Digitally signed by SHAQUETA QUTBUDDIN PATHAN
2024:BHC-AS:13217-DB

J U D G M E N T

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.707 OF 2019

Nitin Gorakhnath Sartape,
Aged: 53 years,
Residing at U/14, Hanjur Nagar,
Pump House, Andheri (E), Mumbai … Appellant
(Org.Accused No.11)

Versus

The State of Maharashtra,
(At the instance of Versova Police Station
C.R. No. 246/2009) … Respondent

WITH
CRIMINAL APPEAL NO.86 OF 2021

Sandip S/O Hemraj Sardar [Prisoner],
Age-49 yrs, Occu: NIL,
R/o. 4/131, B. No. 4, Aram Nagar,
Police Colony, Seven Bunglow,
Andheri (W), Mumbai- 400 061 … Appellant
(Org.Accused No.20)

Versus

The State of Maharashtra,
(At the instance of SIT Versova Police Station, C.R. No. 245 of 2009, C.C. Nos.886/PW/2010, 1555/PW/2010, 2300/PW/2010, & 2728/PW/2010) … Respondent

WITH
CRIMINAL APPEAL NO.104 OF 2021

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Tanaji Bhausaheb Desai,
Age: 50 years, Occupation : Under
Suspension, R/o. 7/101, Solitaire 2,
Poonam Gardens, Opp. SK Stone,
Mira Road (E), Thane - 401107 … Appellant
(Org.Accused No.2)

Versus

1. The State of Maharashtra,
(At the instance of Versova Police
Station)

2. The Inspector of Police
Versova Police Station … Respondents

WITH
CRIMINAL APPEAL NO.151 OF 2021

Pradeep Pandurang Suryawanshi,
Age: 67 years, Occ. Nil,
R/o. Room No. 202, 2nd floor,
Ravi Kiran Co-op. Housing Society, … Appellant
Gorai Road, Borivali (West), Mumbai. (Org.Accused No.9)

Versus

The State of Maharashtra,
(At the instance of Special Investigation
Team, Versova Police Station) … Respondent

WITH
CRIMINAL APPEAL NO.942 OF 2013

1. Manoj Mohan Raj @ Mannu,
Age: 44 years, Residing at

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Noor Mohd. Chawl,
Young Committee, Gundavali
Gaothan, Andheri, Mumbai.

2. Sunil Ramesh Solanki,
Age : 33 years, Residing at BC
Workers' Quarters, B-12 Akurli Road,
Samata Nagar, Kandivali (East),
Mumbai.

3. Mohamed Shaikh Mohd. Taka
Moiddin Shaikh, Age: 44 years,
Residing at : B-13, Room N.303,
Sector-II, Shanti Nagar, Mira Road,
Thane.

4. Suresh Manjunath Shetty,
Age: 43 years, Residing at C- 704,
Shanti Vidya Nagar, Hatkesh,
Mira Road (East), Thane. … Appellants
(Org.Accused Nos.8,
10, 12 and 21)

Versus

The State of Maharashtra,
(At the instance of SIT (Versova Police Station, C.R. No. 246/2009) C.C. Nos.886/PW/2010, 1555/PW/2010, 2300/PW/2010, & 2728/PW/2010) … Respondent

WITH
CRIMINAL APPEAL NO.943 OF 2013

1. Hitesh Shantilal Solanki @ Dhabbu,
Age: 44 years, residing at

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Shardabai Chawl, Room No.1,
Prabhat Colony, Vakola, Santacruz,
Mumbai.

2. Akhil Shirin Khan @ Bobby,
Age: 45 years, residing at Flat No.604,
Priyadarshini Park Society, Om Nagar,
J. B. Nagar, Sahar Road, Andheri
(East).

3. Janardan Tukaram Bhanage,
Age: 59 years, residing at F-9, Sector-9,
CBD Belapur, Navi Mumbai.

As per Court's order dated 23/2/2021,
orig. Accused No. 14 stands abated.
(Expired hence abated).

… Appellants
(Orig. Accused Nos.
5, 6, and 14)

Versus

The State of Maharashtra,
(At the instance of SIT (Versova Police Station C.R. No. 246/2009)
C.C.Nos. 886/PW/2010, 1555/PW/2010,
2300/PW/2010, & 2728/PW/2010)

… Respondent

WITH
CRIMINAL APPEAL NO.944 OF 2013

1. Shailendra Dhoopnarayan Pandey
@ Pinky, Age : 39 years, residing at
Room No.31, Vazir Glass Chawl
Committee, Opp. Natraj Studio,
Andheri (East), Mumbai.

… Appellants
(Orig. Accused No.4)

Versus

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The State of Maharashtra (at the instance of SIT (Versova Police Station C. R. No.246/2009) C.C. Nos. 886/PW/2010, 1555/PW/2010, 2300/PW/2010, & 2728/PW/2010) … Respondent

WITH
CRIMINAL APPEAL NO.1038 OF 2013

1.Ratnakar Gautam Kamble @ Rattu,
Age: 41 years, residing at E/103,
Bandra Police Line, R. K. Patkar Marg,
Bandra (West), Mumbai:400050.

2. Arvind Arjun Sarvankar,
Age: 50 years, residing at S. V. Road,
Kandivali (West), Mumbai.
As per Court's order dated 23/2/2021,
orig. Accused No. 22 stands abated.
(Expired) … Appellants
(Orig. Accused Nos. 3 and 22)

Versus

The State of Maharashtra (at the instance of SIT (Versova Police Station C. R. No.245/2009) C.C. Nos. 886/PW/2010, 1555/PW/2010, 2300/PW/2010, & 2728/PW/2010) … Respondent

WITH
CRIMINAL APPEAL NO.1080 OF 2019

Vinayak Balasaheb Shinde @ Veenu,
Age: 49 years, Occ : Nil,

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Residing at Plot No. 2, Gold Sunit CHS,
Kalwa Naka, Opp. Akash Bar, … Appellant
Kalwa Road, District: Thane. (Org.Accused No.7)

Versus

The State of Maharashtra,
(At the instance of SIT (Versova Police
Station, C.R. No. 246/2009) … Respondent

WITH
CRIMINAL APPEAL NO.1177 OF 2019

Devidas Gangaram Hari Sakpal,
Age: 52 years, Occ : Service,
R/O. 48/6, Worli Police Camp,
Sir Pochkhanwala Road, … Appellant
Worli, Mumbai 400 025. (Org.Accused No.13)

Versus

The State of Maharashtra,
(Through Inspector of Police,
Spl. Investigation Team – Versova Police
Station - C.R. No. 246/2009) … Respondent

WITH
CRIMINAL APPEAL NO.1239 OF 2019

Anant Balaji Patade,
R/O. : Misquitta House,
First Floor, Bajaj Road, … Appellant
Vile Parle (W), Mumbai - 400056 (Org.Accused No.18)

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Versus

The State of Maharashtra,
(through Special Investigating Agency) … Respondent

WITH
CRIMINAL APPEAL NO.1242 OF 2018

Dilip Sitaram Palande,
Aged about 57 years, Occ : Nil,
R/at 19/604, Sanskruti CHS,
Thakur Complex, … Appellant
Kandivali (East), Mumbai. (Org.Accused No.15)

Versus

The State of Maharashtra,
(At the instance of SIT / Versova Police Station, Mumbai (C.R. No. 245/2009) … Respondent

WITH
CRIMINAL APPEAL NO.1488 OF 2018

Pandurang Ganpat Kokam,
Age 56 years,
R/at : Chawl No. E/2, Room No.5,
Gamdevi Compound, Survey No. 79,
Mandeer Road, Meera Gavthan, … Appellant
Dist. Thane. (Org.Accused No.19)

Versus

The State of Maharashtra,
(At the instance of SIT / Versova Police Station, Mumbai C.R. No. 246/2009) … Respondent

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WITH
CRIMINAL APPEAL NO.1490 OF 2018

Ganesh Ankush Harpude,
Age: 58 years,
R/at :- 6/114, Police Quarters, D.N. Nagar, Andheri (W), Mumbai … Appellant (Org.Accused No.17)

Versus

The State of Maharashtra,
(At the instance of SIT/Versova Police Station. Mumbai C.R. No. 246/2009) … Respondent

WITH
CRIMINAL APPEAL NO.1493 OF 2018

Prakash Ganpat Kadam,
Age : 61 years,
R/at : Plot No. 842, B/18,
Shree Shiv Samarth CHS,
Sector No. 8, Charkop,
Kandivali (W), Mumbai – 400 067 … Appellant (Org.Accused No.16)

Versus

The State of Maharashtra,
(At the instance of SIT / Versova Police Station, Mumbai C.R. No. 246/2009) … Respondent

WITH
CRIMINAL APPEAL NO.350 OF 2015

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The State of Maharashtra
(at the instance of SIT (Versova Police Station C.R.No.246/2009) CC. Nos. 886/PW/2010,1555/PW/2010, 2300/PW/2010 and 2728/PW/2010) … Appellant (Orig.Complainant)

Versus

Pradeep Rameshwar Sharma,
Age 49 years,
R/o 6th floor, Bhagwan Bhawan,
J. B. Nagar, Andheri (East),
Mumbai. … Respondent (Orig.Accused No.1)

WITH
CRIMINAL APPEAL NO.854 OF 2013

Ramprasad Vishwanath Gupta,
Age 38 years, Occ: Advocate, R/at
87/B/601, Madhukunj CHS,
Opp. Pant Walawalkar High School,
Mother Dairy Road, Nehru Nagar,
Kurla (E), Mumbai 400 024. … Appellant/Victim

Versus

1. Pradeep Rameshwar Sharma,
   Age 49 years, Occ: Police Inspector,
   R/at 6th floor, Bhagwan Bhavan,
   J. B. Nagar, Andheri (E),
   Mumbai 400 067. … Respondent No.1/ (Original A/No.1)

2. The State of Maharashtra,
   (At the instance of S.I.T. through
   Versova Police Station
   Vide C.R. No. 246/2009) … Respondent No. 2

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WITH
CRIMINAL REVISION APPLICATION NO.182 OF 2023

Ramprasad Vishwanath Gupta,
Age 38 years, Occ: Advocate,
R/at 87/B/601, Madhukunj CHS,
Opp. Pant Walawalkar High School,
Mother Dairy Road, Nehru Nagar,
Kurla (E), Mumbai 400 024 … Appellant/Victim

Versus

1. Tanaji Bhausaheb Desai,
Age 42 years, R.o :- A / 77,
Worli Police Camp, Mumbai-400 025.

2. Ratnakar Gautam Kamble @ Rattu,
Age: 38 years, R/o :- E / 103,
Bandra Police Line, R.K. Patkar Marg,
Bandra(W), Mumbai 400 050.

3. Vinayak Babasaheb Shinde @ Veenu,
Age: 41 years, R/o:-Plot No.2,
Gold Sunit CHS, Kalwa Naka,
Opp. Akash Bar, Kalwa Road,
District – Thane.

4. Pradeep Pandurang Suryawanshi @
Nana, Age:-57 years, R/o :- Ravi
Kiran CHS, 2nd Floor, Room No.202,
Opp. Sayali International School,
Gorai Road, Borivali (W), Mumbai.

5. Nitin Gorakhnath Sartape,
Age: 46 years, R/o:- U/14, Hanjur
Nagar, Pump House, Andheri (E),
Mumbai.

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6. Devidas Gangaram Hari Sakpal,
Age: 45 years, R/o :- 48/06,
Worli Police Camp, Mumbai 400 025.

7. Dilip Sitaram Palande, Age: 50 years,
R/o :- 19/604, Sanskruti CHS,
Thakur Complex, Kandivali(E),
Mumbai.

8. Prakash Ganpat Kadam,
Age: 53 years, R/o :- A-26,
Police Quarters, S.V. Road, Kandivali,
Mumbai.

9. Ganesh Ankush Harpude,
Age: 49 years, R/o:- 6/114,
Police Quarters, D.N. Nagar,
Andheri (W), Mumbai.

10. Anand Balaji Patade,
Age: 39 years, R/o :-Miskita House,
First Floor, Bajaj Road,
Vile Parle (W), Mumbai.

11. Pandurang Ganpat Kokam,
Age: 49 years, R/o :-E-2/5,
Mira Gaothan Mandir Road,
Gaodevi Compound, Mira Road,
Thane.

12. Sandip Hemraj Sardar,
Age: 37 years, R/o:- 131,
Building No.4, Aram Nagar,
Police Quarters, Seven Bungalow,
Andheri (W), Mumbai.

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13. The State of Maharashtra
(at the instance of S.I.T. through
Versova Police Station Vide C. R.
No. 246/09).

… Respondents

Mr. Sudeep Pasbola a/w Mr. Ayush Pasbola i/b Mr. Rahul Arote for appellant in Appeal/1080/2019

Mr. Sanjeev Kadam a/w Ms. Aditi Rajput, Mr. Prashant Raul, Mr.Pratik Deshmukh & Mr. Mayur Sanap i/b Mr. Jagdish Shetty for appellant in Appeal/944/2013

Mr. Jagdish Shetty for Appellant No. 8, 10, 12 & 21 in Appeal/942/2013

Mr. Jagdish Shetty a/w Mr. Mohammed Ayub Shaikh and Mr. U.S.Vanjara for Appellant No. 5 & 6 in Appeal/943/2013

Ms. Pradnya Talekar a/w Ms.Kalyani Mangave a/w Ms. Madhavi Ayyappan i/b Talekar & Associates for appellant in Appeal/151/2021

Mr. C. K. Pendse a/w Ms. Ilsa Shaikh i/b Mr. Shantanu R. Phanse for appellant in Appeal/707/2019

Mr. Girish Kulkarni, Sr. Adv a/w Mr. Kripashankar Pandey and Ms. Mrunmayi Kulkarni i/b Mr. Omkar Ghag for Appellant No.18 in Appeal/1490/2018

Mr. Ashwin Thool a/w Mr. Sarthak Bharsakle, Ms. Archismati Chandramore and Mr. Sushant Mahadik for the appellant in Appeal/1239/2019

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Mr. Nagraj Shinde for Appellant in Appeal/86/2021

Mr. Sushil Gaglani a/w Mr. Dipen Furia for appellant in Appeal/104/2021

Mr. Prakash Shetty a/w Mr. Sarthak Shetty, Mr. Abhishek Singh and Mr.Dnyanesh Bhatkhande for Appellant in Appeal/1177/2019

Mr. Manish Mazgaonkar for appellant in Appeal/1488/2018 and Appeal/1493/2018

Mr. Dilip Sitaram Palande, Appellant No.15 appearing in person in Appeal/1242/2018

Mr. Waqar Pathan a/w Mr.Ayush Pasbola for appellant in Appeal/1038/2013

Dr.Yug Mohit Chaudhry a/w Mr. Harshwardhan Akolkar & Mr.Rohit Vaishya i/b Mr. R.V.Gupta Appellant in Appeal/854/2013

Mr.R.V.Gupta Applicant in person in Revn/182/2023

Mr. Rajiv Chavan, Sr. Adv / Spl.PP a/w Mr. J.P. Yagnik, Addl.PP, Mrs. P.P. Shinde, APP, Mr. Gopal Parab, Ms.Priyanka B. Chavan, Ms. Bhairavi Waradekar and Ms. Priya Mehra for State

Mr. Aabad Ponda, Sr. Adv a/w Mr. Subhash Jadhav, Mr. Chandansingh Shekhawat and Mr. Dilip Rawat for Respondent No.1 in Appeal/350/2015 and Appeal/854/2013

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Mr. Sunil Gaonkar , ACP, CSMT Railway, present

Mr. Vinay Ghorpade, Sr.P.I., D.B.Marg Police Station, present

Mr. Manoj Chalke, PI, Kasturba Marg Police Station, present

Mr. Sunil Lokhande, PI, State CID Konkan Bhavan, present

Mr. K.M.Mallikarjuna Prasanna, Spl, IGP, Establishment, present

CORAM : REVATI MOHITE DERE & GAURI GODSE, JJ.
RESERVED ON : 8th NOVEMBER 2023
PRONOUNCED ON : 19th MARCH 2024

JUDGMENT (Per Revati Mohite Dere, J.) :

1 At the outset, we wish to spell out the names of the appellants/accused and the acquitted accused as appearing in the charge-sheet and the trial and would refer to them as original accused numbers, for the sake of convenience, while deciding all the appeals. The names of the accused are reproduced herein-under:

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Ori. Accused Nos.	Names of Accused
Accused 1	Pradeep Rameshwar Sharma (Police Personnel-Acquitted)
Accused 2	Tanaji Bhausaheb Desai (Police Personnel)
Accused 3	Ratnakar Gautam Kamble @ Rattu (Police Personnel)
Accused 4	Shailendra Dhoopnarayan Pandey @ Pinky (Private Person)
Accused 5	Hitesh Shantilal Solanki @ Dhabbu (Private Person)
Accused 6	Akhil Shirin Khan @ Bobby (Private Person)
Accused 7	Vinayak Babasaheb Shinde @ Veenu (Police Personnel)
Accused 8	Manoj Mohan Raj @ Mannu (Private Person)
Accused 9	Pradeep Pandurang Suryawanshi @ Nana (Police Personnel)
Accused 10	Sunil Ramesh Solanki (Private Person)
Accused 11	Nitin Gorakhnath Sartape (Police Personnel)
Accused 12	Mohamed Shaikh @ Mohd. Taka Moiddin Shaikh (Private Person)
Accused 13	Devidas Gangaram Hari Sakpal (Police Personnel)
Accused 14	Janardan Tukaram Bhanage (Private Person-deceased)
Accused 15	Dilip Sitaram Palande (Police Personnel)
Accused 16	Prakash Ganpat Kadam (Police Personnel)
Accused 17	Ganesh Ankush Harpude (Police Personnel)
Accused 18	Anand Balaji Patade (Police Personnel)
Accused 19	Pandurang Ganpat Kokam (Police Personnel)
Accused 20	Sandip Hemraj Sardar (Police Personnel)
Accused 21	Suresh Manju Shetty (Private Person)
Accused 22	Arvind Arjun Sarvankar (Police Personnel-deceased)

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2 By these appeals, the appellants (**original accused Nos. 2 to 22**) have impugned the judgment and order dated 12th July, 2013, passed by the Ad-hoc Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay, in Sessions Case No. 317/2010 (S.C.Nos. 510/2010, 673/2010, 781/2010), convicting and sentencing them as under:

- **Original Accused Nos. 2 to 22** have been convicted for the offence punishable under Section 120B r/w 364 of the IPC and are sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for a period of two years;

- **Original Accused Nos. 2 to 22** have been convicted for the offence punishable under Section 120B r/w 365 of the IPC and are sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for a period of one year;

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- **Original Accused Nos. 2 to 22** have been convicted for the offence punishable under Section 120B r/w 368 of the IPC and are sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for a period of one year;

- **Original Accused Nos. 2 to 22** have been convicted for the offence punishable under Section 120B r/w 302 of the IPC and are sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for a period of three years;

- **Original Accused Nos.4, 7, 8, 10, 12** and **21** have been convicted for the offence punishable under Section 143 of the IPC and are sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for one month;

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- **Original Accused Nos.4, 7, 8, 10, 12** and **21** have been convicted for the offence punishable under Section 144 of the IPC and are sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

- **Original Accused Nos.4, 7, 8, 10, 12** and **21** have been convicted for the offence punishable under Section 147 of the IPC and are sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

- **Original Accused Nos.4, 7, 8, 10, 12** and **21** have been convicted for the offence punishable under Section 148 of the IPC and are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

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- **Original Accused Nos.4, 7, 8, 10, 12** and **21** have been convicted for the offence punishable under Section 149 r/w 364 of the IPC and are sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for two years;

- **Original Accused Nos.4, 7, 8, 10, 12** and 21 have been convicted for the offence punishable under Section 149 r/w 365 of the IPC and are sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for one year;

- **Original Accused Nos.2 to 8, 10, 12** and **21** have been convicted for the offence punishable under Section 364 r/w 149 of the IPC and are sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for two years;

- **Original Accused Nos.2 to 8, 10, 12** and **21** have been convicted for the offence punishable under Section 365 r/w 149

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of the IPC and are sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for one year;

- **Original Accused Nos.9, 11, 13 to 20** and **22** have been convicted for the offence punishable under Section 364 r/w 109 r/w 120B of the IPC and are sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for two years;

- **Original Accused Nos.9, 11, 13 to 20** and **22** have been convicted for the offence punishable under Section 365 r/w 109 r/w 120B of the IPC and are sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for one year;

- **Original Accused Nos.2 to 22** have been convicted for the offence punishable under Section 368 r/w 109 r/w 120B of the IPC and are sentenced to suffer rigorous imprisonment for

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seven years and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for one year;

- **Original Accused Nos.2, 3, 5, 13** and **16** have been convicted for the offence punishable under Section 344 r/w 34 of the IPC and are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

- **Original Accused Nos.4, 6 to 12, 14, 15, 17 to 22** have been convicted for the offence punishable under Section 344 r/w 109 r/w 120B of the IPC and are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

- **Original Accused Nos.2, 9** and **15** have been convicted for the offence punishable under Section 302 r/w 34 of the IPC and are sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for three years;

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- **Original Accused Nos.2 to 8, 10 to 14** and **16 to 22** have been convicted for the offence punishable under Section 302 r/w 109 r/w 120B of the IPC and are sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for three years;

- **Original Accused Nos.2, 3, 9, 11, 13, 15 to 20** and **22** have been convicted for the offence punishable under Section 201 r/w 34 of the IPC and are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

- **Original Accused Nos.2 to 8, 10, 12, 14** and **16** have been convicted for the offence punishable under Section 201 r/w 109 r/w 120B of the IPC and are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

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- O**riginal Accused No.9** has been convicted for the offence punishable under Section 201 of the IPC and are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

- **Original Accused Nos.2 to 8, 10 to 22** have been convicted for the offence punishable under Section 201 r/w 109 r/w 120B of the IPC and are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months;

- **Original Accused Nos.20** and **22** have been convicted for the offence punishable under Section 174(A) of the IPC and are sentenced to suffer simple imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer simple imprisonment for three months;

- **Original Accused Nos.2, 3, 7, 9, 11, 13, 15 to 20** and **22** have been convicted for the offence punishable under Section 119

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of the IPC and are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for three months.

3 Vide the same judgment and order, Pradeep Sharma (OA1) was acquitted of all the offences punishable under the following Sections :

- Sections 120B r/w 364, 365, 368 and 302 of the IPC;
- Section 368 of the IPC;
- Section 364 r/w 109 r/w 120B and 365 r/w 109 r/w 120B of the IPC;
- Section 368 r/w 109 r/w 120B of the IPC ;
- Section 344 r/w 34 of the IPC;
- Section 302 r/w 34 of the IPC;
- Section 302 r/w 109 r/w 120B of the IPC;
- Section 201 r/w 109 r/w 120B of the IPC;
- Section 119 of the IPC.

4 Against the acquittal of Pradeep Sharma (OA1), the State of Maharashtra, as well as the complainant-Ramprasad

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Gupta (brother of the deceased) have filed Criminal Appeal No. 350/2015 and Criminal Appeal No. 854/2013 respectively. Similarly, the complainant-Ramprasad Gupta (brother of the deceased) has also filed the aforesaid Revision Application, being Criminal Revision Application No.182/2023, as against **12** appellants/accused, seeking enhancement of their sentence, i.e. from life to death.

5 Both the said appeals and the Criminal Revision Application have been tagged alongwith the aforesaid appeals filed by the appellants/accused against their conviction and as such, all the appeals/revision are heard together. Considering that the evidence in all the appeals is the same, all the appeals i.e. appeals against conviction and the acquittal appeal, are decided together, as the findings are overlapping.

6 Before we proceed, we may note that during the pendency of the aforesaid appeals, **A14** (Janardan Tukaram

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Bhanage) and **OA22** (Arvind Arjun Sarvankar) expired and as such, the appeals filed by them stands abated, only *qua* them.

I. BACKGROUND OF THE CASE

7 **The prosecution case, in brief,** is that Ramnarayan Vishwanath Gupta @ Lakhanbhaiya @ Pandeyji (hereinafter referred to as 'Ramnarayan' for the sake of brevity) was abducted alongwith his friend Anil Bheda on 11th November 2006 at around 12:30 hrs. by the police in a Qualis; from there, they were taken to Bhandup; then to D.N. Nagar Police Station; that from D.N. Nagar Police Station, the police took Ramnarayan Gupta to Nana Nani Park and threw his dead body there, fired again and showed that Ramnarayan Gupta was killed in a genuine encounter, when infact, it was a fake encounter. It is further the prosecution case, that Anil Bheda was wrongfully confined by the police and others, so that, he would not spill the beans regarding their abduction and furnish other details.

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8 **Whereas, the case of the appellants/accused, in brief,** is that Ramnarayan Gupta was never abducted and that pursuant to a tip-off received i.e. secret information, a trap was laid and that Ramnarayan Gupta was killed, when he fired at the police party, in retaliation/self defence and as such, it was a genuine encounter. The prosecution case of abduction of Ramnarayan and Anil Bheda was completely denied by the appellants/accused.

9 The details of both the versions will be set-out in greater detail, when we proceed to analyse the evidence on record.

10 Before we advert to the prosecution and the defence case in detail as well as the evidence on record, we would like to place on record the submissions canvassed by the learned counsel for each of the appellants/accused on the one hand and the learned Spl.PP for the State and the learned counsel for the complainant on the other, in the aforesaid appeals.

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II. SUBMISSIONS OF THE APPELLANTS/ACCUSED

A. Submissions of Mr. Pasbola, learned counsel for the appellant-Vinayak Babasaheb Shinde @ Veenu (OA7) in Criminal Appeal No.1080/2019:

11 Mr. Pasbola, learned counsel for Vinayak Shinde (A7) submitted that there are three versions which have come on record in the said case i.e. police (accused) version; the prosecution case; and, the case of Aruna Bheda (PW40). He submitted that infact, the encounter had taken place as stated by the police i.e. accused and that it was a genuine encounter and that the police have been falsely implicated in the said case. According to Mr. Pasbola, the prosecution case as far as the appellant A7) is concerned, rests on circumstantial evidence and that too, only in the form of Call Detail Records/Subscriber Detail Records (CDR/SDR), which, by itself, is not sufficient to point to the complicity of the appellant in the said case. He further submitted that there are several

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contradictions/improvements/omissions that have come on record *inter se* i.e. in the evidence of Ramprasad Gupta (PW1), Ganesh Iyer (PW2), Shyamsunder Gupta (PW3), Dheeraj Mehta (PW38), Aruna Bheda (PW40) and Shankar @ Girish Dalsingh (PW57) and as such, in light of the same, the prosecution case of abduction of Ramnarayan and Anil Bheda cannot be accepted. He further submitted that there is no iota of evidence to show that Ramnarayan and Anil Bheda were abducted from Sector 9, Vashi as alleged, inasmuch as, there are no eye-witnesses to the same and that the evidence relied upon by the prosecution, is based on hearsay evidence, which is inadmissible. He submitted that the appellant has been falsely implicated by Special Investigating Team (SIT) (prosecuting agency). According to Mr. Pasbola, the witnesses examined to prove CDRs i.e. the Nodal Officers of various companies, cannot be relied upon, having regard to the discrepancies that have come in their evidence with respect to different addresses of the same numbers and the change in the Base Transceiver Station (BTS) or Cell Towers address. He

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submitted that Section 65B Certificates as mandated in law, have also not been furnished or produced by the Nodal Officers examined in this behalf.

11.1 Mr. Pasbola further submitted that as far as Exh. 688-entry made by Sanjay Apage, PN No. 30704 (PW90), is concerned, the same cannot be relied upon, as it appears to be fabricated and that the said entry by itself, is not sufficient to infer that the appellant **(A7)** was using the mobile number attributed to him, at the relevant time. He further submitted that there is no evidence to show that Avinash Shinde is the brother of the appellant, in whose name the mobile stood, inasmuch as, no question under Section 313 of the Code of Criminal Procedure (Cr.PC) has been put to the said witness. He further submitted that as far as CDR evidence is concerned, the learned Judge has put a composite question pertaining to all Exhibits, exhibited by the witnesses to all the accused and as such, the same will have to be excluded from consideration under Section 313 Cr.PC Thus,

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according to Mr. Pasbola, from the circumstances brought on record, as far as the appellant is concerned, it is difficult to draw an irresistible conclusion as against the appellant, vis-a-vis, his involvement in the commission of the crime and as such, he be acquitted of all the offences for which he has been convicted.

B. Submissions of Mr. Sanjeev Kadam, learned counsel for the appellant – Shailendra Dhoopnarayan Pandey @ Pinky (OA4) in Criminal Appeal No. 944/2013:

12 Mr. Sanjeev Kadam, learned counsel appearing for the aforesaid appellant submitted that although the appellant has been convicted for the charge under Section 302 of IPC i.e. for the death of Ramnarayan, there is no material whatsoever to connect the appellant with the alleged fake encounter. He further submitted that to prove conspiracy with respect to abduction of Ramnarayan and Anil Bheda, the prosecution relied on the evidence of PW38-Dheeraj Mehta; PW40-Aruna Bheda; PW54-

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Changdeo Godse (Nodal Officer, Vodafone); PW64-Sunil Sawant (Nodal Officer); PW84-Satish Rane (Special Metropolitan Magistrate, who conducted the Test Identification Parade); PW88-Mohammad Usman Shaikh, an employee of a mobile shop, on whose name a sim card was obtained and handed over by PW96-Mehamood Shaikh (mobile shop owner) to the appellant-Shailendra; and PW96-Mehamood Shaikh (mobile shop owner) who was declared hostile, since he did not support the prosecution case. He submitted that the evidence of none of the witnesses i.e. PW1-Ramprasad Gupta; PW2-Ganesh Iyer or PW3-Shyamsunder Gupta can be relied upon, inasmuch as, the same is contradictory, *inter se,* inconsistent and contrary to the evidence of PW40-Aruna Bheda, with respect to abduction. He further submitted that the appellant is not a police officer nor allegedly had any motive to kill Ramnarayan. He submitted that although the appellant is alleged to be an informer of the police, the prosecution has not produced any material in support thereof. He further submitted that the prosecution case rests entirely on

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circumstantial evidence and that the hearsay evidence of the witnesses, with respect to abduction, cannot be relied upon, being inadmissible. He submitted that the prosecution is relying on CDRs of the appellant to show that the appellant was in touch with the other co-accused on the date of the incident i.e. 11th November 2006, and that, that by itself is not sufficient to point to the complicity of the appellant. He further submitted that none of the witnesses have either identified the appellant in the test identification parade held nor in the Court. According to Mr. Kadam, the test identification parade itself suffers from several infirmities and lacunae, inasmuch as, the photograph of the appellant was published in the newspapers. Learned counsel relied on Exh. 782 i.e. the DNA Newspaper, which had published the photograph of the appellant on 12th January 2010, whereas, the test identification parade was held on 20th January 2010. He submitted that PW40-Aruna Bheda has not identified the appellant and it was Anil Bheda (now deceased), who had identified A4-Shailendra, however, in view of the demise of Anil

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Bheda and for the reasons set-out herein-above, the test identification parade cannot be relied upon. He further submitted that no reliance can be placed even on the evidence of PW88-Mohammad Usman Shaikh, an employee of a mobile shop of which PW96-Mehamood Shaikh is the owner, inasmuch as, PW96-Mehamood Shaikh has not supported the prosecution case i.e. that the sim card was purchased in the name of PW88-Mohammad Usman Shaikh and was handed over by PW96-Mehamood Shaikh to the appellant. He further submitted that the evidence of PW88-Mohammad Usman Shaikh shows that the card was allegedly purchased on his name, by using his documents in the year 2007 (mobile sim No. XXXXXX6311), whereas, the incident is of November 2006.

12.1 Learned counsel further submitted that the prosecution had examined PW103-Amit Patel to link the appellant with Janardan Bhanage **(A14)**, vis-a-vis motive, however, the said witness was declared hostile. He submitted that

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suggestions were also made to this witness in his cross-examination, that he was an informer of Pradeep Sharma **(OA1)** and that Janardan Bhanage **(A14)** had disclosed to him about bumping off, of Ramnarayan (deceased) and that he was close to Janardan Bhanage **(A14)**, however, the said suggestions have been denied by the said witness. Learned counsel further relied on the evidence of PW65-Yogesh Shreekrushna Rajapurkar (Nodal Officer, Vodafone), to show the discrepancy between Exhibits 571 and 575. He submitted that the evidence of the said witness is not trustworthy in view of the evidence that has come on record with respect to locations. According to him, the annexures to Exhibits 571 and 575 are signed by the signatory only on the letterhead and not on the annexures, and as such, the annexures which pertain to the CDRs, cannot be relied upon.

12.2 According to Mr. Kadam, the evidence of the Nodal Officers examined by the prosecution, in particular, the evidence of PW62-Rakeshchandra Prajapati (Nodal Officer of Loop

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Mobile), shows that the co-accused Hitesh Solanki **(A5)** had called Shailendra Pandey **(A4)** twice on 11th November 2006 i.e. at 16:30 hrs. and 17:07 hrs. He submitted that timings as stated aforesaid do not match with the time when the alleged abduction took place. He submitted that even otherwise, it is the prosecution case that accused No.5's phone was being used by Pradeep Sharma **(OA1)**. He further submitted that the prosecution has failed to prove that Shailendra Pandey **(A4)** was part of the second incident i.e. the incident of encounter which took place at Nana Nani Park.

12.3 Mr. Kadam further submitted that the same set of questions were put to all the accused in their 313 statements and that no specific question which was incriminating as against the appellant was put to him that he was at Vashi on 11th November 2006 at 16:30 hrs. and 17:07 hrs. He further submitted that although two sim cards were allegedly used by Shailendra Pandey **(A4)**, one standing in his own name and one given to him post the

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incident, no CDR has been collected with respect to the said sim cards, post the incident.

12.4 In conclusion, Mr. Kadam submitted that the trial Court has erred in observing that Shailendra Pandey **(A4)** was physically present at Nana Nani Park, Andheri, though he was not present at the said spot. Mr. Kadam relied on two judgments of the Apex Court in ***Shankar v. State of Maharashtra[1] vis-a-vis motive in a case of circumstantial evidence and Ravindra Singh v. State of Punjab[2], vis-a-vis requirement of 65B Certificate, in support of his submission.***

12.5 He further submitted that considering that there is no evidence to connect the appellant-Shailendra Pandey **(A4)** to the abduction or to the subsequent elimination of Ramnarayan, and considering the fact, that the appellant had no motive nor any role was attributed to him, the appellant be acquitted of the offences for which he has been convicted.

1 2023 SCC OnLine SC 268
2 (2022) 7 SCC 581

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C. Submissions of Mr. Jagdish Shetty, learned counsel for the appellants - Manoj Mohan Raj @ Mannu (A8); Sunil Solanki (A10); Mohammed Shaikh @ Takka (A12) and Suresh Shetty (A21) in Criminal Appeal No.942/2013:

13 Learned counsel appearing for appellants-Manoj @ Mannu **(A8)**, Sunil Solanki **(A10)**, Mohammed Shaikh @ Takka **(A12)** and Suresh Shetty **(A21)** submitted that all the said appellants are private persons, who have been prosecuted alongwith the police officers for the abduction of Ramnarayan and Anil Bheda; wrongful confinement of Anil Bheda; and, for the death of Ramnarayan. He submitted that the only evidence as against the said appellants was the evidence of Anil Bheda, with respect to abduction, however, in view of Anil Bheda's demise, there is no other witness who speaks about the complicity of the said appellants, in the abduction of Ramnarayan and Anil Bheda. He further submitted that there are no CDRs of the said persons collected by the prosecution.

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13.1 As far as the evidence of Parmanand Desai (PW14) is concerned, learned counsel for the appellants submitted that the evidence of this witness will reveal that **Sunil Solanki (A10)** was working as a sweeper in the Mumbai Municipal Corporation; that on 9th November 2006, he had taken half-day leave; that on 10th November 2006, a weekly-off and on 11th November 2006, casual leave and that the same, by itself cannot be said to be incriminating.

13.2 As far as Sujit Mhatre (PW16) is concerned, Mr. Shetty submitted that the said witness has not supported the prosecution case entirely. He submitted that his evidence is silent with respect to Sunil Solanki **(A10),** taking Qualis from him, for his personal use in November 2006. He further submitted that the evidence of the panch i.e. Maruti Naikade (PW13) with respect to the seizure of the Qualis vehicle in March, 2010, allegedly used in the abduction, suffers from several infirmities,

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inasmuch as, there is discrepancy between the chassis and engine number, as reflected in Exh. 182 (panchnama) and Exh. 183 (the verification report). He submitted that hence, there is no clarity with respect to the description of the vehicle so seized. He further submitted that the prosecution had examined Sundar Tendulkar (PW9), who had purchased the vehicle from Sujit Mhatre (PW16) and who had later sold the same to Mrugesh Negandhi (PW10). He submitted that the evidence of these witnesses do not show as to when Sujit Mhatre (PW16) was in possession of the alleged Qualis vehicle, which was used in the commission of the abduction. He submitted that neither is the evidence of Mrugesh Negandhi (PW10) relevant, inasmuch as, the said witness had purchased the Qualis used in the commission of the offence from Sundar Tendulkar (PW9). According to Mr. Shetty, the prosecution ought to have examined Ashok Shah from whom Sujit Mhatre (PW16) had allegedly purchased the Qualis vehicle. Learned counsel for the appellants submitted that although the RTO Officer i.e. Sandesh Chavan (PW48) was

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examined to show the ownership of the vehicle, the document which is at Exh. 359 would only show that in 2006, Ashok Shah was the owner of the vehicle and that in 2007 i.e. on 21st February 2007, Sujit Mhatre (PW16) was the owner. He submitted that the said evidence of Sandesh Chavan (PW48) contradicts the evidence of Sujit Mhatre (PW16), who has stated that he was in possession of the Qualis vehicle of Ashok Shah in 2006 itself, and that he had given the said Qualis vehicle (used in abduction) and another Qualis vehicle to the accused in November 2006.

13.3 According to the learned counsel for the appellants, the Special Executive Magistrate-Satish Rane was examined as PW84, for proving the test identification parade held by him, however, his evidence would only show that Anil Bheda (deceased) had identified Manoj @ Mannu **(A8)** and Sunil Solanki **(A10)** on 23rd March 2010 (Exh. 643) and had identified Mohamed Shaikh @ Mohd. Taka (**A12)** on 28th June 2010 (Exh.

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645). He submitted that since Anil Bheda, before his evidence could be recorded, had died, in the absence of any substantive evidence, the identification by Anil Bheda, of these accused cannot be relied upon.

13.4 As far as Mohammad Usman Shaikh (PW88) is concerned, learned counsel for the appellants submitted that the said witness had turned hostile. He submitted that the prosecution, even otherwise, had examined this witness to establish/show the connection between Shailendra Pandey @ Pinky **(A4)** and Mohamed Shaikh @ Mohd. Taka **(A12)**, post the incident i.e. in 2007. He submitted that even the identification of Mohamed Shaikh @ Mohd. Taka **(A12)** by Amit Jambotkar (PW8), cannot be said to be incriminating.

13.5 Mr. Shetty submitted that PW110- K.M.M. Prasanna, in his cross-examination, had stated that psychological tests were conducted on Ramprasad Gupta (PW1) and three other witnesses

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i.e. PW2-Ganesh Iyer, Anil Bheda and PW40-Aruna Bheda, however, the results were inconclusive and hence, the evidence of these witnesses, including that of PW40-Aruna Bheda cannot be relied upon.

13.6 Mr. Shetty submitted that the learned trial Judge has convicted Manoj @ Mannu **(A8)**, Sunil Solanki **(A10),** Mohammed Shaikh @ Takka **(A12)** and Suresh Shetty **(A21)** , only on the basis of the progress reports submitted by K.M.M.Prasanna (PW110), there being no other material to connect the appellants with the alleged crime.

13.7 In conclusion, he submitted that the evidence on record is not sufficient to point to the complicity of the appellants in the offence, inasmuch as, the circumstances on record that, the vehicle used in the commission of the offence i.e. for abduction, has not been identified; that the prosecution has not proved who was present in the vehicle at the relevant time; and that there are

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no CDRs to show the presence of the appellants at the time of abduction of Ramnarayan and Anil Bheda. He submitted that in this view of the matter, the appellants be acquitted of the offences for which they have been convicted.

D. Submissions of Mr. Jagdish Shetty, learned counsel for the appellants - Hitesh Solanki @ Dhabbu (A5) and Akhil Khan @ Bobby (A6) in Criminal Appeal No.943/2020:

14 Mr. Shetty, learned counsel for Hitesh Solanki @ Dhabbu **(A5)** and Akhil Khan @ Bobby **(A6)** submitted that the prosecution has failed to prove that PSI Ghorpade (PW108) had visited Thane Central Jain, pursuant to an order passed by the Court granting him permission to obtain the specimen handwriting of Hitesh Solanki @ Dhabbu **(A5)**, having regard to the admission of this witness in his cross-examination i.e. there is no record as to when PSI Ghorpade visited the jail.

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14.1 Learned counsel further submitted that the evidence of Ravsaheb Ikke (PW76) cannot be relied upon, inasmuch as, his statement under Section 161 was not recorded by SIT, during investigation. He submitted that hence, having regard to the same, the Station Diary entry i.e. Exh. 620 and 620-A produced by the said witness dated 28th September 2010 at 19:40 hrs. stating therein, that he received a telephonic call from PSI Ghorpade, that Hitesh Solanki @ Dhabbu **(A5)** had refused to give his specimen handwriting, cannot be relied upon.

14.2 Mr. Shetty, learned counsel for the aforesaid appellants **(A5** and **A6)**, submitted that to prove wrongful confinement of Anil Bheda, the prosecution examined Sumant Bhosale (PW32); Milind More (PW55); Naresh Phalke (PW45); Madan More (PW43); and Aruna Bheda (PW40), however, their evidence does not inspire confidence.

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14.3 As far as Sumant Bhosale (PW32) is concerned, learned counsel for the appellants submitted that the said witness has not identified either Hitesh Solanki @ Dhabbu **(A5)** or others. He submitted that as far as Milind More (PW55) is concerned, the said witness has stated in his evidence, that he was knowing Hitesh Solanki @ Dhabbu **(A5)**, as Hitesh, who was working for Pradeep Sharma **(OA1)** and nothing more than that. He submitted that the said witness has not stated that Hitesh Solanki @ Dhabbu **(A5)** was present with them in the Qualis when he went to Bhatwadi at Ghatkopar, as well as to Mid-town Hotel, Andheri.

14.4 As far as Akhil Khan @ Bobby **(A6)** is concerned, there is no mention of him, by the said witnesses.

14.5 As far as Naresh Phalke (PW45) is concerned, learned counsel submitted that the said witness has neither identified nor spoken about the appellants i.e. Hitesh Solanki @ Dhabbu **(A5)**

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and Akhil Khan @ Bobby **(A6)**.

14.6 As far as Vishwajit Chavan (PW53) is concerned, learned counsel for the appellants submitted that the said witness has only stated that Hitesh Solanki @ Dhabbu **(A5)**, was working for Pradeep Sharma **(OA1)** and that Hitesh was with Anil Bheda (deceased) in Mid-town hotel, Andheri. Mr. Shetty submitted that although the said witness has stated that at the behest of Pradeep Suryawanshi @ Nana **(A9)**, he went to Mid-town Hotel on three dates i.e. on 1st February, 4th February and 19th March 2010, however, despite the requirement of making notings in station diary, when leaving, there is no station diary entry of the same.

14.7 Mr. Shetty further submitted that although Aruna Bheda (PW40) has identified Hitesh @ Dhabbu **(A5)**, as having taken her and Anil Bheda to Kolhapur, however, thereafter, the prosecution has not proved that Hitesh @ Dhabbu **(A5)** had

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accompanied Anil Bheda. He submitted that the hotel in which Aruna Bheda (PW40) and her husband-Anil Bheda were kept in Kolhapur, has not been disclosed by her in her statement before the SIT, nor have the room numbers been disclosed. He further submitted that the prosecution has not brought on record the hotel register where Aruna Bheda (PW40) and her husband - Anil Bheda were allegedly confined by Hitesh @ Dhabbu **(A5)** in a Hotel in Kolhapur. He further submitted that neither the Manager nor any employee of the hotel in Kolhapur, where Aruna Bheda (PW40), her husband-Anil Bheda and Hitesh @ Dhabbu **(A5)** stayed, have been examined and as such, there is no material to show that Hitesh @ Dhabbu **(A5)** had taken Aruna Bheda (PW40) and Anil Bheda to Kolhapur and confined them. He further submitted that there are several discrepancies in the evidence of Aruna Bheda (PW40) with respect to when she was taken to Kolhapur by Hitesh @ Dhabbu **(A5)**. According to Mr. Shetty, it is alleged by the prosecution that Hitesh @ Dhabbu **(A5)** had given Aruna Bheda (PW40), a prepared affidavit (Exh. 335)

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to be presented before the Magistrate in the 176 inquiry, however, except for the say of Aruna Bheda (PW40), there is no other material to show that the said affidavit was prepared by Hitesh @ Dhabbu **(A5).** It is further submitted that thus, the prosecution has failed to prove that Aruna Bheda (PW40) and her husband-Anil Bheda were wrongfully confined in Kolhapur by Hitesh @ Dhabbu **(A5).** He further submitted that the same would be evident from the cross-examination of Aruna Bheda (PW40), that she did not disclose the said fact i.e. of her being taken by Hitesh @ Dhabbu **(A5)** against her will and wishes, despite having several opportunities to disclose the same.

14.8 As far as Jayesh Kesariya (PW50) is concerned, learned counsel for the appellants submitted that there is an omission with respect to the presence of Hitesh @ Dhabbu **(A5)** at the Collector's Office when Anil Bheda and Aruna Bheda (PW40) had gone for recording their statements before the Special Land Acquisition Officer (SLAO) and as such, the

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evidence of Jayesh Kesariya (PW50), does not further the prosecution case.

14.9 As far as Ajendrasingh Thakur (PW87), Senior PI attached to D.N. Nagar Police Station is concerned, learned counsel submitted that all that the said witness has stated is that Hitesh @ Dhabbu **(A5)** and Akhil Khan @ Bobby **(A6)** used to come to Pradeep Sharma's **(OA1)** office at D.N. Nagar Police Station and that he had seen Hitesh @ Dhabbu **(A5)** and Akhil Khan @ Bobby (A6) sitting there with Pradeep Sharma **(OA1)**. He submitted that the said evidence cannot be stated to be incriminating as against Hitesh @ Dhabbu **(A5)** and Akhil Khan @ Bobby **(A6).**

14.10 It is further submitted that the prosecution had examined Geetanjali Datar (PW68), to show that Geetanjali Datar (PW68) had made three calls on a mobile number i.e. XXXXXX2987 standing in Hitesh @ Dhabbu's **(A5)** name, but

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was purportedly being used by Pradeep Sharma **(OA1)** i.e. the two calls on 11th November 2006 (one outgoing and one incoming) and one on 15th November 2006 (outgoing call), however, the said witness has turned hostile.

14.11 Thus, Mr. Shetty submitted that considering the aforesaid, i.e. there being no material on record *qua* the appellants – Hitesh Solanki @ Dhabbu **(A5)** and Akhil Khan @ Bobby **(A6)**, they be acquitted of all the offences.

E. Submissions of Ms. Pradnya Talekar, learned counsel for the appellant-Pradeep Suryawanshi @ Nana (A9) in Criminal Appeal No. 151/2021:

15 Ms. Talekar, learned counsel for the appellant-Pradeep Suryawanshi **(A9)** submitted that the appellant has been falsely implicated in the present case and that he is incarcerated in jail for more than 13 years. She submitted that it was a genuine encounter, which has been painted as a fake encounter, with no

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material whatsoever to support the same. She submitted that in fact, the evidence and documents on record would clearly show that the encounter was a genuine encounter. She submitted that the deceased-Ramnarayan @ Lakhanbhaiya was a member of the Chhota Rajan gang and had several antecedents and was a wanted accused in several cases registered against him. According to Ms. Talekar, on 11th November 2006, at about 16:45 hrs, the appellant received information that Ramnarayan @ Lakhanbhaiya was going to meet his accomplices at Nana Nani Park, 7 Bungalow at Andheri (W), pursuant to which, he informed his superiors at about 17:15 hrs i.e. to the ACP of the D.N. Nagar Division-Arun Awate (PW63); DCP, Zone-IX-Vinaykumar Choube (PW61) and Addl. C.P., West Region-Bipin Bihari (PW78). It is the case of the appellant that his seniors ordered him to arrest Ramnarayan @ Lakhanbhaiya, with the help of officers and policemen of the Versova Police Station, pursuant to which, at 17:40 hrs, the appellant contacted PI Sonawane of the Versova Police Station, for help and requested them to send officers to

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D.N. Nagar Police Station i.e. API Sartape **(A11)**, PSI Harpude **(A17)** and Police Naik Kokam **(A19)**. She submitted that the said officers of Versova Police Station reported to the appellant; that about 18:20 hrs the appellant **(A9)** called his staff i.e. API Sarvankar **(A22)**, API Palande **(A15)** and PSI Patade **(A18)** to his cabin. Accordingly, the appellant and the said three officers collected their weapons and ammunition; and the appellant briefed all the officers about the information so received. She submitted that pursuant thereto, the squad reached the spot on motorcycles and rickshaws at 19:10 hrs; that one squad stood at the west side of the Nana Nani Park; and the other on the east side of the Nana Nani Park; that thereafter, an auto-rickshaw stopped near an electric pole and that Lakhanbhaiya got down from the said rickshaw; that the secret informant signaled at the appellant, that the passenger was the wanted accused-Ramnarayan, pursuant to which, all were alerted about the arrival of Ramnarayan. She submitted that thereafter, both the groups moved forward to arrest Ramnarayan, however, on being

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alerted, he pulled out his firearm and pointed at the appellant; that the appellant warned him not to fire as they were Police officers and asked him to surrender; that despite being warned, Ramnarayan fired a round in the direction of the appellant, which the appellant evaded by ducking; thereafter, API Sarvankar **(A22)** also is alleged to have warned Ramnarayan, however, despite the same, he fired in the direction of API Sarvankar **(A22)**. Ms. Talekar submitted that in order to save themselves and the civilians, the police fired five rounds at Ramnarayan i.e. the appellant fired two rounds; and API Sarvankar **(A22)**, API Palande **(A15)** and API Sartape **(A11)** fired one round each. She submitted that since Ramnarayan was seriously injured, the police control room was informed of the same and a wireless van was requested, to shift Ramnarayan to the hospital. She submitted that the appellant directed API Sarvankar **(A22)** and API Sartape **(A11)** to accompany Ramnarayan to Cooper hospital. She submitted that on reaching the hospital i.e. the OPD of Cooper Hospital at 20:57 hrs, Ramnarayan was declared dead by the

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casualty medical officer at 21:00 hrs Pursuant thereto, the appellant lodged an FIR with the Versova Police Station, which was registered vide C.R. No. 302/2006. Ms. Talekar submitted that during the course of recording of the appellant's statement i.e. FIR, the appellant received the news, that Ramnarayan had expired and as such, the same was incorporated in the FIR. Thereafter, investigation was carried out by PI Mohandas Sankhe (PW39) upto 15th November 2006.

15.1 In support of her submission that Ramnarayan Gupta @ Lakhanbhaiya was a wanted criminal, learned counsel Ms. Talekar relied on the antecedents that have come on record of Ramnarayan. She submitted that Ramnarayan was a wanted accused and since a secret information was received of his coming to Nana Nani Park, it was decided to apprehend him at Nana Nani Park, where he was to come to meet his accomplices. She submitted that all the evidence and documents collected would clearly show that it was a genuine encounter and not a fake encounter, as alleged by the prosecution. Learned counsel relied

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on the evidence of Dattatray Sankhe (PW31) and Mohandas Sankhe (PW39) to show that both the officers who investigated, never thought that the encounter was not a genuine encounter. Ms. Talekar relied on the order passed by the National Human Rights Commission ('NHRC'), New Delhi, on a complaint made by Ramprasad Gupta (brother of Ramnarayan) to show that the Commission had relied on an inquiry report of the SLAO and Magistrate and the observation therein, that the encounter of Ramnarayan was a genuine encounter and as such, the action of the police was protected by law.

15.2 Ms. Talekar submitted that if the prosecution case as suggested that Ramnarayan was done to death, prior to bringing him to Nana Nani Park was true, blood would not have been found on the spot. She submitted that not a single witness has been examined by the prosecution to show that the deceased was not alive, when he came to Nana Nani Park.

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15.3 Ms. Talekar, learned counsel for the appellant **(A9)** further submitted that the fact that the encounter was a genuine encounter has also been supported by the witnesses examined by the prosecution i.e. by PW51–Anil More, PW63–Arun Awate, PW31-Dattatray Sankhe, PW35-Kiran Sonone, PW83-Umesh Revandkar (Exh.–633) and PW26-Anil Kadam. She submitted that the evidence of the said witnesses fortifies the appellant's case of a genuine encounter.

15.4 Ms. Talekar further submitted that the report of the NHRC (Exh. 928-A) dated 1st April 2010 reveals that the encounter was a genuine encounter. She, thus, submitted that the documents and the evidence on record will show that the encounter was a genuine encounter, inasmuch as, the same has been corroborated by several documents i.e. spot panchnama, station diary entries, log book of the police van, finding of railway tickets on the deceased's person. She submitted that the blood group of the deceased was Group B and the blood found

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on the spot, was also Group B and as such, the same fortifies the appellant's case, that the encounter took place at the spot. She further submitted that the evidence of some of the witnesses would reveal that the deceased was alive, whilst being shifted/carried from Nana Nani Park to Cooper Hospital and as such, from the documents and evidence on record there was no reason to doubt that the encounter was not a genuine encounter.

15.5 Ms. Talekar submitted that no sanction under Section 197 Cr.PC was taken, inasmuch as, the appellant, a police officer was on duty at the time of the incident and that the weapon used in the alleged crime was a service revolver. Learned counsel relied on C.R. No.302/2006, registered at the instance of the appellant **(A9)** with the Versova Police Station stating therein, that the deceased had attempted to fire at the police, who were discharging their official duty, pursuant to which the deceased was shot. In support of the said submission i.e. the appellant was on official duty, and as there was a danger to the passersby,

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Ramnarayan was shot at, learned counsel relied on the Duty Register (Exh. 208A), Entries regarding issuance of service revolver to the appellant (Exhibits 216A and 221A); FIR No.302/2006 (Exhibits 278 and 281); entries in the Station Diary of the Versova Police Station (Exhibits 282A, 285A, 287A, 297A, 301A, 617A); and, the Muddemal Register (Exhibits – 298A, 299A, 300A). Learned counsel, with respect to the said entries, also relied on the evidence of the witnesses i.e. PW20– Sanjivan Shinge, PW22–Vishnu Khatal and PW23–Shavaka Tadvi. She submitted that considering that the appellant was on official duty and the incident had taken place in exercise of their right to private defence, sanction under Section 197 of Cr.PC was essential.

15.6 As far as motive is concerned, learned counsel for the appellant submitted that the prosecution had failed to establish motive for the appellant to commit the murder of Ramnarayan. She submitted that the witnesses examined on the point of motive

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i.e. PW57–Girish Nepali and PW108-Vinayak Ghorpade have not named the appellant nor have thrown any light vis-a-vis motive. She submitted that infact, the witnesses who could have spelt out the motive i.e. Urmish Udhani, Anandibai Deshmukh, have not been examined by the prosecution, for reasons best known to them.

15.7 As far as abduction of the deceased and Anil Bheda, are concerned, learned counsel for the appellant submitted that there are no eye-witnesses vis-a-vis abduction nor is there any circumstantial evidence adduced by the prosecution to show that the appellant was in anyway involved in the abduction of the deceased and Anil. She submitted that the prosecution examined PW1–Ramprasad Gupta, PW3- Shyamsunder Gupta PW38-Dheeraj Mehta, PW40–Aruna Anil Bheda and PW57-Shankar @ Girish Dalsingh to prove abduction, however, none of the said witnesses have attributed any role to the appellant, much less, named him. She submitted that a perusal of the evidence of the

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said witnesses will reveal contradictions in their version and as such, it is evident that the prosecution had failed to prove abduction of the deceased and Anil Bheda.

15.8 As far as the incident of firing on the deceased at Nana Nani Park is concerned, learned counsel for the appellant submitted that the prosecution had failed to adduce any evidence/material to indicate that the deceased was killed at some other place i.e. before being taken to Nana Nani Park. She further submitted that there is no material to indicate the presence of the appellant at any place other than Nana Nani Park at the relevant time. She submitted that the CDR of the appellant shows his presence at the Nana Nani Park and as such supports the case of a genuine encounter.

15.9 She further submitted that the evidence on record, to the contrary, supports the defence case of a genuine encounter. Learned counsel also relied on the evidence of DW1–Manohar

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Kulpe, examined by the appellant. According to the learned counsel for the appellant, the prosecution had failed to substantiate its case i.e. of throwing the body of the deceased near Nana Nani Park, so as to stage the encounter.

15.10 She further submitted that the SIT constituted pursuant to the order of this Court, had deliberately not examined the material witnesses, which could have shown that the encounter was a genuine encounter.

15.11 As far as the alleged confinement of Anil Bheda is concerned, learned counsel for the appellant submitted that the prosecution has failed to produce any evidence that Anil Bheda was 'confined' or restrained. In this connection, learned counsel relied on the evidence of 4 witnesses examined by the prosecution i.e. PW32–Sumant Bhosale, PW43–Madan More, PW45-Naresh Chalke, PW55-Milind More. She submitted that the evidence of the said witnesses does not reveal that Anil Bheda was wrongfully

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confined. She further submitted that there are serious flaws/contradictions in the evidence of the said witnesses *inter se.*

15.12 According to Ms. Talekar, there are several flaws in the prosecution case and that a few circumstances here and there, would not connect the appellant with the alleged offences. She submitted that the witnesses examined by the prosecution were either pressurized or were called upon to submit a report in favour of the prosecution. She further submitted that there are no records/entries in any diary made by the investigating officers of SIT, whilst investigating the case, casting a doubt on the credibility of the investigation.

15.13 Learned counsel for the appellant further submitted that although lie detector test was conducted pursuant to an order passed by this Court, on PW1 – Ramprasad Gupta, PW2- Ganesh R Iyer, Anil Bheda, Aruna Bheda at the FSL, Kalina, the said test reports were not produced by the SIT, despite the test results

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being inconclusive.

15.14 Learned counsel for the appellant further submitted that the important witnesses have not been examined by the prosecution i.e. Rambabu Lodh (an eye-witness with respect to firing on the deceased at Nana Nani Park); Nilesh (eye witness to abduction), Shekhar Sharma, Vinayak Raundal (photographer who clicked photographs of the spot of encounter at Nana Nani Park), the News Reporter of Aaj Tak, who telecasted the coverage of news of the encounter, Urmish Udhani (builder), Anandibai and Janaya Seth for motive, Ramrajpal Singh (eye-witness), and Subhash (informer).

15.15 As far as ballistic experts' report is concerned, Ms. Talekar submitted that the said report does not inspire confidence, inasmuch as, the ballistic expert i.e. PW86 – Gautam Ghadge has given two contradictory ballistic reports. She further submitted that the hand wash of the deceased was taken but no

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controlled samples were taken to show that the encounter was not a genuine encounter.

15.16 As far as CDRs are concerned, Ms. Talekar submitted that the requisite certificate under Section 65B of the Evidence Act was not produced and as such in the absence of the said certificate, the oral evidence was inadmissible. She submitted that even otherwise, the CDRs does not show that the appellant **(A9)** was present at the time of abduction, other than at Nana Nani Park.

15.17 Ms. Talekar relied on several judgments of the Apex Court to show that an act done in the exercise of right of private defence was protected; that motive was a necessity in a case of circumstantial evidence, and that the same was not proved by the prosecution; that certificates under Section 65B of the Evidence Act, despite being mandatory, were not produced; certain incriminating questions under 313 Cr.PC were not put; and, that

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prior sanction under Section 197 Cr.PC was not taken. She also questioned the evidence of the expert witness and the evidentiary value of the Expert's evidence.

F. Submissions of Mr. Pendse, learned counsel for appellant-Nitin Sartape (A11) in Criminal Appeal No. 707/2019:

16 Mr. Pendse, learned counsel for the appellant – Nitin Sartape **(A11)** submitted that the prosecution has neither proved the presence of the appellant at the spot when the encounter took place nor has proved that it was the appellant who fired at the deceased, though alleged by the prosecution. He submitted that the appellant was at the police station at the relevant time and had gone to the spot, post the incident of firing, to Nana Nani Park. In support of the said submission, learned counsel for the appellant relied on the evidence of PW17–Hanumant Girappa Kambli from whom the weapon was taken and the evidence of PW19–Jyotiram Phasale with whom the weapon was deposited

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after the incident. According to Mr. Pendse, the entries made in the register by the appellant, of having taken the weapon and deposited, post the incident and relied upon by the prosecution, have been concocted and that the appellant disputes the signature made against the said entry i.e. Exh. 197. He submitted that the prosecution has not brought on record any contemporaneous record to show that PW17–Hanumant and PW19–Jyotiram were on duty on the said day i.e. on 11th November 2006 and were in-charge of the disbursement of the arms / depositing of the arms.

16.1 Mr. Pendse, further submitted that the timings mentioned in the said entries appear to have been inserted subsequently. According to the learned counsel for the appellant, the evidence of PW26–Anil Kadam, the driver of Mobile Van-1 attached to Versova Police Station, will reveal that on receiving a wireless message at 20:18 hrs, he reached the Nana Nani Park at 20:28 hrs and thereafter left for Cooper Hospital alongwith the appellant **(A11)** and Arvind Arjun Sarvankar **(A22)** and reached

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Cooper Hospital at about 20:57 hrs. He submitted that if the said timings were taken into consideration, it would be evident that the entry made in the Arms Register with respect to depositing of the arm / fire weapon by the appellant at 22:00 hrs, appears to be doubtful and as such the said entry cannot be relied upon.

16.2 Mr. Pendse further submitted that even the evidence of PW60–Maruti Patil, who was attached to the Magazine Section at Naigaon Armory Depot, would reveal that there is an overwriting on one of the pages and in addition, at Exh. 497. He submitted that the entry made by Maruti Patil is relevant, considering his evidence that if the ammunition is less, the weapon is not allowed to be deposited. He submitted that what was deposited were 30 bullets and that the said number 30 has been scored off and in its place 29 was written. He further submitted that therefore, the procedure adopted by PW60–Maruti for taking weapon/ammunition, is consistent with the

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appellant's case that he had not been to Nana Nani Park at the time of the incident and as such had not fired at the deceased. He, therefore, submitted that the prosecution had failed to prove that the appellant **(A11)** fired at the deceased. He further submitted that even the ballistic report does not support the prosecution case, inasmuch as, the report shows that the bullet which was found at the spot allegedly fired from the appellant's revolver, did not match his revolver but matched with the revolver used by Tanaji Desai **(A2).**

16.3 As far as abduction of the deceased and Anil Bheda and confinement of Anil Bheda, are concerned, he submitted that there are no allegations vis-a-vis the appellant. According to Mr. Pendse, the station diary entry of D.N. Nagar Police Station, relied upon by the prosecution, would have only corroborative value and in the absence of any substantive evidence being led, reliance cannot be placed on the said station diary entry.

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G. Submissions of Mr. Girish Kulkarni, learned Senior Counsel, for the appellant-Ganesh Ankush Harpude (A17) in Criminal Appeal No. 1490/2018:

17 Mr. Girish Kulkarni, learned senior counsel for the appellant–Ganesh Harpude **(A17)** submitted that the appellant was admittedly not present at the time of abduction nor are there any allegations of wrongful confinement of Anil Bheda, *qua* the appellant. He submitted that the evidence on record would only show that the appellant was seen at the spot, post the incident that took place at Nana Nani Park. In support of the same, learned senior counsel relied on the evidence of PW26–Anil Kadam, who was attached to Versova Police Station and was working on Mobile Wireless Van No.1 at the relevant time; the evidence of PW51-Anil More, Police Constable attached to Versova Police Station; the evidence of PW77–Mahendra Tatkare, attached to Versova Police Station and who was on Mobile-II of Versova Police Station, at the relevant time; the evidence of

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PW81–Pramod Shreedhar Sawant, Wireless Operator to "Peter Mobile" attached to Versova Police Station; and the evidence of PW83–Umesh Yashwant Revandkar, Head Constable attached to the Detection Branch. He submitted that the evidence of the said witnesses will show that the appellant **(A17)** was seen at the spot, post the incident alongwith PW39- PI Mohandas Narayan Sankhe and other officers. He submitted that the witnesses have stated that the appellant was collecting the soil mixed with blood from the spot, at the relevant time and that he had asked PW51–Anil More to collect the blood sample and cartridge which was lying at the spot. He submitted that except the appellant being present, there is no material to show that the appellant was part of the team that had gone from D.N. Nagar Police Station alongwith **A9**-Pradeep Suryawanshi, pursuant to the secret information received by **A9**, that a member of the Chhota Rajan Gang was going to come to the spot to meet his accomplice.

17.1 Mr. Kulkarni submitted that prior to the date of the

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incident, the appellant was on leave for about 2 to 5 days. In support of the same, learned senior counsel relied on the Station Diary Entry i.e. Exh.–720A (page 5495). Mr. Kulkarni submitted that according to the charge, the appellant is only alleged to have abetted the commission of the offence of Section 302 of the IPC, when infact, the 15th charge is only *qua* accused Nos.1, 2, 9 and 15, for the offence punishable under Section 302 r/w 34 of the IPC.

17.2 Mr. Kulkarni further submitted that if the CDR of the appellant would have been collected by the prosecution, the same would have revealed that the appellant was present at the beat, at a nearby area and the same could have been considered as a contemporaneous document and would have then disproved the prosecution case, that the appellant was at Nana Nani Park. He submitted that even the evidence of PW108- Vinay Baburao Ghorpade would show that the appellant had not carried any weapon with him. Learned counsel relied on the admission of

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PW110-K.M.M. Prasanna in para 360 of his evidence, that the appellant **(A17)** had not carried any weapon with him and that the said admission was made after perusing the weapon register and entries therein. Learned counsel submitted that as per charge 15, which is *qua* accused Nos.1, 2, 9 and 15, **OA1**-Pradeep Sharma has been acquitted from the same and as such the prosecution case, then becomes suspect. Learned counsel relied on the judgment of the Apex Court in the case of ***Aghnoo Nagesia v/s State of Bihar***[3] that a confession made by accused is not admissible *qua* co-accused i.e. alleged confession by **A9** in the FIR i.e. C.R. No.302/2006, that it was a genuine encounter.

H. Submissions of Mr. Nagraj Shinde, learned counsel for the appellant-Sandip Hemraj Sardar (A20) in Criminal Appeal No. 86/2021:

18 Mr. Nagraj Shinde, learned counsel for the appellant–

3 AIR 1966 SC 119

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Sandip Hemraj Sardar **(A20)**, a police constable attached to D.N. Nagar Police Station at the relevant time, submitted that the prosecution has not proved its case against the appellant. He submitted that the evidence of PW20–Sanjivan Bhimrao Shinge, In-charge Head Constable attached to D.N. Nagar Police Station, reveals that it was his (PW20) duty to maintain duty register and that the appellant was assigned with the duty of passport verification on 11th November 2006. He submitted that the same is corroborated by duty register entry, which is at Exh. 208A. Mr. Shinde further submitted that the evidence of PW87-Ajendrasingh Thakur, Senior P.I., attached to D.N. Nagar Police Station, would show that the station diary entries at Exhibits 669 and 670, would reveal the persons (accused), who had gone for the operation and of their return from the said spot i.e. Nana Nani Park. He submitted that the name of the appellant is absent in both the entries. He submitted that apart from the FIR registered at the behest of **A9**–Pradeep Pandurang Suryawanshi @ Nana i.e. C.R. No.302/2006, there is no material to connect the appellant

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with the alleged crime, inasmuch as, there is no corresponding entry as stated above in Exhibits 669 and 670. He submitted that apart from the aforesaid, there is no other role attributed to the appellant to show that he was present at the spot i.e. Nana Nani Park, at the time of the alleged murder and as such, the appellant cannot be convicted on the basis of the said evidence.

I. Submissions of Mr. Ashwin Thool, learned counsel for the appellant - Anand Balaji Patade (A18) in Criminal Appeal No. 1239/2019:

19 Mr. Thool, learned counsel for the appellant – Anand Balaji Patade **(A18)** submitted that the prosecution has not adduced any evidence to show that the appellant had either kept a watch on the deceased on 10th November 2006; or that he was involved in the abduction of the deceased-Ramnarayan and Anil Bheda from Vashi on 11th November 2006; or that the appellant was present at Bhandup, where allegedly the deceased and Anil

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Bheda were taken at around 13:14 hrs; or at D.N.Nagar Police Station, where allegedly the deceased and Anil Bheda were brought at around 14:00/14:30 hrs; or that the appellant was attached to Pradeep Sharma's squad; or that the appellant was in anyway concerned with the confinement of Anil Bheda, post the alleged murder of Ramnarayan.

19.1 Mr. Thool, does not dispute the entries made in the register to show that the appellant had collected one pistol and 6 bullets from the D.N. Nagar Police Station and its return i.e. the weapon alongwith 6 bullets. He, however, states that the appellant had not used either the firearm or the bullets. He further submitted that although the record shows that the appellant was part of the team of A9-Pradeep Suryawanshi, the appellant was not present at the time of the alleged incident and had come subsequently i.e. post the incident at Nana Nani Park. He submitted that at the highest, the appellant can be convicted for destruction of evidence but not for conspiracy. Mr. Thool,

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does not dispute the entries made in the duty register, which is deposed to by PW20-Sanjivan Bhimrao Shinge i.e. Exh.-208A and Exh. 209A; nor does he dispute the evidence of PW22-Vishnu Baburao Khatal, District Hawaldar who was working in the Arms and Ammunition Division of D.N. Nagar Police Station, with respect to having taken the arms and ammunition on 11th November 2006 at 18:00 hrs; nor does he dispute the evidence of PW23-Shavaka Saibu Tadvi, also working as a District Hawaldar, Arms and Ammunition, with D.N. Nagar Police Station, with respect to the arms and ammunition being returned by the appellant. According to Mr. Thool, the appellant was not involved in either the conspiracy as alleged by the prosecution or in the murder of Ramnarayan. He submitted that the appellant was only at the wrong place at the wrong time.

19.2 Mr. Thool, further submitted that the evidence of PW2 – Ganesh R Iyer and PW62-Rakeshchandra Prajapati, Nodal Officers of BPL Mobile would show that the mobile

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number i.e XXXXXX2362 belonged to Mangesh Sawant and that the prosecution had failed to bring any evidence on record to show that the appellant was using the said number. He therefore submitted that the CDR brought on record by the prosecution to show that the appellant was in touch with the other accused cannot be relied upon, since the number belonged to Mangesh Sawant.

19.3 Mr. Thool, submitted that there was no blood found on the head of the deceased and only the bullet injury on the stomach was a fresh injury. In support thereon, the learned counsel relied on the spot panchnama, to show that there was only one pool of blood i.e. pool of blood measuring only 1 foot. He submitted that there should have been atleast 2 pools, one from the head and another from the bullets sprayed on the deceased. Hence, he submitted that since there was no blood flow from the head wound, the same would indicate that the said wound was caused atleast an hour or more, prior to the actual

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incident. He submitted that the possibility of the incident having taken place prior, has not been investigated by the prosecution nor has the prosecution investigated whether any 3rd person had shot the deceased, and the accused only to take the credit, had shown that the deceased was fired by them in an encounter. He submitted that therefore, in the absence of evidence, either direct or circumstantial, the appellant cannot be convicted for the offence of conspiracy to cause the death of the deceased.

J. Submissions of Mr. Sushil Gaglani, learned counsel for the appellant-Tanaji Bhausaheb Desai (OA2) in Criminal Appeal No. 104/2021:

20 Mr. Gaglani, learned counsel for the appellant – Tanaji Bhausaheb Desai **(A2)** submitted that there are no eye-witnesses to the alleged abduction of the deceased-Ramnarayan and Anil Bheda; their wrongful confinement, and thereafter, in the alleged murder of Ramnarayan at Nana Nani Park. He

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submitted that it is alleged by the prosecution; (i) That the appellant was keeping a watch on Anil Bheda on 10th November 2006, at his residence i.e. Sector 29, Vashi, Navi Mumbai; (ii) that the appellant was present at the Bhandup Complex from where the deceased and Anil Bheda were made to sit in different vehicles and then taken to D.N. Nagar Police Station; (iii) that the appellant was a part of the raiding party at Nana Nani Park; and (iv) that the appellant had also allegedly confined Anil Bheda at Bhatwadi on 12th November 2006. As far as the appellant keeping a watch on Anil Bheda on 10th November 2006 is concerned, learned counsel for the appellant submitted that there is no witness with respect to the same. He submitted that it is alleged by the prosecution that the appellant was keeping a watch on Anil Bheda's house, as the deceased was staying there, however, the evidence of PW40–Aruna Bheda, is to the contrary i.e. it shows that the deceased was not residing with them and that for the first time, she saw the deceased on 11th November 2006. He submitted that having regard to the same, the question of the

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appellant keeping a watch on Anil Bheda's house does not arise.

20.1 Mr. Gaglani, further submitted that the appellant is alleged to have been using mobile No. XXXXXX1323 (BPL Mobile), however, the prosecution has not produced Section 65B Certificate as mandated and hence, the evidence of PW62-Rakeshchandra Prajapati cannot be relied upon. He submitted that even otherwise, if the CDR is stated to be incriminating, there are no proper questions put to the appellant under Section 313 Cr.PC. In this connection, learned counsel pointed out to the question i.e. question No.318, to show that a composite question was asked and not a specific question. He submitted that hence, the prosecution has failed to prove that the appellant was keeping a watch on the whereabouts of the deceased and as such on Anil Bheda's house.

20.2 As far as the second allegation made by the prosecution is concerned, i.e. that the appellant was present at

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Bhandup Complex, after the deceased and Anil Bheda were abducted, the prosecution has not adduced any evidence that the deceased and Anil Bheda were brought to Bhandup Complex, nor has it been brought on record that the deceased and Anil Bheda were together on 11th November 2006 and that they travelled to Bhandup Complex and from there to D.N. Nagar Police Station and thereafter, the deceased was taken to Nana Nani Park. He submitted that the prosecution has not brought on record any evidence, with respect to what happened or transpired at Bhandup and has only relied on CDRs, which by itself is not sufficient.

20.3 Mr. Gaglani, learned counsel for the appellant further submitted that there is a discrepancy between the location of Trisha Collection and also with respect to the existence of Trisha Collection. He submitted that the e-mail sent by SIT to PW62–Rakeshchandra Prajapati, shows that the location of the appellant at Sector 9-A, Vashi was sought, whereas, Trisha Collection is in

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Sector 9. He submitted that Sector 9 and Sector 9-A are different areas and that the same has been categorically deposed to, by PW38-Dheeraj Ugamraj Mehta. He submitted that the CDR was sought of Sector 9-A and not of Sector 9, from where the abduction took place. According to the learned counsel, Trisha Collection does not exist and that the prosecution has not adduced any evidence in support thereof i.e. the owner of Trisha Collection - Dilip Jain, has not been examined, to show the existence of the said premises. Learned counsel relied on the admission of PW110 – K.M.M. Prasanna, in his evidence to show that the SIT had not collected any document to show the existence of Trisha Collection and where Trisha Collection was situated, thus making the prosecution case of abduction, doubtful. He submitted that it has come in the evidence of PW110 - K.M.M.Prasanna that the spot was shown by PW1 i.e. the complainant and not by Anil Bheda, and that Anil Bheda was reluctant to show the place. He submitted that although it is alleged by the prosecution that efforts were made to trace Nilesh,

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however, no document was produced in support thereof.

20.4 As far as wrongful confinement is concerned, it is the prosecution case that after the deceased was killed, Anil Bheda was confined at 3 places i.e. Bhatwadi, Ghatkopar, Mumbai; at a hotel in Kolhapur; and at Mid-Town Hotel, Andheri, Mumbai. He submitted that as far as the appellant is concerned, it is the prosecution case that the appellant had gone to Bhatwadi and had wrongfully confined Anil Bheda. He submitted that the evidence of PW40-Aruna Bheda, who has identified the appellant as being one of the persons who confined her and Anil Bheda at Bhatwadi is concerned, her evidence cannot be relied upon, inasmuch as, she had not made the said disclosure before the SLAO and the learned Metropolitan Magistrate and had infact, not disclosed the same to anyone prior to her statement being recorded by SIT on 3rd September 2009. He submitted that PW32-Sumant Ramchandra Bhosale and PW55-Milind Subhash More, examined by the prosecution to show that the appellant was guarding the

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house at Bhatwadi where Anil Bheda was living with his wife's family cannot be relied upon, inasmuch as, there are no station diary entries made by the said witnesses, who are police officers, of having gone to Bhatwadi, Ghatkopar to guard the house at night and of their return back to the police station. He submitted that thus, the evidence, at the highest, would show that the appellant **(A2)**, a police constable was only acting on the orders of his superior–Pradeep Suryawanshi **(A9)** and had accompanied PW32-Sumant and PW55-Milind i.e. for guarding the house of Anil Bheda at Bhatwadi. Thus, according to the learned counsel, the prosecution had failed to show that the appellant was guarding Anil Bheda's house and as such had wrongfully confined him.

20.5 As far as killing of deceased at Nana Nani Park is concerned, Mr. Gaglani submitted that one empty bullet was found on the spot at Nana Nani park, however, there is a discrepancy in the description of the empty as mentioned in the

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spot panchnama; the letter sent to FSL, and the CA report and as such the ballistic expert's report cannot be relied upon to show that the bullet was fired from the appellant's pistol. He submitted that the evidence on record would show that infact, the appellant had taken one pistol and 30 rounds from the Magazine Section at Naigaon Armory Depot and had also returned one pistol and 30 rounds and as such there was not a single bullet which was missing. In this connection, learned counsel relied on the evidence of PW80–Pravin Baliram Bhosale and PW60–Maruti Y. Patil. He submitted that although the prosecution has relied on PW80–Pravin Bhosale and PW60–Maruti Patil, to show that the appellant fired at the deceased, the documents on record would show that there is tampering of the records i.e. manufacturing year was subsequently incorporated in the documents. He thus submitted that considering the evidence on record, the opinion given by the Ballistic Expert (PW86–Gautam Ghadge), that the empty was fired from the appellant's weapon, cannot be accepted. He further submitted that the appellant had no motive to cause

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the death of the deceased.

20.6 It is pertinent to note, that although the learned counsel for the appellant does not deny the FIR lodged by **A9**; the encounter which took place on 11th November 2006 at Nana Nani Park; and his presence at the spot at the time of the encounter, his only submission is that he did not fire at the deceased, as alleged by the prosecution.

K. Submissions of Mr. Prakash Shetty, learned counsel for the appellant-Devidas Gangaram Hari Sakpal (A13) in Criminal Appeal No. 117/2019:

21 Mr. Prakash Shetty, learned counsel for the appellant –Devidas Gangaram Hari Sakpal **(A13)** submitted that the prosecution has not proved the complicity of the appellant in the alleged crime. He submitted that the appellant was attached as a Police Constable to the D.N. Nagar Police Station, at the relevant time and was working under the **OA1–**Pradeep Sharma and **A9–**

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Pradeep Suryawanshi. He submitted that although the appellant has been named by **A9**–Pradeep Suryawanshi in the FIR, as being part of the team that did the encounter of the deceased, the appellant came to the spot subsequently, and was not present at the time when the encounter took place. In support of the said submission, learned counsel relied on the timings mentioned in the FIR (Exh.–278) and the proforma to show that the incident had taken place between 20:11 hrs to 20:13 hrs and that the police had received information at 20:50 hrs. He submitted that PW26-Anil Mahadev Kadam, who was on Wireless Mobile Van on the said day, in his evidence, has stated that he received the message on 11th November 2006 at 20:18 hrs and that he reached Nana Nani Park at 20:28 hrs and saw the injured at the spot and that he also saw two policemen i.e. Nitin Sartape **(A11)** and Arvind Arjun Sarvankar **(A22)** at the spot. He submitted that the appellant was not seen at the spot and if the CDRs of the appellant are seen, it is evident that the appellant was not present at the timings mentioned in the FIR at the spot and was infact, at

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JW Marriott, at the relevant time. Learned counsel relied on the evidence and the documents produced by PW62 - Rakeshchandra Prajapati, Nodal Officer of Loop Mobile. He submitted that the mobile number of the appellant was XXXXXX7293. He submitted that CDR records will falsify the prosecution case, that the appellant was present at the spot as mentioned in the FIR i.e. between 20:11 hrs to 20:13 hrs when the encounter took place. He submitted that the CDR will show that the appellant was at Nana Nani park only at 20:34 hrs i.e. post the incident. He further submitted that although the appellant has been named in the FIR, the station diary entry i.e. Exh.–669 and return station diary entry i.e. Exh.–670, do not bear the appellant's name as being part of the raiding party. He submitted that the appellant is being prosecuted only because he was attached to OA1–Pradeep Sharma and A9–Pradeep Suryawanshi, without there being any material to support the appellant's presence at the spot, at the relevant time.

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21.1 As far as confinement of Anil Bheda is concerned, he submitted that the only allegation as against the appellant is that after a few days of the encounter, the appellant had visited Midtown Hotel and was guarding the room in which Anil Bheda was staying. He submitted that the witnesses examined by the prosecution i.e. PW45-Naresh Phalke and PW55-Milind More, cannot be believed, inasmuch as, both the said witnesses have categorically stated that they had not made any entry in the station diary of having gone to Mid-Town Hotel or of their return from the said hotel. He submitted that both the said witnesses although had guarded the hotel where Anil Bheda was staying, only the appellant has been made an accused.

L. Submissions of Mr. Manish Mazgaonkar, learned counsel for Prakash Ganpat Kadam (A16) in Criminal Appeal No. 1493/2018:

22 Mr. Manish Mazgaonkar, learned counsel for the

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appellant submitted that the appellant at the relevant time, was a Head Constable attached to the D.N. Nagar Police Station. He submitted that there is no evidence, either direct or circumstantial, to connect the appellant with the alleged offences. He submitted that though charge was framed under Section 149 of the IPC, the appellant has not been convicted for the same with other co-accused. He submitted that the only reason for roping the appellant in the present case, is the disclosure of the appellant's name in the FIR lodged by the A9-Pradeep Suryawanshi @ Nana i.e. in C.R. No. 302/2006, registered with the Versova Police Station and the averments made in the petitions before this Court and the Apex Court with respect to the said FIR i.e. C.R. No. 302/2006. He submitted that since the case as set out by the accused that it was a genuine encounter was rejected by the trial Court, no reliance could have been placed on the said FIR, in which the appellant has been named. He submitted that Pradeep Sharma (OA1) was acquitted and as such the appellant also be acquitted.

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22.1 Mr. Mazgaonkar further submitted that the prosecution had failed to collect the CDRs of the appellant, as collected of the other accused and as such adverse inference be drawn against the prosecution, since no CDR has been produced to show that the appellant was present at the spot, as alleged. He submitted that the Thane Ammaldar has not been examined by the prosecution, who was responsible for making the station diary entries as per Police Manual in respect of the movement of the appellant from Versova Police Station to D.N. Nagar Police Station and from D.N. Nagar Police Station to Nana Nani Park. He further submitted that none of the police officers, who were examined by the prosecution, have produced their personal diaries with respect to how the matter was investigated, inasmuch as, maintaining police diary was compulsory for the police officers. He submitted that in the event, the presence of the appellant is proved at the spot, it can only be inferred that the

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appellant was present at the spot, pursuant to the orders of his seniors and as such had acted in discharge of his official duty and thus, sanction to prosecute under Section 197 Cr.PC was necessary. He submitted that even the answers given to the questions put to the appellant under Section 313 Cr.PC have been ignored by the trial Court.

22.2 Mr. Mazgaonkar, learned counsel for the appellant submitted that the appellant was a Police Naik attached to the Versova Police Station at the relevant time. He submitted that the evidence of PW51-Anil More wherein he has stated that ASI Devkate told them that he himself and Police Naik-Kokam (**A19)** will do the duty of patrolling in the police station area, is hearsay and as such cannot be relied upon. He further relied on the admission which has come in the evidence of PW110 - K.M.M. Prasanna, as to whether the appellant and two others were sent from Versova Police Station to D.N. Nagar Police Station as additional help. He submitted that like the appellant (Prakash

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Ganpat Kadam) in Criminal Appeal No.1493/2018, the material as against the appellant relied upon by the prosecution, is finding of his name in the FIR, i.e. the FIR lodged by **A9**-Pradeep Suryawanshi (C.R. No.302/2006) and filing of petitions before this Court as well as the Apex Court, relying on the FIR. He submitted that there is no other evidence to show that the appellant was involved in the abduction/confinement of Anil Bheda and in the encounter of Ramnarayan. He submitted that in the alternative, if it is proved that the appellant was at the spot, it was only pursuant to the orders of his seniors and as such it can only be inferred that the appellant had acted in the discharge of his official duty.

M. Submissions of Dilip Sitaram Palande (A15), appellant who appears in-person in Criminal Appeal No. 1242/2018:

23 We heard Mr. Dilip Palande, the appellant who

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appears in-person, through video-conferencing as well as when he was produced before us pursuant to our order dated 14th September 2023, as he was not audible. Mr. Palande submitted that there is no evidence to connect him with the alleged offence and that the evidence so collected is manufactured at the behest of the complainant i.e. PW1-Ramprasad Vishwanath Gupta. He submitted that the encounter which took place on 11th November 2006 was a genuine encounter and that it had taken place as set out in the FIR lodged by A9–Pradeep Suryawanshi (C.R. No.302/2006 (Exh. - 121)). According to Mr. Palande, the evidence on record would show that deceased - Ramnarayan had several antecedents and that the complainant (brother of the deceased) had suppressed the deceased's antecedents from this Court at the time of the filing of his petition before this Court.

23.1 In this connection, Mr. Palande relied on the evidence of PW1-Ramnarayan Gupta and PW3-Shyamsunder V Gupta with respect to the antecedents of the deceased, who was the

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brother of PW1-Ramnarayan and PW3-Shyamsunder Gupta. He submitted that the deceased was a wanted criminal and was associated with the Chhota Rajan Gang and that on receipt of the information, it was decided to go to the spot and apprehend him, however, as the deceased refused to surrender and retaliated, the police were constrained to shoot him. He submitted that the evidence on record would show that the deceased was absconding and wanted in many cases and as such the police on receipt of the information decided to apprehend him.

23.2 Mr. Palande submitted that PW1-Ramnarayan Gupta was close to the deceased as admitted by him and hence PW1 - Ramnarayan Gupta had lodged a false complaint against the police, to take revenge of his brother's death.

23.3 Mr. Palande further submitted that PW38-Dheeraj Mehta, is not an eye-witness to the alleged abduction of the deceased and Anil Bheda by the police. He submitted that Nilesh,

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an alleged eye-witness to the abduction was not examined by the prosecution for reasons best known. He pointed out the discrepancies in the evidence of PW38-Dheeraj Mehta, PW57-Shankar @ Girish Dalsingh, PW1-Ramnarayan Gupta and PW40-Aruna Anil Bheda. He submitted that the evidence of PW57–Shankar @ Girish would show that PW38-Dheeraj Mehta had called him and informed that some 'Gavwale' had picked up the deceased and Anil Bheda and accordingly he had informed the same to PW1-Ramnarayan Gupta. He further submitted that PW1-Ramnarayan Gupta in the petition filed by him in this Court had not stated that he was informed by Shankar @ Girish (PW57).

23.4 Mr. Palande further submitted that in the alleged letters/fax/communications made to various authorities by PW1-Ramnarayan Gupta, there is no date, time and place to show from where the deceased and Anil Bheda were picked up from. Mr. Palande when questioned by us, does not dispute the

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faxes/telegrams being sent, however, he submits that the contents therein are vague. He further submitted that the prosecution had failed to collect the data with respect to an alleged call made between PW1-Ramnarayan Gupta and PW38-Dheeraj Ugamraj Mehta on 11th November 2006 nor had collected the CDR records of another mobile (Airtel) belonging to PW3-Shyamsunder Gupta.

23.5 Mr. Palande submitted that PW38-Dheeraj Mehta in his first statement recorded on 27th August 2009 and in his 161 statement recorded on 4th September 2009 had denied any knowledge of abduction or of informing about the same to any authority. He submitted that in view of the said two statements, the statement recorded of PW38–Dheeraj Mehta on 1st February 2010, after 5 months by SIT, wherein, he disclosed about abduction of the deceased and Anil Bheda, becomes suspicious. He submitted that the prosecution has not even collected any material to show what was the motive for the police to either

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abduct the deceased or to kill him, inasmuch as, the prosecution has not examined or recorded the statement of Anandibai Deshmukh, on account of whose property there was a dispute between the deceased and **A14**-Janardan Tukaram Bhanage (now expired). He submitted that no documents were even collected by SIT to prove that there was any dispute with respect to the property as alleged. He submitted that in the absence of motive, the prosecution case would fall, since the prosecution case rests on circumstantial evidence. He further submitted that it is not the prosecution case that the appellant was involved in the abduction, nor is there any evidence of abduction by him. He submitted that the encounter was a genuine encounter and the same is evident from the fact that two railway tickets were found on the person of the deceased, when the inquest panchnama was drawn.

23.6 Mr. Palande further submitted that SIT has not proved that there was a shop `Trisha Collection' and that Nilesh and PW38-Dheeraj Mehta were doing business from the said

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shop. He submitted that in this connection, the owner of Trisha Collection, Mr. Dilip Jain has not been examined by the prosecution, that there were only 3 shops, i.e. Trisha, Vaishnavi Cosmetics and Trisha Collection and that there was no 4th shop. He submitted that it is the complainant i.e. PW1 - Ramnarayan Gupta who showed Trisha Collection to the officers of SIT and that Anil Bheda, who was allegedly abducted from there, had not shown the said shop.

23.7 Mr. Palande relied on the NHRC Report (Exh. – 146) to show that it was a genuine encounter. According to Mr. Palande, the conduct of the witnesses examined by the prosecution would belie the prosecution case i.e. PW1 - Ramnarayan Gupta was sending telegrams in the name of Aruna Anil Bheda (PW40), though Aruna Bheda had not granted permission to do so. He submitted that there was no plausible reason that has come on record to show why PW1 - Ramnarayan Gupta did not sent the telegrams / faxes in his name.

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He submitted that the evidence of PW40–Aruna Bheda as well as her conduct vis-a-vis abduction and wrongful confinement is doubtful and as such appears to be an after-thought. He submitted that PW40 – Aruna Bheda had changed her statements before several authorities and as such implicit reliance cannot be placed on her evidence. He submitted that only later-on SIT pressurizing Anil Bheda and Aruna Bheda and PW38-Dheeraj Ugamraj Mehta that their statements came to be recorded. He submitted that SIT has fabricated the statements of witnesses and the documents. He submitted that the statements of Anil Bheda and Aruna Bheda could not have been recorded by PW110-K.M.M. Prasanna on 3rd September 2009, since that day, was a day of Anant Chaturdashi and PW110-K.M.M. Prasanna, being the DCP of Zone IX could not have spent 2 to 3 hours at Powai for recording their statements. He, therefore, submitted that no statement of Jayesh Kanji Kesariya, Anil Bheda and Aruna Bheda, as alleged by the prosecution were recorded by PW110-K.M.M. Prasanna on 3rd September 2009. He submitted that even

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otherwise there are discrepancies in their statements. He submitted that even the 164 statements of Anil Bheda were recorded on 30th December 2009 and that of Aruna Bheda on 5th January 2010, belatedly, after more than 4 to 5 months, of recording of their 161 statements.

23.8 Mr. Palande further submitted that even the statement of PW50 - Jayesh Kanji Kesariya was recorded belatedly.

23.9 Mr. Palande submitted that faxes/telegrams were sent by PW1–Ramprasad Gupta, in the name of Aruna Bheda without any justification and as such the explanation offered by PW1–Ramprasad Gupta, that he felt shy of sending the same in his name, cannot be accepted.

23.10 Mr. Palande further submitted that despite receiving information of abduction of Anil Bheda, PW40-Aruna Bheda lodged a missing complaint i.e. her husband-Anil Bheda was missing, and not an FIR of abduction. He submitted that if really

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Anil Bheda and Ramnarayan, as disclosed by PW38-Dheeraj Mehta and PW1–Ramprasad Gupta were abducted, there was no reason for PW40-Aruna Bheda not to lodge a complaint of abduction with the police. He further submitted that if really Anil Bheda and Ramnarayan were abducted, PW40 - Aruna Bheda as well as PW38-Dheeraj Mehta would have sprung into action, since PW40 - Aruna Bheda was the wife of Anil Bheda and PW38 - Dheeraj Mehta, a friend of Anil Bheda. According to Mr. Palande, PW1 –Ramprasad Gupta sent false faxes and telegram messages in the name of PW40 - Aruna Bheda, only with the intent to create evidence, when infact, there was nothing to show that Anil Bheda and Ramnarayan, were abducted.

23.11 Mr. Palande further submitted that Nilesh has not been examined by the prosecution and that there are a lot of infirmities with respect to the existence of Nilesh and that the possibility of Nilesh being a fictitious person cannot be ruled out, having regard to the evidence that has come on record. He

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submitted that even SIT took no efforts to trace Nilesh, who allegedly saw the abduction. According to Mr. Palande, there are also several discrepancies in the Cell ID and the tower locations vis-a-vis, the tower locations where Anil Bheda stayed and Trisha Collection, where the incident of abduction allegedly took place.

23.12 Mr. Palande also relied on the progress report to show that the investigation was carried out not according to what was disclosed by Aruna and Anil Bheda but according to PW1–Ramprasad Gupta (complainant) i.e. brother of the deceased. He submitted that it is evident from the record, that the statement of PW38-Dheeraj Ugamraj Mehta was recorded on 4th September 2009 only after Anil Bheda and Aruna Bheda's statements were recorded by SIT on 3rd September 2009. He submitted that the statements of PW38-Dheeraj Ugamraj Mehta (made to SIT, recorded under Section 161 and 164 Cr.PC.), do not inspire confidence having regard to his earlier statements.

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23.13 Mr. Palande further submitted that since the encounter which took place was an act committed in the course of their official duty, it was incumbent for the prosecution to seek sanction under Section 197. Mr. Palande relied on the following judgments in support of his submissions:

Smt. Vandana Vikas Waghmare v. State of Maharashtra & Ors.[4]***; Vidhya Singh v. State of Madhya Pradesh***[5]***; Sankaran Moitra v. Sadhna Das & Anr.***[6]***; Om Prakash & Ors. v. State of Jharkhand through the Secretary, Department of Home, Ranchi & Anr.***[7]***; P. K. Pradhan v. State of Sikkim, Represented by Central Bureau of Investigation***[8]***; Matajog Dobey v. H. C. Bhari***[9]***; Darshan Singh v. State of Punjab & Anr.***[10]***;*** and ***Raj Kumar Singh alias Raju alias Batya v. State of Rajasthan***[11]***.***

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4 1998 CRI. L. J. 4295
5 (1971) 3 SCC 244
6 (2006) 4 SCC 584
7 (2012) 12 SCC 72
8 (2001) 6 SCC 704
9 1955 SCC OnLine SC 44
10 (2010) 2 SCC 333
11 (2013) 5 SCC 722

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23.14 Mr. Palande also relied on the circular issued by the Government of Maharashtra dated 22nd December 2006.

23.15 According to Mr. Palande, the evidence on record, in particular, the evidence of PW107–Manoj Laxman Chalke, PW31-Dattatray Ganpat Sankhe, PW39-Mohandas Narayan Sankhe, PW35–Kiran Tukaram Sonone, PW63–Arun Vasantrao Awate and PW61–Vinaykumar Keshavprasad Chaube, would show that the said officers did not doubt the genuineness of the encounter. He submitted that even the report of the NHRC would show that the encounter was a genuine encounter.

23.16 Mr. Palande submitted that the ballistic expert i.e. PW86 - Gautam Natha Ghadge had given his report at the instance of SIT and that the evidence that has come on record, to suggest that the firing was done at a short distance, does not inspire confidence. He submitted that the investigation carried out by the SIT was biased and false. According to Mr. Palande,

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the prosecution had failed to examine the material witnesses i.e. Lefty (informer), Dilip Jain (owner of Trisha Collection), Mr. Ashok Shah (owner of Qualis Vehicle), and Mr. Vijay Jadhav (panch to the inquest panchnama); the photographer who took photographs of the spot; and the person who drew the map, and as such, adverse inference ought to be drawn, for non-examination of these witnesses.

23.17 Mr. Palande submitted that the circumstances relied upon, have not been proved by the prosecution beyond reasonable doubt nor have certain incriminating questions been put to him under Section 313 Cr.PC i.e. on CDRs. He submitted that even the CDRs cannot be relied upon, for want of Section 65B Certificate and several discrepancies therein.

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N. Submissions of Mr. Waqar Pathan, learned counsel for the appellant-Ratnakar Gautam Kamble @ Rattu (A3) in Criminal Appeal No.1038/2013:

24 Mr. Waqar Pathan, learned counsel for the appellant submitted that the appellant does not dispute the fact, that he was part of the team (Group–2), when the encounter took place on 11th November 2006. Learned counsel submitted that the encounter was a genuine encounter and was not a fake or staged encounter, as alleged. He submitted that admittedly, the appellant is not alleged to have fired at the deceased or even carried any weapon to the spot.

24.1 Mr. Pathan further submitted that admittedly the appellant was not present at the time of the alleged abduction, even according to the prosecution. He submitted that it is the prosecution case, that the appellant alongwith others had wrongfully confined Anil Bheda at Bhatwadi, Ghatkopar and at

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Mid-town Hotel, Andheri. He submitted that the appellant has denied the allegation of wrongful confinement. He submitted that there is no documentary evidence except the oral testimony to suggest that the appellant ever visited either Bhatwadi or Mid-Town Hotel i.e. there are no corresponding station diary entries of the same.

24.2 Mr. Pathan submitted that with respect to wrongful confinement of Anil Bheda, the prosecution examined three witnesses i.e. PW43-Madan Tanaji More, PW45-Naresh Namdeo Phalke and PW55-Milind Subhash More, however, the evidence of all the three witnesses, is contrary to each other and as such does not inspire confidence and hence cannot be relied upon. According to Mr. Pathan, the prosecution has failed to prove that the appellant was a member of the squad of Pradeep Sharma **(OA1)** or infact, that a squad of Pradeep Sharma existed. He submitted that the appellant was on deputation from Juhu Police Station (July 2006) to D.N. Nagar Police Station and that the

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appellant was working for D.N. Nagar Police Station and not for Pradeep Sharma, as alleged by the prosecution. He submitted that since the encounter was a genuine encounter, the prosecution had failed to obtain sanction as mandated by law under Section 197 Cr.PC, since the act committed by them was in the course of their official duty.

24.3 Learned counsel also assailed the CDR relied upon by the prosecution. He submitted that in the absence of Section 65B Certificate, the evidence with respect to the same, cannot be relied upon.

III. Submissions of Mr. Rajiv Chavan, learned Special Public Prosecutor (Spl.PP) for the Respondent-State in all Appeals preferred by the Appellants/Accused:

25 Mr. Chavan, learned Spl.PP appearing for the respondent-State of Maharashtra, submits that the prosecution

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case rests entirely on circumstantial evidence and that the prosecution has proved all the circumstances relied upon by them, by leading cogent, legal and admissible evidence. He submitted that whilst appreciating the evidence, the Court would have to bear in mind the fact that the investigation in the case started after three years, in 2009, of an incident which had taken place in 2006, only after the High Court directed registration of an FIR, and hence, by then, crucial witnesses were missing. He submitted that infact, during the pendency of the case, just before the prime and star witness of the case-Anil Bheda could be examined, he was done to death. He submitted that the prime witness-Anil Bheda was a witness to the abduction of Ramnarayan and himself; of being taken to Bhandup Complex; and then in separate cars by the police to D.N. Nagar Police Station; and thereafter, his own confinement, post the encounter of Ramnarayan (deceased).

25.1 According to Mr. Chavan, the case in question, is,

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not just one of abduction, confinement and cold blooded murder, but a grave case in which, officers of the law enforcement agency, custodians of law and order, had conspired, created and fabricated false records to substantiate their claim, that Ramnarayan died in a genuine encounter. He submitted that it is a case in which pressure tactics were used so that no witness would come forward to give any statement/depose. He submitted that the case involves not only police personnel/ officers but even some civilians, who were members of the squad led by Pradeep Sharma **(OA1).** He submitted that all of them conspired to kill Ramnarayan for an ulterior motive and made the encounter look like a genuine encounter. He submitted that the telegrams/faxes sent by PW1- Ramprasad Gupta to various authorities would show that Ramnarayan and Anil Bheda were abducted and that there was a likelihood of Ramnarayan being killed in an encounter. He submitted that the prosecution has proved through the evidence of witnesses, the telegrams/faxes sent by the complainant (PW1-Ramprasad Gupta) to various authorities.

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25.2 Mr. Chavan further submitted that pursuant to the order passed by the High Court, magisterial inquiry was conducted under Section 176(1-A) of Cr.P.C and that the report of the Magistrate clearly revealed that the police officers had abducted the deceased, taken him to some unknown place, killed him by firing bullets at him, and then showed that the encounter had taken place at the Nana Nani Park. Mr. Chavan further submitted that pursuant to the High Court order, SIT was constituted and C.R. No. 246/2009 came to be registered with the Versova Police Station. He submitted that the accused being police officers, exerted immense pressure and gave threats to the witnesses during the course of investigation, in order to ensure that they do not give any statement against them and that the evidence of the witnesses examined in connection with the same, is a testimony of the same.

25.3 With respect to the murder of Ramnarayan, Mr.

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Chavan submitted that false documents were created by the accused, to cover up the fake encounter and cold-blooded murder of the deceased. He submitted that the incident of 11th November 2006 was meticulously planned and executed to perfection and that the police had grossly misused their power and position to fabricate and even destroy evidence and to pressurize and intimidate crucial witnesses. He, therefore, submitted that the prosecution case will have to be appreciated, keeping in mind that there is a gap of three years in commencing with the investigation with respect to abduction, fake encounter, and of confinement, coupled with the pressure tactics and fear psychosis exerted by the accused on witnesses to dither them from coming forward to give evidence. He submitted that the charges in the said case came to be framed on 8th March 2011 and Anil Bheda was summoned to depose in the said case on 16 March 2011, and that prior to recording of his evidence, Anil Bheda, a star witness, was abducted and murdered in a gruesome manner on 13th March 2011 i.e. his body was found charred to

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death.

25.4 Mr. Chavan submitted that there is a chain of events brought on record by the prosecution i.e. right from keeping a vigil on the house of Anil Bheda on 10th November 2006 and again on 11th November 2006; abduction of Ramnarayan and Anil Bheda on 11th November 2006 from Sector 9A, Vashi; bringing them to Bhandup Complex from there; taking the two, to D.N. Nagar Police Station, in separate vehicles; and thereafter, taking Ramnarayan to Nana Nani Park, Andheri, Mumbai, and showing that he was killed in a genuine encounter, and thereafter, confining Anil Bheda for a month, so that, he would not spill the beans. He submitted that the same cannot be said to be a mere co-incidence but is a part of a larger conspiracy executed by the officers by meticulous planning.

25.5 Mr. Chavan submitted that C.R. No. 302/2006 was registered at the behest of **A9**, only to cover up the encounter.

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He submitted that the document on record will show that before the registration of the FIR, ADR was registered i.e. ADR 55/2006 with the Versova Police Station. He submitted that on the basis of the ADR, the body was forwarded to J.J. Hospital for post-mortem examination. He submitted that the FIR registered i.e. C.R. No. 302/2006 has been accepted and relied upon by **A2, A3, A9** and **A15**, as being genuine, in support of their defence i.e. that it was a genuine encounter. He submitted that although there were ten cases registered against the deceased, the said cases were prior to 2000 and that, none of these cases were registered in the entire West Region, Mumbai, which includes D.N. Nagar Police Station and Versova Police Station. He submitted that although **A9**-Pradeep Suryawanshi has stated in his FIR that he had informed his superiors and that the superiors had deputed three officers from Versova Police Station to D.N. Nagar Police Station to carry out the secret operation, the evidence on record, is to the contrary. Mr. Chavan relied on the evidence of PW63-Arun Awate, the ACP of the area, to show that he was not aware of the

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encounter or that any officer was going to nab an accused; the evidence of PW61-Vinaykumar Chaube, DCP, Zone-IX, to show that he was not aware of any operation; and the evidence of PW78-Bipin Bihari, Additional Commissioner of Police (`Addl. CP'), West Region, that he had not given any directions or instructions as alleged by Pradeep Suryawanshi (A9). He submitted that it is thus evident, that none of the three superior officers had any information, nor had given any instructions as alleged by A9. He submitted that infact, no suggestions have been made to any of the said three witnesses suggesting to the contrary i.e. that they were aware or that they had given permission to nab the deceased, prior to the incident. He submitted that even the entry in the Station Diary i.e. Exh. 897, is significant. He submitted that the said entry has been denied by PW39-PI Sankhe, which entry shows that the officers had left for D.N. Nagar Police Station on a secret mission. He submitted that no attempt was made to cross-examine PW78-Bipin Bihari, vis-a-vis the said entry. According to Mr. Chavan, the said entry is a

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false entry, made with the sole intent to build a story of a secret operation to be conducted. He submitted that although Pradeep Suryawanshi **(A9)** had claimed in his FIR, that a meeting was held in his cabin at 18:20 hrs, pursuant to the secret information received, the same is not supported by the CDRs of Pradeep Suryawanshi @ Nana **(A9),** Dilip Palande **(A15)** and Ganesh Harpude **(A17).** He submitted that infact, Ganesh Harpude **(A17)** has denied being present at the D.N. Nagar Police Station, at the relevant time.

25.6 He further submitted that there are two more false station diary entries; (i) the first entry at the Versova Police Station which shows that API Sartape **(A11)**, PSI Harpude **(A17)** and PC No. 26645 proceeded to the D.N. Nagar Police Station for confidential work at 18:05 hrs and (ii) the second entry, which shows that PI Suryawanshi **(A9)**, API Palande **(A15)**, API Sarvankar **(A22)**, PSI Patade **(A18)**, API Sartape **(A11)**, PSI Harpude **(A17)**, PC No. 26645 and the informer proceeded to

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Nana Nani Park at 18:55 hrs. He submitted that the CDRs do not show that the accused were together, however, the entry is to the contrary. The author of the said entries is Dilip Palande **(A15).** He submitted that the said entries have been brought on record by PW87-Ajendrasingh Thakur. Mr. Chavan further submitted that the evidence of PW87-Ajendrasingh Thakur, Sr.PI attached to D.N. Nagar Police Station, shows that he too was kept in the dark with respect to the alleged secret operation.

25.7 As far as the spot panchnama of the place where the alleged encounter took place, is concerned, Mr. Chavan submitted that according to the accused, the same started at 23:00 hrs and was over at 1:35 hrs. Mr. Chavan submitted that the spot panchnama alleged to have been prepared at the spot, was infact a fabricated document. In support of the said submission, Mr. Chavan relied on the evidence of PW81- Pramod Sawant, who was attached as a Wireless Operator to Peter Mobile of Versova Police Station; PW51-Anil More, who was attached to

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Versova Police Station as a police constable; PW77-Mahendra Tatkare, who was on duty of the mobile–II of Versova Police Station; who was present at the spot and had collected the articles from the spot. PW83-Umesh Revandkar, who was attached to the Detection Branch, Versova Police Station; and the evidence of PW73-Vilas Kandalgaonkar, Police Constable attached to Versova Police Station. He submitted that the evidence of PW51-Anil More is consistent with respect to the presence of PW39-Mohandas Sankhe, at the spot, when they reached the spot, between 20:30 hrs and 21:00 hrs i.e. the time when Pradeep Suryawanshi @ Nana **(A9)** is alleged to have lodged an FIR, which FIR was recorded by PW39-Mohandas Sankhe between 20:50 hrs to 21:50 hrs. He submitted that the evidence of PW81-Pramod Sawant, PW51-Anil More, PW77-Mahendra Tatkare and PW83-Umesh Revandkar, would show that when they went to the spot, soon after the incident, collection of articles was in progress and that PI Sankhe was at the spot. He further submitted that at around 21:45 hrs, PW77-Mahendra

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Tatkare was present when blood, revolver, soil were collected in plastic bags. He further submitted that the statement of PW73-Vilas Kandalgaonkar, Police Constable attached to Versova Police Station, would show that when he returned at 23:00 hrs from some other duty, PW39-Mohandas Sankhe called him and asked him to do, as per the orders of the officers of the Detection Branch. He submitted that the evidence of PW73-Vilas Kandalgaonkar, would show that pursuant thereto, he recorded the spot panchnama at the police station itself, without going to the spot, at the behest of the officers.

25.8 He submitted that the timings as disclosed by aforestated witnesses, will show that the spot panchnama was not done at the spot, as alleged by Pradeep Suryawanshi **(A9),** nor was the FIR registered at the time as stated by **A9** and that at 22:45 hrs on 11th November 2006, Mr. Chavan submitted that the fact, that nobody was present at the spot, is also fortified by the evidence of PW1-Ramprasad Gupta and PW2-Ganesh Iyer which

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is further corroborated by the evidence of other witnesses.

25.9 Mr. Chavan submitted that the fact that the encounter was a fake encounter and not a genuine encounter is also fortified by the following circumstances :

(i) The finger print expert's report.

(ii) The report of the ballistic expert i.e. of PW86-Gautam Ghadge, which shows inconclusive results in the absence of control samples, taken of the deceased (both hands).

He submitted that the finger print expert's report as well as the ballistic expert's report would clearly show, that a revolver was planted by the police on the deceased.

(iii) The spot panchnama allegedly prepared at the spot, is contrary to the evidence on record, in particular, the evidence of PW73-Vilas Kandalgaonkar.

(iv) That the evidence on record shows that what was

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collected from the spot was collected in plastic bags, but what was forwarded to the FSL was in bottles and as such, the appellants/accused manipulated the record.

(v) That even railway tickets were planted by the accused to show that the deceased was not in their custody at the relevant time. In this context, Mr. Chavan, learned Special P.P. relied on the evidence of PW11-Dr. Sunil Shinde, who was working as a CMO at the Cooper Hospital; on Exh.-174 i.e. the MLC Register (Exh.-174), in which there is no mention of tickets (Exh.-285); and similarly, the Station Diary entry in which there is no mention of railway tickets being found. He further submitted that even PW39-Mohandas Sankhe has not spoken about finding of railway tickets.

25.10 As far the evidence of DW1–Manohar P. Kulpe is concerned, Mr. Chavan submitted that no reliance could be placed on his evidence having regard to the contradictions that

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have come in his cross-examination on material aspects, when confronted by the learned Public Prosecutor.

25.11 Mr. Chavan relied on the ballistic report, map annexed to the additional affidavit filed by A9–Pradeep Suryawanshi and admitted by A9 and the spot panchnama to show that the encounter was a fake encounter and not a genuine one, as alleged by the defence. He submitted that the evidence of PW86-Gautam Ghadge and the ballistic report would show that the hand wash taken from the deceased was inconclusive and as such the same would belie the theory of the accused that the deceased had attempted to shoot at them. He further submitted that the spot panchnama relied upon by the accused and allegedly prepared by PW39-Mohandas Sankhe would show the distances between the places where the members of the encounter team were standing and from where they shot at the deceased. He submitted that the distance from where the police shot at the deceased was about 40 feet and across the road, whereas, the

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ballistic expert's report and the evidence of PW86 – Gautam Ghadge would show that the firing was done from a distance of about 2 meters. Mr. Chavan also pointed out the distances from the map annexed by **A9**–Pradeep Suryawanshi to the additional affidavit filed by him in the Writ Petition i.e. Writ Petition No. 2473/2006, filed by PW1 on 15th November, 2006, to show that firing from the said spots as alleged by A9 was impossible.

25.12 Learned Spl.PP relied on the medical jurisprudence and literature relied upon by PW86-Gautam Ghadge with respect to firearm shots. According to Mr. Chavan, taking into consideration the evidence on record, the deceased could not have been shot from a distance of about 40 feet as alleged by **A9** and some other accused.

25.13 As far as **formation and existence of squad** is concerned, Mr. Chavan submitted that the evidence on record would clearly show that an illegal squad was formed, of which

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Pradeep Sharma **(OA1)** was the head. He submitted that there is overwhelming evidence of witnesses to show the formation of such a squad under Pradeep Sharma **(OA1)** and that some of the accused were sent on deputation to work as members of the said squad. He submitted that although it is alleged that the said squad was formed by the Addl.CP (West Region), for obvious reasons, PW78–Bipin Bihari, Addl. CP, has denied the existence of any special squad or of even having transferred any officers to the D.N. Nagar Police Station, to work under the said squad. He submitted that PW78–Bipin Bihari has denied the existence of a squad since it was not legal to form a squad. He submitted that although PW78–Bipin Bihari has denied about the existence of a squad/formation of a squad/deputing members to assist Pradeep Sharma the head of the squad, there is overwhelming evidence of other witnesses who state to the contrary. He submitted that the witnesses who have spoken about the existence of a squad are PW87–Ajendrasingh Thakur, Senior P.I. attached to D.N. Nagar Police Station; PW25-Dhiraj Koli, attached to Juhu Police Station

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as PSI, PW72–Manohar Desai, PSI, attached to Versova Police Station; PW79–Prataprao Baburao Kharate, SHO attached to D.N. Nagar Police Station; PW82–Samir Faniband, Probationary Officer, Road Entry, in particular Entry at Exh.–626; PW63–Arun Vasantrao Awate, ACP, D.N. Nagar Police Station and PW20-Sanjivan Shinge, In-charge Head Constable at D.N.Nagar Police Station. He submitted that all the said witnesses have spoken about the existence of a squad at the behest of a Senior Officer and that the squad was headed by Pradeep Sharma and that some of the accused were deputed to work for the said squad. He submitted that there is no cross-examination of some witnesses or even suggestion made to some of the witnesses, with respect to the said evidence, that has come on record, vis-a-vis existence of a squad under OA1. Mr. Chavan also relied on the documents/station diary entries/duty register deposed to by the aforesaid witnesses, with respect to the deputation of some of the officers, to work as members of the said squad.

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25.14 Mr. Chavan, in support of the formation of the squad also relied on the evidence of PW32–Sumant Bhosale, Police Naik, D.N. Nagar Police Station (Detection Branch); PW43–Madan More; and PW45–Naresh Phalke, Police Constable attached to D.N. Nagar Police Station and PW55–Milind Subhash More and PW110-K.M.M.Prasanna. He submitted that none of these witnesses have been cross-examined with respect to the formation of the squad and the fact, that **A2, A3, A7, A15** and **A16** were deputed as members of the squad and as such, the prosecution has duly proved the existence of a squad under **OA1.**

25.15 As far as **CDRs** are concerned, Mr. Chavan submitted that the prosecution has duly proved the CDR records and all documents produced in support thereof. He submitted that the evidence on record would show that when the documents were exhibited, no objection was raised by the defence for taking the said documents on record, in the absence of Section 65B Certificate. He submitted that the documents having being

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marked as exhibits, without 65B Certificate can be relied upon. In support of his submission, Mr. Chavan relied on the evidence of PW54–Changdeo Godse, Nodal Officer, Vodafone to show that the documents produced by this witness have been duly proved and that no objection was taken by any of the defence counsel for exhibiting of the said documents, in the absence of Section 65B Certificate. He submitted that the officer has duly stated in his evidence that he had issued the documents in question and has admitted to the seal and the signatures thereon.

25.16 Mr. Chavan submitted that the prosecution has proved the CDR/SDR/Cell ID documents/information as sought for, through the Nodal Officers. Learned Spl.PP relied on the evidence of PW54–Changdeo Godse, Nodal Officer, Vodafone India Limited; PW97–Vikas Phulkar, Nodal Officer, Vodafone India Limited; PW62-Rakeshchandra Prajapati, Nodal Officer, Loop Mobile India Limited, PW65-Yogesh Rajapurkar, Nodal Officer, Bharati Airtel, PW69–Mr. Shekhar Palande, Nodal

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Officer, Tata Tele Services Maharashtra Limited, PW85–Divakar Rao, Nodal Officer, Reliance Communication Limited; and PW89-Rajesh Gaikwad, Nodal Officer, Reliance Communication Limited. He submitted that a perusal of the evidence of the said witnesses would show that no objection was raised for exhibiting the documents placed on record by the said Nodal Officers. He submitted that since no objection was taken by the accused, that the said documents could not be exhibited, for want of Section 65B Certificate, they are precluded from raising any objection now. Thus, Mr. Chavan submitted that the CDRs and all the documents have been duly proved by the prosecution through the said Nodal Officers and as such can be relied upon, having being exhibited. He further submitted that with respect to only one document i.e. Exh.–459, PW54–Changdeo Godse has clarified that the Cell ID location of the said document was incorrect and that subsequently, the correct Cell ID was submitted i.e. Exh.–464 and as such, the said ambiguity also stood corrected.

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25.17 Mr. Chavan submitted that all the information/documents sought for by the Investigating Officer in the form of CDR/SDR have been exhibited, and that at no stage, when the CDR/all other documents were exhibited, any objection was raised by the accused. Mr. Chavan has tendered the details of the calls made by the accused, their locations to show that the accused were present at the spot when the alleged incident took place i.e. at the time of abduction, wrongful confinement and thereafter, the place where the encounter took place. Mr. Chavan submitted that the prosecution has also duly proved through the Nodal Officers that the appellants/accused were infact using the mobile numbers as alleged by the prosecution.

25.18 To prove the circumstance of **`Abduction',** Mr. Chavan, learned Spl.PP relied on the evidence of six witnesses, in support of the same i.e. PW38-Dheeraj Mehta; PW57-Shankar @ Girish Dalsingh @ Nepali; PW1-Ramprasad Gupta; PW2-Ganesh Iyer; PW40-Aruna Bheda and PW3-Shyamsunder Gupta. He

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submitted that the abduction of the deceased and Anil Bheda is deposed to by the aforesaid witnesses and that there is corroboration to the said evidence in the form of documents i.e. faxes and telegrams and CDRs.

25.19 Mr. Chavan submitted that the evidence of PW38-Dheeraj Mehta would show that he was informed of the abduction by Nilesh at 12:40 hrs as soon as Ramnarayan and Bheda were abducted. He submitted that although all the learned counsel for the appellants submitted that the evidence of PW38-Dheeraj Mehta would not be admissible with respect to what was disclosed by Nilesh to him, being hearsay, the said submission is not legally tenable and as such, misconceived. He submitted that the evidence of Nilesh would be admissible under Section 6 of the Evidence Act, under the principle of *res gestae.* He submitted that the evidence of PW38-Dheeraj Mehta, would show that the deceased and Anil Bheda reached his shop Trisha Collection at Sector 9A, Vashi at about 12:15 hrs; that as there was no place to

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sit in his shop, PW38-Dheeraj Mehta stated that they could wait outside; that at 12.40 hrs, Nilesh came to his shop and informed him about the same i.e. that his friend (Anil Bheda) and friend's friend (Ramnarayan) were picked up by 5-6 persons in a Qualis vehicle. Mr. Chavan submitted that the CDRs would show that Ramnarayan had made his last call at 12:33 hrs which lasted for two minutes i.e. till 12:35 hrs, after which, both, Anil Bheda and Ramnarayan's mobile phones were coming switched-off. He submitted that the CDR also shows that calls were made by Vinayak Shinde @ Veenu **(A7)** (who was at Sector 9A at the relevant time) to Pradeep Sharma **(OA1)** (who was at D.N. Nagar Police Station (mobile standing in the name of Hitesh Solanki @ Dhabbu **(A5)** and that at 12:39 hrs, a call was made by Shailendra Pandey @ Pinky **(A4)** to Lefty (Informer).

25.20 Mr. Chavan submitted that the evidence of PW38- Dheeraj Mehta would show that he was under pressure and under duress of the relatives of the appellants-accused and

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that an advocate who used to appear for some of the appellants-accused was also pressurizing him to give statements in a particular way in the said case, pursuant to which, PW38- Dheeraj Mehta gave his earlier statements i.e. prior to his statement dated 27th August 2009 (161 statement) and statement dated 4th September 2009 (164 statement) recorded by the SIT and the learned Magistrate, respectively. Mr. Chavan submitted that therefore, non-examination of Nilesh will not have any bearing in the peculiar facts of this case, inasmuch as, the said disclosure made by Nilesh to PW38-Dheeraj Mehta would clearly fall within the exception to the admissibility of hearsay evidence and as such the said disclosure would be admissible in law and as such would not be fatal to the prosecution. Learned Spl.PP relied on Section 6 of the Evidence Act, in particular, illustration (a) of the said section, in support of his submission.

25.21 Mr. Chavan submitted that within a few minutes, on learning of the abduction of Ramnarayan and Anil

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Bheda at 12:40 hrs, calls were exchanged between PW38-Dheeraj Mehta and PW57-Shankar @ Girish Dalsingh @ Nepali and PW3-Shyamsunder Gupta and PW1-Ramprasad Gupta. He submitted that the evidence of the said witnesses i.e. PW38-Dheeraj Mehta, PW57-Shankar @ Girish Dalsingh @ Nepali, PW3-Shyamsunder Gupta, PW1-Ramprasad Gupta and PW40-Aruna Bheda, corroborate each other with respect to the same and that there is no reason to disbelieve the same.

25.22 Mr. Chavan submitted that the oral evidence of these witnesses with respect to abduction, is duly supported by documentary evidence i.e. by faxes/telegrams sent by Ramprasad Gupta (PW1) and Ganesh Iyer (PW2) to various authorities. He submitted that the evidence of PW1-Ramprasad Gupta is duly corroborated by PW4-Shaligram Wankhade, Sub-Divisional Engineer, working in Central Telegraph Office, Mumbai; PW41-Wasudeo Channe, working in Customer Service Centre, BSNL, Prabhadevi; PW42-Bhavka Bhangare, working as Telegraph

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Assistant at the Matunga Office; PW44-Arjun Satam, working as a Telegraph Assistant at Dadar Telegraph Office; PW47-Santosh Naik, working as a Writer in Main Control Room (who received the telegram addressed to the CP, Mumbai); PW49-Ravindra Kulkarni, Personal Assistant of the CP, at the relevant time; and PW5-Rachana Vanjare, Clerk, working with the BSNL, with respect to receipt of a telegram. Mr. Chavan relied on the telegram reports placed on record by the said witness i.e. PW5-Rachana Vanjare, received by her from the Dadar and Matunga Telegraph Office (Exh. 131). Mr. Chavan also relied on the evidence of PW46-Lakkaraju Narsimha, to show that although the original charge book was destroyed in 2010, a corresponding entry to that effect was made in the Station Diary. The said entry in the charge book pertains to an entry i.e. Exh. 356 i.e. receipt of a telegram by the main control room, addressed to the CP, on 11th November 2006.

25.23 As far as faxes sent by PW1-Ramprasad Gupta

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are concerned, Mr. Chavan submitted that the prosecution had proved sending of two faxes i.e. one, to the CP, Navi Mumbai and the other, to the CP, Thane, on 11th November 2006. Mr. Chavan, to prove sending of the two faxes, relied on the evidence of PW93-Sadashiv Borale, who was attached to C.B.D Control Room and attached to the Office of the CP, Navi Mumbai, to prove the receipt of fax on 11th November 2006 at 16:45 hrs; the evidence of PW94-Sunil Somawanshi, who was attached to the Control Room at Navi Mumbai, with respect to Station Diary entries made by the said witness on 12th November 2006 i.e. Exhibits 702 and 703; PW92-Dinkar Thakur was examined to show that the original fax message book could not be produced and for proving the affidavit filed by him (Exh. 694). He submitted that although an attempt was made by PW1-Ramprasad Gupta to send a fax to the CP, Mumbai, for want of fax tone from the Office of the CP, the fax could not go through. Mr. Chavan submitted that the evidence of the witnesses examined to prove the same, would show that faxes and

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telegrams were sent and as such, there was no serious challenge to the evidence of sending faxes and telegrams by PW1-Ramprasad Gupta and PW2-Ganesh Iyer, to the authorities as stated aforesaid. He submitted that the dispute only pertains to the contents of the said faxes. He submitted that the faxes sent, were clearly admissible under Section 80 of the Evidence Act and that though originals were not available, the prosecution has proved the said documents by leading secondary evidence.

25.24 Mr. Chavan submitted that the prosecution has thus proved abduction of Ramnarayan and Anil Bheda by the accused, by legal, cogent and admissible evidence. In support of the submission, learned Spl.PP relied on the evidence of PW1-Ramprasad Vishwanath Gupta, PW2-Ganesh R Iyer, PW3-Shyamsunder Gupta, PW38-Dheeraj Mehta, PW40-Aruna Bheda and PW57 - Shankar @ Girish Dalsingh. He submitted that the evidence of the said witnesses is duly corroborated by prompt sending of faxes/telegrams, letters and filing of writ petition as

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well as by the CDR records. He submitted that the evidence of the said witnesses has not been shattered, despite a grueling and lengthy cross-examination.

25.25 Mr. Chavan submitted that the evidence of PW1- Ramprasad Vishwanath Gupta with respect to having called his friend for securing fax numbers has been duly corroborated by the said witness i.e. PW6-Mahesh Muley, from whom PW1-Ramprasad Gupta had taken fax numbers and PW8-Amit Jambotkar, to whom PW1-Ramprasad Gupta asked to make inquiry at the Crime Branch office at Thane. He submitted that the said evidence was also corroborated by the CDR of PW1-Ramprasad Gupta, of having made calls to PW6-Mahesh Muley and PW8-Amit Jambotkar. It is further submitted that PW1–Ramprasad's evidence has also been duly corroborated by PW40-Aruna Bheda, on all material aspects, which are germane to the decision of the said case.

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25.26 Mr. Chavan submitted that in order to prove **wrongful confinement** of Anil Bheda, the prosecution has examined PW40-Aruna Bheda, PW32-Sumant Bhosale, PW55–Milind More, PW43–Madan More, PW45–Naresh Phalke, PW37-Astatu Arya and PW52-Purba Bhattacharya. He submitted that Anil Bheda had a mobile and that his CDR shows that he last called from his mobile at 11.30 hrs on 11th November 2006, from his residence. He submitted that thereafter Anil Bheda's mobile was never operational, which will show that Anil Bheda was confined by the police. Mr. Chavan relied on the evidence of PW40-Aruna Bheda, to show that her husband Anil Bheda was brought to the police station on 12th November 2006 by the police, after his abduction on 11th November 2006; that after withdrawing the missing complaint lodged by PW40-Aruna Bheda, when Anil Bheda and Aruna Bheda came out, Anil Bheda disclosed to PW40-Aruna Bheda, how he and Ramnarayan were abducted by **OA1's** men and taken to D.N. Nagar Police Station, within that short moment. He submitted that the evidence of

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PW40-Aruna Bheda, will also reveal that her husband-Anil Bheda was wrongly confined by the police, in particular, by **A2**-Tanaji Desai, **A3**-Ratnakar Kamble @ Rattu and **A5**-Hitesh Solanki @ Dhabbu. He submitted that after Anil Bheda surfaced on 12th November 2006 i.e. was brought by the police to the Vashi Police Station, he, alongwith PW40-Aruna Anil Bheda, were taken to their house by the police in a Qualis vehicle; and from there, they were asked to pick up their clothes and were taken in the same Qualis vehicle to Aruna Bheda's father's house at Bhatwadi, Ghatkopar; that on 13th November 2006, Anil Bheda was taken to D.N. Nagar Police Station and thereafter, on the insistence of PW40 - Aruna Bheda, she and her son were permitted to accompany Anil Bheda, who was taken to Kolhapur by **A5**-Hitesh @ Dhabbu, where they were kept in a hotel. He further submitted that the fact, that PW40–Aruna Bheda's son was absent from school from 11th November 2003 to 11th December 2006 is duly corroborated by PW52-Purba Bhattacharya, Primary School Teacher, where, PW40–Aruna Bheda and Anil Bheda's son were

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studying. The said witness has produced the original attendance register and documents showing admission/absence and when their son left school. He further submitted that the evidence of PW40 – Aruna Bheda vis-a-vis wrongful confinement by **A2**-Tanaji Desai, **A3**-Ratnakar Kamble @ Rattu and **A5**-Hitesh Solanki @ Dhabbu is duly corroborated by their CDRs. He submitted that the prosecution has examined PW37-Astatu Arya, Divisional Engineer, Ghatkopar Telephone Exchange, MTNL, to show that 2 PCO's were standing in the name of PW40 - Aruna Bheda's father. He submitted that the CDRs would show that calls were made from the said PCO by Aruna Bheda to speak to Anil Bheda on the telephone numbers of **A2** and **A3**. Mr. Chavan relied on Exhibits 269, 549 and 407. He submitted that the evidence on record will show that the phone used by **A5** (XXXXXX5118) stood in the name of Shaikh Kaider. He submitted that the evidence of PW40 – Aruna Bheda would show that Anil Bheda was kept in confinement, right from the time of his abduction on 11th November 2006 till 12th December 2006,

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by the police initially, at Bhatwadi, then Kolhapur and then, at Mid-town Hotel.

25.27 Mr. Chavan submitted that the aforesaid evidence vis-a-vis confinement of Anil Bheda is further fortified by the evidence of PW55-Milind More, PW43-Madan More and PW45-Naresh Phalke.

25.28 Mr. Chavan submitted that the next set of evidence pertains to **pressure tactics/intimidation** employed/ done by the accused persons to cover up C.R. No.302/2006, i.e. the fake encounter. In this connection, Mr. Chavan relied on the three orders passed by this Court dated 13th February 2008; 11th August 2008 and 13th August 2009. He submitted that it is also pertinent to note that a Suo-Motu Contempt proceeding was initiated as against **A9**–Pradeep Suryawanshi for interfering in the administration of justice, pursuant to the report sent by the learned Magistrate. Mr. Chavan submitted that this Court vide

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judgment dated 4th February 2011 held A9–Pradeep Suryawanshi guilty and sentenced him to 3 months imprisonment. He submitted that the said judgment was challenged by A9–Pradeep Suryawanshi, by way of an SLP, however, the said SLP was dismissed.

25.29 Mr. Chavan submitted that throughout the proceeding before the Magistrate, High Court and even after the SIT took over the investigation, the accused continued to exert pressure on the witnesses to fall in line with the investigation of C.R. No.302/2006. In support of his submission, Mr. Chavan relied on the evidence of PW31-Dattatray Sankhe, P.I and Investigating Officer in C.R. No.302/2006; evidence of PW35-Kiran Sonone, Senior P.I attached to Oshiwara Police Station; evidence of PW39-Mohandas Sankhe and the evidence of the Investigating Officer i.e. PW107-Manoj Chalke, PW109-Sunil Gaonkar, PW110-K.M.M. Prasanna and several others. He submitted that the evidence that has come on record is also duly

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supported by the CDRs.

25.30 Mr. Chavan also relied on the evidence of PW110-K.M.M. Prasanna to show why Anil Bheda was not called upon to show Trisha Collection prior to 3rd September 2009; why PW40–Aruna Bheda was constrained to lodge a missing complaint with respect to the disappearance of Anil Bheda on 12th November 2006 and why Jayesh Kesariya had deposed earlier, that he had accompanied Anil Bheda to Shirdi on 11th November 2006.

25.31 Mr. Chavan also relied on the affidavits filed by A9 and the documents annexed thereto to show the manipulation done by the police. He submitted that the statement of one of the witnesses, was obtained after almost three years by A9, when there was no occasion for him to do so and more so, when he was not even investigating the case (C.R. No.302/2006).

25.32 Mr. Chavan relied on the post-mortem report

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and the evidence of PW29–Dr. Gajanan Chavan with respect to the injuries sustained by the deceased. He submitted that the evidence would show that the death of the deceased was instantaneous. He submitted that there would have been more blood oozing, if the person shot at, was alive as compared to a dead person. He submitted that the evidence of PW29–Dr. Gajanan Shejrao Chavan would show that there was rupture of the atrium and as such, it is impossible that the pool of blood will be as small i.e. 1 foot, as was found at the spot. Mr. Chavan submitted that the same would belie the appellants/accused case, that Ramnarayan was shot at the spot in an encounter.

25.33 Mr. Chavan also relied on the evidence of the carrier in whose possession the articles were and who handed over the same, in a sealed condition to the FSL i.e. evidence of PW21–Kailas Ekilwale, PW53–Vishwajit Chavan and PW91-Sudu Patade.

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25.34 As far as **CDRs** are concerned, he submitted that the CDRs of the appellant/accused clearly corroborate the prosecution case of abduction, of taking the deceased to Bhandup, from there to D.N. Nagar Police Station and from there to Nana Nani Park. Mr. Chavan has tendered a compilation of the CDRs to show the calls made and the presence of the accused at the spot, despite the said areas, being outside their Commissionerate and despite there being no occasion for them to go there i.e. to a different Commissionerate.

25.35 Mr. Chavan has submitted a detailed chart of the CDRs exchanged between the accused *inter se* and the calls made between the witnesses to corroborate the evidence adduced by the prosecution. He submitted that the CDRs have been duly proved by the prosecution through the concerned witnesses and that the said CDRs corroborate the evidence that has come on record i.e. with respect to abduction of the deceased and Anil Bheda; taking them to Bhandup where they were put in two

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different vehicles, and thereafter, to D.N. Nagar Police Station; thereafter, the deceased was taken to Nana Nani Park; and Anil Bheda was taken to Vashi Police Station on 12th November 2006; from there to Bhatwadi, Ghatkopar; from there to D.N. Nagar Police Station; then to Shirdi; and thereafter, from Shirdi back to Mid-town Hotel, Andheri. He submitted that the prosecution has also duly proved that Pradeep Sharma **(OA1)** was using the Sim belonging to **A5** and this is evident from the location of the said number at D.N. Nagar Police Station and the calls exchanged between **OA1** and the accused as well as the calls made to the Addl.CP–Bipin Bihari. Mr. Chavan further submitted that the evidence of PW1-Ramprasad Gupta, PW2-Ganesh Iyer, PW3-Shyamsunder Gupta, PW38-Dheeraj Mehta and PW40-Aruna Bheda, also stand duly corroborated by the CDRs of the said witnesses.

25.36 As far as **allotment of arms and ammunition** in connection with C.R. No.302/2006 on 11th November 2006 and

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12th November 2006, Mr. Chavan relied on the evidence of PW17–Hanumant Kambli and PW19–Jyotiram Phasale, both attached to Versova Police Station; PW22–Vishnu Khatal and PW23–Shavaka Tadvi, both attached to D.N. Nagar Police Station as well as the evidence of PW60–Maruti Patil attached to the Magazine Section at Naigaon Armory Depot, (where the arms and ammunition are kept).

25.37 He submitted that PW17–Hanumant Kambli has proved the entry made by him with respect to API – Nitin Sartape **(A11)** having taken 1 pistol and 6 rounds from the Arms and Ammunition Division of Versova Police Station. He submitted that PW19–Jyotiram Phasale has proved that **A11**-Nitin Sartape, returned 1 pistol and 5 rounds on 12th November 2006 (after firing 1 round) and that there is an entry to that effect in the register. He further submitted that PW22–Vishnu Khatal, had handed over 1 revolver and 6 rounds to PI-Pradeep Suryawanshi @ Nana **(A9)** on 11th November 2006 at 18:00 hrs; and also

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weapons to API–Arvind Sarvankar **(A22)**, Dilip Palande **(A15)** and Anand Patade **(A18)**. He submitted that the signatures of all i.e. Pradeep Suryawanshi @ Nana **(A9)**, Dilip Palande **(A15)** and Anand Patade **(A18)** are there in the register, however, inadvertently, API – Arvind Sarvankar's **(A22)** signature could not be taken. He submitted that neither Pradeep Suryawanshi @ Nana **(A9)**, nor Dilip Palande **(A15)** or Anand Patade **(A18)** have denied taking arms from PW22–Vishnu Khatal and that only API–Arvind Sarvankar **(A22)** has pleaded ignorance about having taken any weapon/ammunition.

25.38 According to Mr. Chavan, as per C.R. No.302/2006, 2 bullets were fired by **A9; 1** by **A11, 1** by **A15** and **1** by **A22**. He submitted that as far as **A9** and **A15** are concerned, they both do not dispute that they had fired at the deceased from the weapons they had taken. He submitted that admittedly the weapons used by **A9, A11, A15** and, **A22** were not sent to the FSL in connection with C.R.No.302/2006 (Versova Police

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Station) and that all the weapons of the accused were sent to FSL, post the registration of the present C.R with the Versova Police Station i.e. C.R.No. 246/2009. Mr.Chavan submitted that the FSL report would show that the bullet which was allegedly fired by **A11** was fired from **A2's** weapon, whereas, the bullet that was allegedly fired from **A22's** weapon was fired from **OA1's** weapon. He submitted that 3 bullets were retrieved from the body of Ramnarayan and that one of the bullet which was retrieved was bullet fired from **OA1's** weapon, 1 from **A9's** and 1 from **A15's** weapon. He submitted that it is only after the FSL report was received in the present C.R, that **A11** and **A22** disputed taking of the weapons or firing from the said weapons.

25.39 As far as PW23–Shavaka Tadvi is concerned, Mr. Chavan submitted that his evidence would show that he had received arms after the alleged encounter i.e. on 12th November 2006 from **A9, A15, A18 and A22**. The said witness has given details of the arms and ammunition received from the said

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accused. They are at Exhibits–**216 to 219 and 221 to 224.** He submitted that there is absolutely no cross-examination with respect to return of the said articles i.e. arms and ammunition by the accused.

25.40 As far as the evidence of PW60 – Maruti Patil is concerned, Mr. Chavan, submitted that the said witness was attached to Naigaon Armory Depot, at the relevant time. He submitted that his evidence will show that there is a history of every weapon i.e. butt history and that his evidence would show that although **A2** had taken 30 rounds and deposited 30 rounds, **A2** had used **A11's** bullet and shot the deceased with his **(A2's)** weapon. He submitted that the same is fortified by the ballistic report, which shows that **A2** fired from the weapon. He submitted that **A11's** bullet was used by **A2** in his weapon and therefore all the rounds which were returned/deposited by **A2** were intact. He submitted that the evidence of this witness would also show that **A11** took 30 rounds but deposited 29 rounds, as 1

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bullet was used in C.R. No.302/2006. He submitted that after receipt of the ballistic report, **A11** denied firing on the deceased, although in the FIR lodged by **A9**, he is alleged to have fired at the deceased.

25.41 Mr. Chavan relied on the evidence of PW60 to show the history of the weapons used by **A22, A9, OA1**. He submitted that Butt No.468 was used by **A22** – Sarvankar and that according to C.R. No.302/2006, **A22** had taken the said weapon and 5 bullets from D.N. Nagar Police Station and had returned the weapon with 4 bullets. He submitted that the Ballistic report shows that the bullet alleged to have been fired by **A22** was fired from **OA1's** weapon i.e. Butt No.347. Mr. Chavan also relied on the evidence of PW64–Sunil Sawant, PW66–Sabir Sayeed, PW67–Manoj Desai, PW80–Pravin Bhosale, PW98 – Sandeep Dal, all attached to the Armory Section of Naigaon to prove the history of the weapon/handing over and depositing of the weapons etc. Mr. Chavan also relied on the two panch

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witness i.e. PW28–Bapurao, panch to the seizure of the arms from Naigaon i.e. seizure of arms of **A2, A9, A11, A15, A18** and **A22** and the evidence of PW34–Shamsuddin Ansari, panch with respect to the seizure of weapon of **OA1**. Mr. Chavan submitted that the evidence of the aforesaid witnesses is duly corroborated by the investigating officers i.e. PW107–Manoj Chalke, PW8–Vinay Ghorpade, PW109–Sunil Gaonkar and PW110–K.M.M. Prasanna with respect to the seizure of the weapons, panchnama, sending of articles to the FSL and so on.

25.42 As far as Section 197 Cr.PC is concerned, Mr. Chavan submitted that the acts of the accused are not protected under Section 197 Cr. PC, inasmuch as, the acts were not done in the discharge of their official duty warranting protection. In this connection Mr. Chavan submitted a compilation of judgments on Section 197 Cr.PC, on which reliance was placed.

25.43 Thus, according to Mr. Chavan, learned Spl. P.P,

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the prosecution has proved all the circumstances relied upon by them, by leading legal, admissible and cogent evidence and that the said oral evidence was duly corroborated by the documentary evidence. He submitted that the prosecution once having proved abduction of Ramnarayan and Anil Bheda, it becomes a clear case of custodial death of Ramnarayan, i.e. a case of murder which is given a colour of a genuine encounter. He submitted that the appellants/accused have failed to discharge the burden cast on them under Section 106 of the Evidence Act i.e. to show what happened to Ramnarayan, whilst he was in their custody, and as such, this becoming an additional circumstance, in the chain of circumstances proved by the prosecution. Accordingly, Mr. Chavan submitted that no interference was warranted in the impugned judgment and order, so far as it convicts the appellants for the offences mentioned in Para 2 herein-above.

25.44 We may note here, that all learned counsel appearing for the appellants/accused and Mr. Palande **(A15),**

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appearing in-person as well as Mr. Chavan, learned Spl. P.P have submitted their written submissions, during the course of hearing, which were taken on record by us.

IV. ANALYSIS

A. Sequence of events in detail

26 The case in hand has a chequered history, and as such, it would be necessary to place the two versions, that have come on record; one as mentioned in **C.R. No. 302/2006** registered with the Versova Police Station on **11th November 2006,** at the behest of **A9;** and the present case i.e. **C.R. No. 246/2009** registered with the Versova Police Station, on **20th August 2009,** after SIT was constituted, after almost 3 years of the incident, pursuant to the order dated 13th August 2009 passed by this Court in W.P. No. 2473/2006 (preferred by Ramnarayan's (deceased) brother i.e. PW1).

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i. C.R. No. 302/2006 registered with the Versova Police Station at the behest of A9

27 **According to Police Inspector-Pradeep Pandurang Suryawanshi (A9),** who at the relevant time, was attached to D.N. Nagar Police Station, he received information on **11th November 2006** at **16:45 hrs** from his informer, that one Ramnarayan @ Lakhanbhaiya (deceased), aged 38 years, who was wanted in cases of murder, dacoity, theft and extortion, was to come to Nana Nani Park at Seven Bungalow, Andheri (West), Mumbai, to meet his associates/accomplice. Accordingly, at **17:15 hrs**, **A9** informed his Superior Officers i.e. the ACP, D.N. Nagar Division, the DCP, Zone-IX and the Addl. CP, West Region of the same. At about **18:30 hrs,** Pradeep Suryawanshi **(A9)** called API Dilip Palande **(A15)**, API Arvind Sarvankar [**A22** (now deceased], PSI Anand Patade **(A18)**, PC Devidas Sakpal **(A13)** and other staff to his cabin and briefed them about the information so received. Pursuant thereto, all the aforesaid drew a plan to apprehend Ramnarayan @ Lakhanbhaiya.

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27.1 At about **18:40 hrs.,** Pradeep Suryawanshi **(A9)**, alongwith his officers and constables and the secret informer, made a plan to arrest Ramnarayan and the officers and men were given appropriate instructions about the said operation.

27.2 At about **19:10 hrs.,** the aforesaid police officers and the staff reached Nana Nani Park, Seven Bungalow, Juhu-Versova Link Road. The spot was inspected and Pradeep Suryawanshi **(A9)** formed two groups (Group 1 and Group 2) and concealed themselves at different spots. Pradeep Suryawanshi (**A9)** told the Officers and the staff to wait for his signal.

27.3 **Group-1** consisted of PI Pradeep Suryawanshi **(A9),** the secret informer, API Nitin Sartape **(A11)**, PSI Anand Patade **(A18)**, Head Constable-Prakash Kadam (Buckle No. 18839) **(A16)**, Police Naik-Pandurang Kokam (Buckle No. 26645) **(A19)**, Police Constable-Devidas Sakpal (Buckle No. 10502)

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(A13). The said group i.e. Group-1 positioned themselves in front of Magnum Opus Building, situated on the west side of the Nana Nani Park.

27.4 **Group-2** consisted of API Palande **(A15)**, API Sarvankar **(A22)**, PSI Harpude **(A17)**, Police Constable-Ratnakar Kamble (Buckle No. 31963) **(A3)**, Police Constable-Tanaji Desai (Buckle No.31241) **(A2)** and Police Constable-Sandip Sardar (Buckle No.33492) **(A20)**. The said group-2 positioned themselves in front of Trishul Building, near the compound of Nana Nani Park.

27.5 At about **20:10 hrs.**, one auto-rickshaw came from Versova side and stopped near an electric pole, on the southern side of Nana Nani Park. One person alighted from the said auto and was loitering; the secret informer, who was present in Group-1, identified the said person as Lakhanbhaiya and accordingly, informed PI Pradeep Suryawanshi **(A9)**, who

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thereafter, signaled to the police officers/staff and cautiously proceeded to apprehend him. The Officers/Staff in Group-2 also proceeded ahead to arrest Ramnarayan. According to **A9**, on seeing the movements of the police officers, Ramnarayan pulled out a revolver from his waist and pointed it at PI Pradeep Suryawanshi **(A9)**. According to PI Pradeep Suryawanshi **(A9),** he shouted loudly and identified them as policemen and asked him not to fire, but to surrender himself. It is alleged that Ramnarayan did not heed to the warnings of the police and fired one round at PI Pradeep Suryawanshi **(A9)**, however, he evaded the said shot. It is further alleged that API Sarvankar **(A22)** positioned in Group-2 also shouted saying that they were policemen and that he (Ramnarayan) should surrender, however, Ramnarayan is alleged to have fired one round in the direction of Group-2.

27.6 It is the case of **A9**, that the said officers and staff in Group-1 and Group-2, in order to protect themselves and

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the public, from being shot by Ramnarayan, opened fire in retaliation/self defence. According to PI Pradeep Suryawanshi **(A9),** he fired two rounds from his service revolver, API Sartape **(A11)** fired one round from his pistol and API Sarvankar **(A22)** and API Palande **(A15)** fired one round each from their service revolvers, in the direction of Ramnarayan. Pursuant to the said firing, Ramnarayan sustained bullet injuries and fell down. The said firing is alleged to have taken place between **20:11 hrs. to 20:13 hrs.**

27.7 PI Pradeep Suryawanshi **(A9)** informed the incident to the West Control Room at **20:15 hrs.** and requested them to send a wireless van for assistance, to shift Ramnarayan to the Hospital. Pursuant thereto, Versova-1 Mobile reached the spot and removed Ramnarayan to Cooper Hospital. API Sarvankar **(A22)** and API Nitin Sartape **(A11)** are stated to have accompanied Ramnarayan to the Hospital. Ramnarayan, when brought to the OPD, at **21:00 hrs,** was declared to be dead by the

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Casualty Medical Officer. PI Pradeep Suryawanshi **(A9)** is stated to have asked the staff to protect the spot, after which, PI Pradeep Suryawanshi (**A9**) went to Versova Police Station, Mumbai, and lodged an FIR, which was registered vide C.R No. 302/2006 at **20:50 hrs.,** for the alleged offences punishable under Sections 307 and 353 of the IPC and Sections 3, 25 and 27 of the Arms Act, as against Ramnarayan. (The said FIR is marked as Exh. 278). According to **A9,** while the FIR was being recorded, API Sarvankar **(A22)** informed him that Ramnarayan was declared dead before admission by the CMO of Cooper Hospital and hence, the same was also incorporated in the FIR. Recording of said FIR, by PI Sankhe (PW39), i.e. C.R. No.302/2006 with the Versova Police Station, concluded at 21:50 hrs.

27.8 Post the registration of the said C.R, PI Mohandas Sankhe (PW39) took over the investigation. He directed PSI Jadhav to go to Cooper Hospital and carry out the inquest panchnama. PI Sankhe seized two empties of bullets fired

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from the 0.38 service revolver of PI Pradeep Suryawanshi **(A9)** under a panchnama (Exh.–279) between **22:05 to 22:35 hrs.** PI Sankhe (PW39), alongwith PI Suryawanshi, thereafter proceeded to the spot of the incident and drew a spot panchnama on the very same day i.e. 11th November 2006. The said spot panchnama allegedly commenced at about **23:00 hrs.** on 11th November 2006 and concluded at **1:35 hrs.** of 12th November 2006 (Exh. 283).

27.9 According to PI Sankhe (PW39), there was a pool of blood near electric pole No. KBC 13-061; one revolver was lying near the said pool of blood; and one empty was found near the said pool of blood and near Magnum Opus Building. Pursuant thereto, PI Sankhe (PW39) took photographs of the spot with the help of a photographer, Mr. Sharma. PI Sankhe (PW39) took measurements of the place of incident, examined the revolver allegedly used by Ramnarayan and found two empties at the spot and two live bullets in the revolver. One fingerprint

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expert Mr. Gangadhar Sawant was called to examine the fingerprints on the revolver, however, he did not find any fingerprints and accordingly submitted his report, which is at Exh. 284.

27.10 During the course of investigation, PI Sankhe (PW39) also seized one empty produced by API Sarvankar **(A22)** and one empty produced by API Palande **(A15)** under a panchnama (Exh. 286). Accordingly, PI Sankhe (PW39) recorded the statements of the raiding party, of the inquest panchas, the photographer and other witnesses and also forwarded the dead body for post-mortem examination vide ADR Form (Exh. 288) and request letter (Exh. 289). PI Sankhe (PW39) also forwarded the articles to the Chemical Analyzer and carried out investigation till 15th November 2006. Subsequently, the investigation was taken over by PI Dilip Patil of Oshiwara Police Station, who recorded the statements of the police present at the time of encounter and of other witnesses.

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ii. **C.R. No. 246/2009 registered with Versova Police Station, after SIT was constituted pursuant to the order passed by this Court.**

28 **The prosecution case is to the contrary.** It is the prosecution case, that from 10th November 2006, a watch was kept on the movements of Anil Bheda by the accused, that on 11th November 2006, Ramnarayan (deceased) and Anil Bheda left Anil Bheda's house at around **10:45 hrs.**; that they both went to PW38-Dheeraj Mehta's shop at around **12:15 hrs,** which was situated at Sector 9A, Vashi, Navi Mumbai; that they stepped out of the shop for sometime, when at around 12**:35 hrs to 12:37 hrs**, Ramnarayan and Anil Bheda were abducted in a Qualis vehicle; that one Nilesh on seeing the same, immediately came to PW38-Dheeraj Mehta's shop at **12:40 hrs** and informed him that his friend (Anil Bheda) and friend's friend (Ramnarayan) had been taken in a Qualis Vehicle, by 5-6 persons, who were in plain clothes; that PW38-Dheeraj Mehta informed PW57-Girish

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Nepali; who in turn, informed PW3-Shyamsunder Gupta, who in turn, informed PW1-Ramprasad Gupta. Pursuant thereto, PW1-Ramprasad Gupta called PW38-Dheeraj Mehta, who informed him about the abduction; that PW1-Ramprasad Gupta asked PW38-Dheeraj Mehta to inform PW40-Aruna Bheda, pursuant to which, PW38-Dheeraj Mehta went to PW40-Aruna Bheda's house, at about **14:30 hrs.** and informed her what had happened. When PW38-Dheeraj Mehta was at PW40-Aruna Bheda's house, PW1-Ramprasad Gupta called PW38-Dheeraj Mehta, pursuant to which, PW1 and PW2-Ganesh Iyer spoke to PW40-Aruna Bheda and informed her that there was danger to the lives of Anil Bheda and Pandeyji (Ramnarayan); PW1 also disclosed that they were likely to be killed in a fake encounter; fax and phone numbers of police were given by PW1 and PW2, to PW40-Aruna Bheda to enable her to inform the authorities, however, PW40 decided to wait till **17:00 hrs.** to decide further course of action; that in the meantime, PW1 and PW2 sent faxes and telegrams to all the authorities in Aruna Bheda's name, between **16:00 hrs.** to **18:28**

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hrs.; that at about **18:30 hrs.**, PW40 went to Vashi Police Station and lodged a missing complaint that her husband Anil Bheda was missing; that PW1-Ramprasad and PW2-Ganesh also visited Belapur Police Station to find the whereabouts of Ramnarayan, but did not get any information; and that at around **20:30 hrs.,** PW1-Ramprasad was informed by Shyamsunder Gupta (PW3) that his brother was shot by the police in an encounter. Pursuant thereto, PW1, PW2 with others, visited Versova Police Station and from there, to Nana Nani Park; that they reached Nana Nani Park at about **22:30 hrs.** and found none at the spot. The said persons only found a small pool of blood on which a newspaper was placed with a stone kept on it.

28.1 It is the prosecution case, that soon after the fake encounter, **A9** lodged a false FIR as against Ramnarayan @ Lakhanbhaiya alleging offences under Section 307 etc. According to the prosecution, PW1 had sent complaint letters to several authorities, as he suspected foul play, however, since no action

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was taken, PW1 filed a writ petition in this Court, being Criminal Writ Petition No. 2473/2006, on **15th November 2006.** Pursuant to the filing of the petition, a sleuths of orders were passed by this Court, including the order dated **13th February 2008**, wherein this Court directed the Metropolitan Magistrate, Railway Mobile Court to conduct an inquiry regarding police firing on 11th November 2006 under Section 176(1-A) of the Cr.PC, as the Court was not happy with the report of the SLAO, which had recorded a finding, that the encounter was a genuine encounter. The Metropolitan Magistrate, Railway Mobile Court, conducted an inquiry and accordingly submitted a report to this Court. According to the learned Magistrate, it was a fake encounter. Pursuant to the said report, the High Court vide order dated 13th August 2009, constituted a SIT under the DCP, Zone-IX, K.M.M. Prasanna.

28.2 The said order dated **13th August 2009** passed by this High Court (Coram : B.H. Marlapalle & Smt. Roshan S.

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Dalvi, JJ.) is reproduced hereunder :

hereunder :

> *"1. This Petition under Article 226 of the Constitution of India has been filed by a learned member of the Bar alleging that his elder brother Ramnarayan Vishwanath Gupta was abducted by the Mumbai Police on 11th November, 2006 at about 1.00 p.m. and in a fake encounter he was shown killed at about 8.00 p.m. on the same day. He had therefore, sent telegraphic messages to the Respondent No.1 and other higher-ups either in his name or in the name of the wife of Mr. Anil Bheda, who was also allegedly picked-up by the police along with Ramnarayan. On 12th November, 2006 the Petitioner's other elder brother Shyamsunder identified the dead body of Ramnarayan at J.J. Hospital and on the next day the Petitioner requested for a copy of the postmortem report, but he was not obliged. He filed a complaint with Respondent No.1 on 14th November, 2006 and requested for an investigation into the murder of his brother. As there was no response to the complaint, he has approached this Court.*
>
> *2. The Respondents including the Intervener have filed reply and it has been stated that Ramnarayan was a known criminal and wanted in pending criminal cases and the police had got a tip off that he was to visit Nana Nani garden in Andheri on 11th November, 2006 around 7.00 p.m. Therefore, the police party was deputed to visit the said place and take him in custody. At about 7.30 p.m, Ramnarayan came in an auto-rickshaw to the destination and when he was called upon to surrender by the police party, he started firing from the weapon in his possession and therefore, the police had to upon fire in which Ramnarayan*

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died.

3. This Court passed orders from time to time and a magisterial inquiry conducted at the behest of Respondent No.1 was not found to be sufficient to discard the Petitioner's prayer. In a detailed order dated 13th February, 2008 this Court in paragraph 7 recorded a prima facie satisfaction that the case was within the parameters of Section 176(1-A) of the Code of Criminal Procedure and therefore, it was necessary to order an inquiry under the said Section and to be conducted by the Metropolitan Magistrate. In paragraph 8 of the said order this Court clarified that whether the alleged encounter had taken place while the deceased was in custody of the police or whether he had disappeared after the deceased was taken into custody by the police, or otherwise, would be the issues requiring inquiry by the concerned Metropolitan Magistrate. Consequently the learned Metropolitan Magistrate, Railway Mobile Court, Andheri submitted her report dated 11th August, 2008 and in her forwarding letter on the same day she stated that the inquiry conducted by her was in respect of the following 3 issues:

a) Whether alleged encounter has taken place while the deceased was in custody of police.

b) Whether he had disappeared, after the deceased was taken into custody by the police.

c) Or otherwise.

4. In her inquiry it is concluded that the death of Ramnarayan was caused while he was in police custody. His death had not taken place at the spot alleged by the police and that the deceased had not disappeared from the police

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custody before he was done to death, but that the deceased was abducted by the police. As per the learned Metropolitan Magistrate the Petitioner's brother was somewhere else and the police had shown that as an encounter killing at Nana Nani Park.

5. In the order dated 23rd January, 2009 this Court noted that it would be desirable to hear the Respondents as well the Interveners on their objections to the report submitted by the learned Metropolitan Magistrate and consequently we have heard the learned Counsel for all the parties at length. We have also considered the post mortem report and more particularly the places of bullet injuries on the person of the deceased. The learned Counsel for the Respondents and Interveners by citing a host of decisions of the Supreme Court as well as this Court urged before us not to entertain this Petition and argued that the Petitioner be relegated to the alternative remedy of filing a private complaint under Section 190 and 200 of the Code of Criminal Procedure and a Petition under Article 226 of the Constitution of India cannot be entertained. Whereas Mr. Pradhan, the learned Sr. Counsel for the Petitioner also relied upon a host of the decisions of the Supreme Court as well as this Court including the Full Bench of this Court and submitted that it was a fit case to direct the police authorities to register a crime and handover the investigation to the Central Bureau of Investigation, as not only some of the senior police officials are the Interveners, but even the affidavit in reply filed by the Respondent No.1, who is the head of the Mumbai Police, indicated suppression of material facts and thus an attempt to mislead the Court.

6. Be that as it may, we are satisfied that the complaint of the Petitioner in respect of the murder of his brother is

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required to be investigated into and more so as it is an admitted fact that Ramnarayan died by the bullets fired by the police officers. We had called upon the learned Incharge P.P to submit before us a panel of I.P.S. Officers, in consultation with the Directorate General of Police - Maharashtra, so that one of these paneled officers could be appointed as the Investigating Officer and as a head of the Special Investigating Team, which we propose to constitute.

7. Mr. Pol has submitted before us a list of 5 officers from the I.P.S. Cadre. We hereby appoint Shri K.M.M.Prasanna, D.C.P, Mumbai City as the Investigating Officer and we leave it to the choice of the Investigating Officer to have other 2 or 3 police officers to assist him in the investigation and the said personnel shall be spared by the Commissioner of Police, Mumbai or the Directorate General of Police, Maharashtra State, as the case may be.

8. We direct the Petitioner to approach the said Officer immediately, submit a copy of his complaint dated 14th November, 2006 addressed to Respondent No.1 and request the said Officer to record his statement afresh, which statement shall be treated as an F.I.R to be registered by the said Investigating Officer. The Petitioner shall also submit the list of witnesses to the Investigating Officer. The Investigating Officer shall proceed to record the statements of all the witnesses and ofcourse the list of witnesses should not be confined only to the names mentioned by the Petitioner. We also leave it to the choice of the Investigating Officer to subject any of these witnesses to lie detection test, including the Petitioner and his friend Shri Ganesh Iyer – Advocate, Shri Anil Bheda and his wife Mrs. Aruna Anil Bheda.

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9. The Investigating Officer shall submit before us the progress report in the investigation so conducted from time to time and the first such report shall be placed before us within 4 weeks from today.

10. Mr. A.N. Roy appeared before us on 12th August, 2009 and submitted his affidavit tendering an unconditional apology and explanation as to the circumstances leading to the receipt of the telegram sent by the Petitioner on 11th November, 2006 and its forward dispatch for an appropriate action by the D.C.P. We have heard Mr. Walwalkar appearing for Mr. Roy. We have accepted the apology tendered by Mr. Roy.

11. Hence, Stand over for 4 weeks.

12. A copy of this order be forwarded forthwith to (1) The Director General of Police, Maharashtra, (2) The Commissioner of Police, Mumbai and (3) Shri K.M. Prasanna, D.C.P. Mumbai City.

Sd/- Sd/-
(SMT.ROSHAN S. DALVI, J.) (B.H.MARLAPALLE, J.)

13. The above order was dictated in the first half. However, in the second half Mr. Mirajkar, the learned Counsel for one of the Interveners submitted an oral application and prayed for stay to the operation of this order.

14. The oral application is hereby rejected.

(emphasis supplied)

Sd/- Sd/-
(SMT.ROSHAN S. DALVI, J.) (B.H.MARLAPALLE, J.)"

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28.3 Pursuant to the said order, SIT was constituted, as this Court was *prima facie* of the opinion that it was a fake encounter.

28.4 During the course of investigation by the SIT, the prosecution recorded the statements of several persons including that of PW1-Ramprasad Gupta (brother of deceased-Ramnarayan), PW3-Shyamsunder Gupta (another brother of deceased - Ramnarayan), PW2-Ganesh Iyer, who was present with PW1-Ramprasad Gupta, when he received the information about abduction of his brother Ramnarayan, Aruna Bheda (PW40), Dheeraj Mehta (PW38) and several other witnesses.

28.5 The most important and prime witness whose statement was recorded by SIT, both under Section 161 and under Section 164 was, that of Anil Bheda, who was present with Ramnarayan, at the time when Ramnarayan was abducted from

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Sector 9, Vashi, Navi Mumbai. Thus, Anil Bheda was a star witness for the prosecution with respect to the abduction of the two of them i.e. himself and Ramnarayan, by the police from Vashi on 11th November 2006 around **12:30 hrs.** and of the travel from Vashi to Bhandup Complex and from there to D.N. Nagar Police Station; and, thereafter, of his wrongful confinement by the police and others. It is the prosecution case that Anil Bheda, was kept in confinement by the appellant/accused since the date of his abduction i.e. 11th November 2006, initially at Bhatwadi, Ghatkopar, then in a Hotel at Kolhapur, and then at Mid-Town Hotel, Andheri, Mumbai, so that he does not spill the beans vis-a-vis the incident of abduction, he being the prime witness. It is pertinent to note, that SIT and the learned Magistrate recorded the statements of Anil Bheda under Sections 161 and 164 on 3rd September 2009 and 30th December 2009 respectively. Anil Bheda, the star witness in the case, went missing on 13th March 2011 i.e. within 3 to 4 days, after charge came to be framed as against the appellants/accused in the case, on 8th March 2011.

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Pursuant thereto, Aruna Bheda lodged a missing complaint on 13th March 2011 with the Vashi Police Station. A burnt dead body was found by the Manor Police, in the vicinity of a farm at Manor, District Thane. Later on, it was confirmed that, the burnt dead body was that of Anil Bheda. The said body was identified on the basis of the DNA carried out. It appears that the investigation of the said case i.e. death of Anil Bheda, is still pending with the State CID.

28.6 The investigation done by SIT in the instant case revealed that Ramnarayan and Anil Bheda were abducted by the police from Vashi and thereafter, were taken to Bhandup Complex and from there, to D.N. Nagar Police Station. Ramnarayan was shot dead. It is the prosecution case, that the appellants/accused created a false case, that Ramnarayan was killed in an encounter at Nana Nani Park, Andheri. Thereafter, Anil Bheda, an eye-witness to the abduction and what happened between Vashi and D.N. Nagar was wrongfully confined by the

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police and others, for almost a month, so that he does not spill the beans. Accordingly, after investigation, charge-sheet was filed in the said case as against the appellants and acquitted accused – Pradeep Sharma (OA1), under Sections 364, 365, 368, 302, 120B r/w 364, 143, 144, 147, 148, 149 r/w. 364, 149 r/w 365, 364 r/w 149, 365 r/w 149, 368, 364 r/w 109 r/w 120B and 365 r/w 109 r/w 120B, 368 r/w.109 r/w 120B, 344 r/w. 34, 344 r/w. 109 r/w 120B, 302 r/w 34, 302 r/w 109 r/w 120B, 201 r/w 34, 201 r/w 109 r/w 120B, 201, 201 r/w 109 r/w 120B, 174(A) of the IPC, in the Court of the learned Metropolitan Magistrate, Railway Mobile Court, Andheri (East), Mumbai.

28.7 Since the case was Sessions triable, the case was committed to the Court of Sessions for trial. The prosecution in support of its case, examined as many as 110 witnesses.

28.8 The defence of the accused was that of denial and false implication. According to some of the accused i.e.

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Tanaji Desai **(A2)**, Ratnakar Kamble **(A3),** Pradeep Suryawanshi **(A9)** and Dilip Palande **(A15)**, it was a genuine encounter, whereas others denied their presence at the spot. Vinayak Shinde **(A7)**, in support of his case, examined two witnesses.

LIST OF DEFENCE WITNESSES EXAMINED BY THE ACCUSED NO.7

1	D.W.1 – Manohar P. Kulpe (Exh. – 960)
2	D.W.2 – Dagdu Bandu Patil, Senior Police Inspector (Exh. – 973)

28.9 The learned Judge after considering the evidence on record, which was circumstantial and documentary in nature, convicted and sentenced all the appellants as stated herein-above in para 2 and acquitted Pradeep Sharma **(OA1)** as stated in Para 3. Hence, the aforesaid appeals, by the convicted appellants/accused and by the State of Maharashtra and

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the complainant as against the acquittal of Pradeep Sharma **(OA1)**. The complainant has also filed a revision application, for enhancement of the sentence of 12 of the accused, all police personnel.

28.10 Admittedly, the prosecution case rests entirely on circumstantial evidence. Hence, before we proceed to analyse the evidence, it would be apposite to consider the law vis-a-vis circumstantial evidence, which is no longer *res integra*.

B. The Law on Circumstantial Evidence

29 In ***Hanumant Govind Nargundkar v. State of M.P.***[12] which is one of the earliest decision, the Apex Court observed specifically in para 12, as under:

> *"**12.** It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so*

12 AIR 1952 SC 343

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established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

29.1 The Apex Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[13]**,** has laid down the five golden principles (Panchsheel) which govern a case based only on circumstantial evidence. Para 153 of the said judgment is reproduced herein-under:

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

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

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

13 (1984) 4 SCC 116

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Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency,*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

29.2 Thus, it is clear from the aforesaid that it is the duty of the prosecution to prove each and every circumstance as against the accused, no chain of which should be missing. Each

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of the circumstance must point to the complicity of the accused and the established facts must be consistent / in consonance with only the guilt of the accused and must exclude any hypothesis consistent with the innocence of the accused. Keeping this in mind, we now proceed to consider each of the circumstance relied upon by the prosecution.

C. Circumstances and Analysis of each of the circumstance

30 The prosecution in support of its case, has relied on the following circumstances :

(i) Formation of squad under OA1;
(ii) Abduction of the deceased (Ramnarayan) and Anil Bheda;
(iii) Custodial death/fake encounter/Murder of the deceased (Ramnarayan) by the police;
(iv) Wrongful confinement of Anil Bheda;
(v) Pressure tactics employed by the relatives of the appellants/accused;
(vi) CDRs;
(vii) Ballistic report/forensic evidence; and
(viii) Criminal conspiracy.

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Accordingly, we proceed to consider whether the prosecution has proved the circumstances as stated aforesaid as against the appellants/accused, by legal, cogent and admissible evidence.

31 Before we proceed to deal with each of the circumstance relied upon by the prosecution, it would be necessary to set out the stand of each of the appellant/accused, who are police officers with respect to the encounter i.e. whether they support the encounter i.e. C.R. No. 302/2006, lodged at the behest of **A9**, or not.

32 **Stand of each of the police accused vis-a-vis C.R. No. 302/2006 :**

- As far as **Tanaji Desai (A2)**, **Ratnakar Kamble (A3), Pradeep Suryawanshi (A9) and Dilip Palande (A15)** are concerned, the said appellants/accused have been named in C.R.

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No. 302/2006, as being part of the encounter team. According to said appellants, it was a genuine encounter. The said four appellants/accused have accepted the correctness of the FIR lodged by **A9**, which was registered vide C.R. No. 302/2006. Even in the present appeals, the said appellants have supported the encounter and have submitted that since it was a genuine encounter, it was mandatory for the prosecution to obtain sanction under Section 197 Cr.P.C, which was not done.

- As far as **Vinayak Shinde (A7)** is concerned, he has not been named in C.R No. 302/2006 (as being part of the team) and has pleaded ignorance with respect to the correctness of the said C.R. According to **A7**, he has nothing to do with the said encounter. It appears from the tenor of the cross-examination conducted of PW31, PW39, PW61, PW63 and PW83 and from the examination of defence witnesses by **A7**, in particular DW2, that the stand of **A7** was that it was a genuine encounter.

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- Although, **Nitin Sartape (A11)**, has been named in C.R. No. 302/2006 and has accepted the correctness of the said C.R in his statement under Section 313 Cr.P.C (Question No.155), from the tenor of his cross-examination, it appears that he has denied being part of the encounter team. Even before us, whilst arguing his appeal, the said appellant, has denied being part of the encounter team. It is the pertinent to note, that **A2, A3, A17** and **A18** had filed an Intervention Application No.283/2008 (Exh. 851) in Writ Petition No.2473/2006 and **A11** had filed Writ Petition No.181/2009 (Exh. 848), wherein they claimed to be a part of the encounter team.

- Although, **Devidas Sakpal (A13), Prakash Kadam (A16), Anand Patade (A18) and Pandurang Kokam (A19)** have been named in C.R. No. 302/2006 and have accepted the correctness of C.R. No. 302/2006 in their 313 statements (Question 155), the said appellants before us, have submitted that they were not part of the encounter team. It is pertinent to

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note that **A13, A16, A19** and **A20** had filed an SLP, being SLP No.6801/2009 (Exh. 135) in the Apex Court, claiming to be a part of the encounter team.

- **Ganesh Harpude (A17) and Sandeep Sardar (A20),** although named in C.R. No. 302/2006, have pleaded ignorance with regard to the correctness of the said C.R., in their statements recorded under 313 (Question 155). Before us, the appellants have urged that they were not part of the encounter team and had gone to the spot i.e. Nana Nani Park, only to help the police in collection of the articles, during the Spot panchnama.

- **Arvind Sarvankar (A22)** has been named in the C.R. No. 302/2006. He too has claimed ignorance with respect to the correctness of the said C.R in his 313 statement (Question 155). It is pertinent to note, that **A11, A15** and **A22** had filed an Intervention Application No.284/2008 (Exh. 852) in Writ Petition No.2473/2006, where they claimed to be a part of the encounter

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team.

- We may note, that **Arvind Sarvankar (A22)'s** appeal being Criminal Appeal No. 1038/2013) stood abated, only *qua* him vide order dated 23rd February 2021, in view of his demise, pending the hearing of his appeal.

Having set-out the stand only of the appellants (police personnel) as aforesaid, we now proceed to analyse each of the circumstance, relied upon by the prosecution.

i. FORMATION OF SQUAD:

33 Learned counsel for all the appellants submitted that the evidence on record, in particular, that of PW78-Bipin Bihari, Addl C.P, West Region, would reveal that formation of squads was illegal and as such, there was no evidence on record to show that infact, such a squad as alleged by the prosecution under Pradeep Sharma **(OA1),** existed. In support of the said

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submission, learned counsel for the appellants placed great reliance on the evidence of PW78-Bipin Bihari and the admissions of the said witness, that have come on record in his cross-examination.

33.1 Per contra, according to the prosecution, although the formation of a squad was illegal, nevertheless, such a squad existed under Pradeep Sharma **(OA1)**, and that the same has been duly proved by the prosecution. In support thereof, the prosecution relied on the evidence of Sanjivan Shinge (PW20), Dhiraj Koli (PW25), Sumant Bhosale (PW32), Madan More (PW43), Naresh Phalke (PW45), Milind More (PW55), Manohar Desai (PW72), Prataprao Kharate (PW79), Samir Faniband (PW82) and Ajendrasingh Thakur (PW87). According to the prosecution, it is evident from the deposition of the said witnesses, that the members of the said squad, were not doing any work of the police station; were not participating in the activities of the D.N. Nagar Police Station; that the members of

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the squad under Pradeep Sharma **(OA1)** were doing special operations; and, that the staff including the officers of the D.N. Nagar Police Station were not aware of the said special operations. It was also submitted that since they were members of the squad of **OA1,** there was no record of the work or activities of the squad members and no information was recorded about their departure/arrival etc. and that there were no entries made about the work, they were doing. It is the prosecution case, that the squad was using private vehicles and that some civilians were also members of the said squad. According to the prosecution, since reserve officers were already available at D.N. Nagar Police Station, there was no necessity to call police personnel and officers from other police station to D.N. Nagar Police Station, as was done in the present case. Mr. Chavan, learned Spl. P.P. submitted that although Bipin Bihari (PW78), Addl. CP, West Region, has denied that any such squad was formed under Pradeep Sharma **(OA1)**, the evidence on record of other witnesses is to the contrary i.e. it shows the existence of a squad under

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Pradeep Sharma **(OA1)**. Mr. Chavan submitted that the existence of the squad, would be evident from the fact that some of the officers had joined D.N. Nagar Police Station on deputation, i.e. Dilip Palande **(A15)** was deputed from Kalachowki Police Station to D.N. Nagar Police Station in August 2006; Ratnakar Kamble **(A3)** was deputed from Juhu Police Station to D.N. Nagar Police Station on **29th July 2006**; and Tanaji Desai **(A2)** and Vinayak Shinde **(A7)** were deputed from Versova Police Station to D.N. Nagar Police Station on **18th October 2006.**

33.2 The following are the officers who have deposed with respect to existence of a squad under Pradeep Sharma **(OA1)**:

PW87 - Ajendrasingh Thakur, Then Sr. PI, D.N. Nagar Police Station :

34 Ajendrasingh Thakur (PW87), was attached to D.N. Nagar Police Station as Sr.P.I in November 2006. He has stated,

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that at the relevant time, PI Taware (Administration), PI Pradeep Suryawanshi (Investigation), PI Pradeep Sharma (Prevention), PI Avadhoot Chavan (Community) were attached to D.N. Nagar Police Station. The said witness has stated that PI Pradeep Sharma was supposed to supervise the preventive work, such as taking preventive actions under Sections 56, 57, 107 of Cr.P.C, etc.; that there was a cabin behind the police station and that Pradeep Sharma **(OA1)** would sit in the said cabin; that initially, it was a store room, which was renovated by Pradeep Sharma **(OA1)**, as he did not have a cabin to sit in. He has stated that PI Pradeep Sharma **(OA1)**, PI Pradeep Suryawanshi **(A9)** and some other officers were reserve officers.

34.1 According to Ajendrasingh Thakur (PW87), there was a squad of the Addl. C.P., West Region in D.N. Nagar Police Station and that the said squad included PI Pradeep Sharma **(OA1)**, API Palande **(A15)** and 3 to 4 police constables who had come from outside i.e. Kamble **(A3)**, Desai **(A2)** and Shinde (**A7**).

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He has stated that Palande **(A15)**, Kamble **(A3)**, Shinde **(A7)** and Desai **(A2)** were appointed in the squad by orders of the Addl. C.P., West Region and that it was an oral and not a written order. The said witness has placed on record the order dated 21st August 2006 of the Office of the Sr. Inspector of Police, D.N. Nagar Police Station, which bears the signature of PI Suryawanshi **(A9)**. He states that the said order was issued in the name of Sr. P.I., D.N. Nagar Police Station and that as per the oral order of Addl. C.P, West Region, Bandra (West), Mumbai, with effect from 21st August 2006, PC 10502-Devidas Sakpal **(A13)**, would work with PI Pradeep Sharma **(OA1)** and PI Pradeep Suryawanshi **(A9)**. The said letter is marked at **Exh. 668.**

34.2 Ajendrasingh Thakur (PW87) has further stated that two civilians would come to D.N. Nagar Police Station to meet PI Pradeep Sharma i.e. `Bobby' **(A6)** and `Dhabbu' **(A5)**. He has identified both the said accused. PW87 has further deposed that API Palande **(A15)** was deputed to D.N. Nagar Police Station in

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August 2006 from Kalachowki Police Station, Mumbai and was attached to D.N. Nagar Police Station till April 2007. According to PW87, on 11th November 2006, he was on day duty in the police station and that since there was rehearsal of Umang Programme, to be held on 12th November 2006 at Andheri Sports Complex, he had gone to Andheri Sports Complex and remained at the Sports Complex till 23:00 hrs. on 11th November 2006. He has stated that there was a relay at 20:00 hrs. to 20:30 hrs. on Wireless Channel of Peter I, that there was exchange of fire between the police and a gunda, however, the name of the gunda was not revealed. He has further stated that he was informed of the same by his Operator. However, since the incident had taken place within the jurisdiction of Versova Police Station and he was having bandobast duty at the Andheri Sports Complex, he told the Operator that it was not necessary for him to go there. PW87 has further in his evidence deposed that the squad of Pradeep Sharma **(OA1)** used to do special operations under the directions of the Addl. C.P, West Region. He has stated that as the work of

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the squad was confidential, he did not make any inquiry about their work.

34.3 In the cross-examination, the said witness has stated that Kalachowki Police Station was not within the jurisdiction of West Region and that though Mr. Palande **(A15)** was deputed to D.N. Nagar Police Station by the orders of the Add. C.P, West Region, the Addl. C.P., West Region had no jurisdiction over Kalachowki Police Station. It has come in the cross of the said witness that he had not seen any order in writing in respect of transfer of **A15** from Kalachowki Police Station to D.N. Nagar Police Station and that he had only seen the entry in the Station Diary in which it was stated that Palande **(A15)** was transferred by the orders of Addl. C.P, West Region. He has stated that although, it was correct to state that **A15** reported to him, pursuant to which, the Station Diary entry was made, he did not insist upon the written order about **A15**'s transfer.

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34.4 It is pertinent to note that PW87 in his cross-examination, when questioned if he was deposing falsely with respect to the special squad formed by orders of the Addl. C.P, West Region, denied the same, stating that he was not deposing falsely that API Palande **(A15)**, Mr. Kamble **(A3)**, Mr. Shinde **(A7)** and Mr. Desai **(A2)** were working in a special squad; and that the office order Exh. 668 bearing signature of **A9**, is not a fabricated or a false document. He further admitted in the cross, that he has stated in his statement before SIT that, as the work of the squad was confidential, he did not make inquiry about their work.

PW25 - PSI Dheeraj Koli attached to Juhu Police Station :

35 PW25- Dheeraj Koli was attached to Juhu Police Station as PSI, since July 2006. He has stated that on 29th July 2006, he was working in night shift from 20:00 hrs to 8:00 hrs, on the next date i.e. 30th July 2006. He has stated that on 29th

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July 2006, at about 20:30 hrs., one PC Kamble **(A3)** came to Juhu Police Station and stated that Addl.C.P, West Division, had directed him to assist PI Pradeep Sharma **(OA1)** of D.N. Nagar Police Station and therefore, necessary Station Diary entry for leaving D.N. Nagar Police Station be made. He stated that PSI Nalawade was maintaining the Station Diary and as such, he requested him to make the said entry. He has stated that accordingly, PSI Nalawade made the said Station Diary entry. The said witness has identified the handwriting of PSI Nalawade and has deposed that the said entry is as per his say. The said entry is at **Exh. 228.**

35.1 It has come in the cross-examination of the said witness that the entry made by PSI Nalawade was made in the presence of PC Kamble **(A3)** and that he had asked PSI Nalawade to make entry of what PC Kamble was stating and that the information of deputation of Kamble was given by Kamble to him i.e. PW25 and that except the Station Diary i.e. Exh. 228, there is

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no record of his conversation with Kamble about his deputation. He has, further in his cross-examination, admitted that he did not ask the Sr.PI to verify, and neither did he verify whether PC Kamble had joined duty as per deputation. The said witness has denied the suggestion that he was not concerned with Exh. 228 and that the said entry i.e. Exh. 228 was made at the behest of SIT.

PW79- API Pratap Kharate attached to D.N. Nagar Police Station :

36 PW79- Pratap Kharate was attached to D.N. Nagar Police Station at the relevant time as Police Sub-Inspector i.e. between the period 3rd June 2006 to 3rd June 2009. He has stated that on 18th October 2006, he was S.H.O during day time at D.N. Nagar Police Station and that at about 19:00 hrs, PC Shinde **(A7)** Buckle No. 31743 and PC Tanaji Desai **(A2)** Buckle No. 31241 came to him along with a memo from Versova Police Station. The memo stated that they were deputed to D.N. Nagar Police Station. The said witness has stated that he produced both of

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them before Sr. P.I Ajendrasingh Thakur (PW87) at D.N. Nagar Police Station and thereafter, as per the instructions of PI Ajendrasingh Thakur, he effected an entry in the Station Diary in the handwriting of his Relief Officer, PSI Samir Faniband. He has stated that the said entry was made as per his instructions. The said witness produced the original Station Diary i.e. the entry dated 18th October 2006 at Serial No. 33 in the handwriting of ASI Samir Faniband. The entry was accordingly marked as **Exh. 626**. The xerox copy of the said entry was placed before the trial Court after verifying that the contents therein were true and correct as per the original and accordingly, the xerox copy was marked as Exh. 626A. The said witness has also identified the memo received from Versova Police Station as being the same i.e. **Exh. 613**. The said witness has also identified Tanaji Desai **(A2)** and Vinayak Shinde **(A7).**

36.1 The said witness in his cross-examination has admitted that he had not received any letter from Addl. C.P,

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Western Region addressed to D.N. Nagar Police Station and that neither had he made any inquiry about it to the office of the Addl. CP, West Region. The said witness has also admitted that it is not mentioned in the entry that Tanaji Desai **(A2)** and Vinayak Shinde **(A7)** had brought the memo to him in D.N. Nagar Police Station. The said witness has explained that he could have himself made the entry, however, he had received instructions to get some work done by the probationer PSI and as such, instructed the probationer PSI Samir Faniband to write down the entry. He has stated that the entry at Serial No. 33, Exh. 626 does not mention that Tanaji Desai and Vinayak Shinde were produced before Sr.PI of D.N. Nagar Police Station. The said witness has denied the suggestion that he has never seen Exh. 613 and that the said entry i.e. Exh. 626 was made by him at the behest of SIT.

PW20- Sanjivan Shinge, Head Constable who assigned duties at D.N. Nagar Police Station :

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37 PW20-Sanjivan Shinge has stated that he was working in the D.N. Nagar Police Station as in-charge Head Constable from 2004 to 2010. He has stated that it was his duty to allot duties to police personnel of the police station and that the allotment of duties was mentioned in the Duty Register maintained at the police station. He has stated that on 11th November 2006, he was on duty and had made entries about the duties assigned to the police personnel, in the Duty Register. The said witness has produced the Duty Register of 11th November 2006, which is in his handwriting. He has identified the contents therein, and as such the relevant entries are marked as **Exh. 208** and the copy of the entry as 208A. He has stated that in Column No. 1, his buckle No.9246 appears as in-charge Head Constable and in Column No. 6 as Assistants to PIs are mentioned. He has stated the names of the constables, who were assisting the PIs at the relevant time. There is an entry of Buckle No. 33492 **(A20)**. He has also identified the entries made in the Duty Register of 12th November 2006, which are in his handwriting. The said

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entries have been marked as **Exh. 209** and copy as Exh. 209A. He has stated that prior to 2006, PI Pradeep Sharma **(OA1)** had informed him that his (PW20's) office premises, which was inside the police station building was required by him **(OA1)** and that he (PW20) was given alternate premises for his office outside the Police Station building, pursuant to which, he shifted to the new office, which was outside the police station building. He has stated that PI Pradeep Sharma **(OA1)** had no charge of any department of the police station, with him and that he had no assistant. He has further stated that there were three constables who were on deputation at D.N. Nagar Police Station i.e. Tanaji Desai **(A2)**, Vinayak Shinde **(A7)** and Ratnakar Kamble **(A3)** i.e. **A2** and **A7** were deputed from Versova Police Station and **A3** from Juhu Police Station. He has stated that he received orders of deputation of Desai **(A2)** and Shinde **(A7)**, whereas, Kamble **(A3)** had joined duty pursuant to an entry made in the Station Diary. PW20 has further stated that these police personnel were working under Pradeep Sharma **(OA1)** and that besides the said three

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constables, there was one more constable Shri Kadam **(A16)** working with Pradeep Sharma, however, constable Kadam **(A16)** was neither on deputation nor was he from D.N. Nagar Police Station. PW20-Sanjivan Shinge has further stated that he was not assigning duties to these constables and hence, entries in that regard were not made by him, in the Duty Register. He has further stated that though he received information with respect to constables, whose leave was sanctioned, he was not receiving information about the leave of the constables, who were on deputation.

37.1 In the cross-examination, the witness has admitted that there is nothing in writing to show that Tanaji Desai **(A2),** Ratnakar Kamble **(A3)**, Vinayak Shinde **(A7)**, Prakash Kadam **(A16)** were working under Pradeep Sharma **(OA1)** and that as regards them, there was no record maintained at the police station about their arrival, departure and/or attendance, nor was there any entry about what work these constables were doing.

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37.2 Except the aforesaid para on cross, there is no cross-examination of this witness.

38 In addition to the aforesaid witnesses, there are four more witnesses, all constables attached to D.N. Nagar Police Station, who have spoken about the squad of **OA1** The said witnesses are PW32-Sumant Bhosale; PW43-Madan More; PW45-Naresh Phalke; and PW55-Milind More.

PW32 – Sumant Bhosale :

39 PW32-Sumant Bhosale was working in D.N. Nagar Police Station, at the relevant time, as Police Naik in the Detection Branch headed by Crime PI i.e. Pradeep Suryawanshi **(A9)**. He has stated that **OA1** was working in D.N. Nagar Police Station and that he alongwith his staff was occupying the old duty officer's room. He has stated that the staff of **OA1** was deputed

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from other police stations and that **OA1** and his staff were not doing any work of D.N. Nagar Police Station; and that **OA1** and his staff was not participating in the activities of D.N. Nagar Police Station. PW32 has identified two of **OA1's** staff i.e. **Tanaji Desai (A2)** and **Ratnakar Kamble (A3)**.

39.1 PW32 has stated that even when he went to Mid-town Hotel, where Anil Bheda was confined, the Qualis vehicle which was a private vehicle, was used by the squad of **OA1.** He has stated that the said vehicle would be regularly parked outside the office of **OA1** and that Virendra @ Viru would regularly visit the office of **OA1**; that one person was driving the vehicle and that Virendra was sitting next to the driver in the said vehicle. He has stated that he was told by **A9** to sit in the green Qualis vehicle, at about 22:30 hrs, pursuant to which he went to Bhatwadi at Ghatkopar in the said vehicle, alongwith **Milind More (PW55).** According to PW32, the members of the squad of **OA1**, Ratnakar Kamble **(A3)** and Tanaji Desai **(A2)** were present

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there. He has deposed that the members of the said squad were deputed from other police stations and that the Qualis, a private vehicle was used by the squad of **OA1.**

39.2 It is pertinent to note that there is no cross of the said witness i.e. PW32 with regard to what is deposed by him with respect to Tanaji Desai **(A2)** and Ratnakar Kamble **(A3)** being deputed to D.N. Nagar Police Station; that **OA1** and his staff, who were deputed from other Police Station, were not participating in the activities of D.N. Nagar Police Station; that they were members of the said squad; and that the said members of the squad were deputed from other police stations and that the Qualis, a private vehicle was used by the squad of **OA1.**

PW43–Madan More :

40 PW43-Madan More has stated that he was attached to D.N. Nagar Police Station and was working as Police Naik

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since 25th November 2005 in the Detection Branch, of which Pradeep Suryawanshi **(A9)** was PI (Crime). He has stated that **OA1** used to sit in the room which was behind the police station, that **OA1** was in-charge of the squad, in which, there were hawaldars deputed from other police stations; and that the said squad was not doing any work of D.N. Nagar Police Station.

40.1 PW43 has further stated that he met one Dhabbu **(A5),** who was working with **OA1**, when he went to Mid-town Hotel (where Anil Bheda was confined); that the said Dhabbu **(A5)** would sit outside the office of **OA1** and would make inquiries with the persons who came to meet **OA1** and then grant entry to the said persons. He has further stated that Ratnakar Kamble **(A3)**, a police hawaldar, was working on deputation in the squad of **OA1**. Accordingly, he has identified **A3** and **A5.**

40.2 Similarly, in the cross-examination of this witness, there is no cross whatsoever with respect to **OA1** being in-charge

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of a squad, in which there were hawaldars deputed from other police stations and that the said staff was not doing any work of D.N. Nagar Police Station and that Dhabbu (**A5**) would sit outside the office of **OA1** and after making inquiries, would grant entry to persons to meet **OA1**; and that **A3**, a police hawaldar was working on deputation with **OA1**.

PW45–Naresh Phalke :

41 PW45- Naresh Phalke was attached to D.N. Nagar Police Station at the relevant time. He has stated that **OA1**-PI Pradeep Sharma was in-charge of squad and he was not doing any work of the police station; that constables of other police stations were deputed in the squad and that the persons deputed in the squad were not doing any official work in the police station.

41.1 PW45 is also a witness to the confinement of Anil Bheda at Mid-town Hotel. However, this witness has also stated

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in para 3 of his evidence that Virendra was a driver and was working with the squad and was not attached to their police station.

41.2 In the cross-examination, although a suggestion was made to the said witness that he was deposing falsely that there was a squad of **OA1** of constables of other police stations and that the said persons were not doing any work of D.N. Nagar Police Station, the same has been denied by the said witness.

PW55 - Mr. Milind More:

42 PW55-Milind More, a constable was attached to Detection Branch, D.N. Nagar Police Station, Mumbai, of which Pradeep Suryawanshi **(A9)** was the P.I (Crime). He has stated that **OA1** used to sit in the Office of the D.N. Nagar Police Station; that previously there was one room for the duty in-charge; that that the said room was demolished and a new room was

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constructed there, for the police squad working under Pradeep Sharma **(OA1)**. PW55 has further stated that there was a squad working under **OA1**, who were on deputation from other police stations and that the said squad did not do any work of D.N. Nagar Police Station**.** He has further stated that no one from D.N. Nagar Police Station used to visit the room of **OA1** and that people from outside the police station would visit the room of **OA1**. He has further stated that there was a Qualis, which was being used by the squad of **OA1** and that the said vehicle would remain outside the office of **OA1.**

42.1 With respect to squad, the only cross-examination of this witness relates to omissions in his statement dated 2nd February 2010, wherein, he has not disclosed that the encounter was done by **OA1** and that **A9** was the member of the said squad of **OA1.** There is no suggestion nor cross of PW55, with respect to what has been deposed by him i.e. with respect to deputation of persons from other police stations to work in the squad under

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OA1; that the said squad would not do any work of D.N. Nagar Police Station; and, that there used to be one Qualis used by **OA1,** which used to remain outside the office of **OA1.**

42.3 The aforesaid four witnesses i.e. PW32-Sumant Bhosale, PW43-Madan More, PW45-Naresh Phalke and PW55-Milind More have been examined by the prosecution to prove both, confinement of Anil Bheda as well as on the point of existence of the squad of **OA1**.

43 Apart from the aforesaid, there is another witness i.e. PW63–Arun Apte, who has also spoken with respect to the existence of a squad.

PW63 – Arun Vasantrao Awate

44 PW63 was working as an ACP, D.N. Nagar Division under Zone-IX, at the relevant time. He has stated that D.N.

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Nagar Police Station, Oshiwara Police Station and Versova Police Station falls within the jurisdiction of D.N. Nagar Division. As far as existence of a squad is concerned, PW63 has stated that at the relevant time **OA1** alongwith some police personnel served in a special squad and worked as per the directions of the superior officer; that as per his knowledge **A15** and some constables were on deputation in the squad of **OA1;** that as per the orders of Addl. CP, Western Region (PW78), the said squad was formed and that **A15** was one of the member of the said squad. PW63 has further deposed that on 11th November 2006 when he was at the Andheri Sports Complex in connection with a programme "Umang" to be held on 12th November 2006, Vijay Sonawane, Senior P.I, of the Versova Police Station met him at the venue and informed him about an exchange of fire between the police and accused within the jurisdiction of the Versova Police Station; that on the next day i.e. on 12th November 2006, he learnt that one Ramnarayan @ Lakhanbhaiya was killed by a joint team from Versova Police Station and D.N. Nagar Police Station; and that on

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11th November 2006, he had not received any information as regards Ramnarayan @ Lakkhanbhaiya.

44.1 In his cross-examination vis-a-vis formation of a squad, he has stated that he had no occassion to see any orders as regards formation of a special squad under **OA1** by the superior. As far as station diary entries with respect to some of the accused who were sent on deputation, PW63 has stated in his cross that he does not remember whether there are any such entries nor had he any occasion to inquire with the Senior P.I. of Oshiwara Police Station, Versova Police Station and D.N. Nagar Police Station, as to on whose orders the said officers/personnel were deputed in the special squad under **OA1.** He has further admitted in his cross that he did not issue any letter to the superior officer or to the P.I. of the police station under him, for making inquiry as to on whose orders the special squad was formed or constituted. PW63 voluntarily deposed that he had knowledge that the squad was formed by the orders of the Addl. C.P. He has

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admitted that it was correct to say that a special squad which included officers from different police stations could not be constituted without written authority nor he had any occassion to see the orders of the Addl. C.P.

44.2 Although, PW63 has stated in his cross in para 24 that he had orally asked **OA1** as to by whose orders the special squad was formed, since **OA1** was attached to the police station within his jurisdiction, he did not ask the Senior P.I of any of the police stations from his jurisdiction to furnish record as regards to the formation of the special squad and deputation of the officers to the said squad. PW63 has voluntarily deposed that he had knowledge that a squad was formed by the orders of the Addl. C.P (PW78) and that he had no occasion to inform anybody as regards the formation of the said squad, till his statement was recorded by the SIT on 5th July 2010. The said witness has denied the suggestion that he was falsely deposing, that as per the orders of the Addl. C.P (Western Region) PW78, a special squad

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was formed and **OA1** alongwith some police personnel was serving in the said special squad and that **A15** was also a member of the said special squad.

45 Infact, all the aforesaid witnesses, except PW78-Bipin Bihari have deposed with respect to the existence of a squad under **OA1** and that some of the witnesses have deposed that police from different police stations were deputed to D.N. Nagar Police Station on the orders of PW78-Bipin Bihari, Addl.C.P, West Region, to work in the squad of **OA1.**

46 The evidence of these witnesses as stated aforesaid, clearly shows the formation and existence of a squad under **OA1**, albeit being illegal.

PW78- Bipin Bihari, Addl. CP, West Region :

47 PW78-Bipin Bihari was posted as the Addl. C.P,

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Western Region, at the relevant time. He had three zones under him i.e. Zone-VIII, Zone-IX and Zone-X; each zone having 2 to 3 divisions i.e. in all, there were 8 to 9 divisions under the jurisdiction of the said witnesses i.e. around 19 to 20 police stations within his jurisdiction. He has stated that at the relevant time, he was using mobile No. XXXXXX3333 and that the said number was not in his name but in the name of one of his friend i.e. Ketan Kanakiya. He has further stated that the said number was given to him by Kanakiya and was probably in the name of his company; and that the said number was with him since 2003-2004 onwards till 2007. He has stated that D.N. Nagar Police Station, Versova Police Station and Oshiwara Police Station were within his jurisdiction at the relevant time and that he knew PI Pradeep Sharma **(OA1)** from Crime Branch and Pradeep Suryawanshi **(A9).**

47.1 He has stated that on 11th November 2006, he was in his office, on morning duty and in the evening, he was at

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Andheri Sports Complex, where `Umang Programme' was to be held on 12th November 2006. He has stated that for the purpose of rehearsal and security arrangements, he being in-charge of the said programme, was present at the venue. He has stated that he probably was at the venue on 11th November 2006 upto 22:00 hrs, when he learnt about an incident i.e. firing between police and some criminals and that the firing had taken place within the jurisdiction of Versova Police Station.

47.2 Although, PW78, was not questioned on formation of squad in his examination-in-chief, in his cross-examination, PW78 has denied the formation of any special squad during January 2006 to June 2007 and has stated that it was banned by the previous CP. He has further stated in his cross-examination that no special squad under PI Pradeep Sharma **(OA1)** was formed under his oral orders. He has also admitted that no police officers or staff were deputed by him to D.N. Nagar Police Station to be part of the special squad under PI Pradeep Sharma

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(OA1). He has further in his cross-examination deposed that no police officers or staff could be transferred from one police station to another, by oral orders and unless there are orders in writing; and, that he had not issued any oral orders of such officers or staff from one police station to another police station.

48 It is pertinent to note that the learned trial Judge has rejected the circumstance of formation of squad under **OA1,** by placing implicit reliance only on the evidence of PW78-Bipin Bihari, Addl.C.P, without even considering the other evidence i.e. of all the other witnesses vis-a-vis formation of squad, that had come on record. It is also pertinent to note, from a perusal of the evidence of PW78, that formation of squads was banned by the previous C.P, and as formation of squads was illegal, there was no question of PW78 admitting that under his oral direction, any such squad was formed. What is pertinent to note, is, that the said evidence of PW78 is contrary to the evidence of the other witnesses, which has come on record i.e. the evidence of

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Ajendrasingh Thakur (PW87), Dhiraj Koli (PW25), Prataprao Kharate (PW79) and Sanjivan Shinge (PW20), PW32-Sumant Bhosale, PW43-Madan More, PW45-Naresh Phalke, PW55-Milind More, PW63 – Arun Awate and the documentary evidence in support thereof i.e. of deputation of some of the constables to D.N. Nagar Police Station, to work under or assist Pradeep Sharma **(OA1).**

49 The documentary evidence relied upon by the prosecution, as deposed to by the aforesaid witnesses are at Exhibits 668, 228, 626, 613, 219, 208 and 209.

50 It is pertinent to note, that PC Ratnakar Kamble **(A3)** has not denied joining D.N. Nagar Police Station or his presence in the encounter team, but has questioned what was deposed to by PW25-PSI Koli, that Kamble **(A3)** had informed him of the Addl. C.P. asking him to go on deputation to D.N. Nagar Police Station to assist Pradeep Sharma **(OA1)**. Although, the entry in

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the Station Diary (Exh. 228) has been challenged by Ratnakar Kamble **(A3),** we do not see any merit in the said challenge, inasmuch as, it is an entry made in the course of the official duty by PW25. The entry of Juhu Police Station dated 29th July 2006 i.e. **Exh. 228** is as under :

दिनांक	घटना	शेरा
२०.३५	(५४) पो. उ. नि. कोळी निवेदन करतात कि. मा. अप्पर पोलीस आयुक्त, पश्चिम प्रादेशिक विभाग, बांद्रा, यांच्या आदेशाने पो.शि.क्र ३१९६३/सा.वि. हे पो.नि. प्रदिप शर्मा डि.एन.नगर पो. ठाणे यांच्याकडे कर्तव्यावर होण्यास रवाना	पे.शि.क ३१९६३/ सा.वि. हे डि.एन. नगर येथे नियुक्तीवर रवाना

English translation of the extract from Station Diary of Juhu Police Station, written in Marathi, reads thus :

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20:35	*(54) P. S. I. Koli states that, P. C.No. 31963 left for reporting the duty to P. I. Pradeep Sharma, D.N. Nagar Police Station, as per the directions of the Additional Commissioner of Police, Western Territorial Department, Bandra.*	*P.C.No.31963 left for reporting the duty at D.N. Nagar on deputation.*

(Ratnakar Kamble **(A3)** is P.C.No.31963)

51 Considering the aforesaid, i.e. the evidence of PW25-Dheeraj Koli and the Station Diary entry (Exh. 228), the contemporaneous record i.e. the disclosure made by Ratnakar Kamble **(A3)** to him, that the Addl. C.P, West Region had directed him to assist Pradeep Sharma **(OA1)** of D.N. Nagar Police Station, and there being no challenge to the said disclosure, we find no reason to disbelieve his testimony, that Kamble **(A3)** had been sent on deputation to assist Pradeep Sharma **(OA1)** of D.N. Nagar Police Station. The said evidence also stands fortified by the entry at Exh. 228, which entry has been identified by this witness. Although, learned counsel for the appellants urged that the witness did not verify with the superiors, the question of verifying

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with the superiors, in this case Addl. C.P, West Region (PW78), would not arise. PW25-Dhiraj Koli, was a PSI attached to Juhu Police Station. The said witness performed his duty by making noting in the Station Diary, as disclosed by **A3** and would have no reason to doubt what was disclosed by **A3.** It is pertinent to note, that no officer would have the courage to question his superior officer, in the present case, the Addl. C.P, West Region (PW78) whether, **A3** was deputed by him to D.N. Nagar Police Station or not. It would amount to insubordination and as such, we find no merit in the appellants' submission that the information received was not verified by PW25, from the superior officers. The entry was made in the official course in the station diary and there is no reason to disbelieve the same.

52 PW79 - Prataprao Kharate was attached to D.N. Nagar Police Station as PSI, at the relevant time. He has deposed to with respect to **A7** and **A3** joining from Versova Police Station to D.N. Nagar Police Station. The said witness produced **A7** and

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A3 before PW87–Sr. P.I. Ajendrasingh Thakur, at D.N. Nagar Police Station and an entry to that effect was made in the Station Diary, as per his (PW79's) instruction. The entry in the Station Diary has been exhibited, as Exhibits 626.

52.1 The Station Diary i.e. Exh. 626 at Sr. No. 33 deposed to by PW79-API Pratap Kharate, attached to D.N.Nagar Police Station, reads thus :

दिनांक	घटना १८.१०.०६	शेरा
(३३)	पो. उ. नि. खराडे असे निवेदन करतात की मा. अप्पर पोलिस आयुक्त मो. पश्चिम प्रादेशिक विभाग, मुंबई यांच्या आदेशान्वये वर्सोवा पोलीस ठाणेस नेमणूकित असलेले पो. शि. ३१२४१/तानाजी भाऊसो देसाई व ३१७४३/ विनायक बाळासाहेब शिंदे हे दा.नौ.नगर पोलीस ठाणे येथे प्रतिनियुक्तीवर आज रोजी हजर झाले.	पो.शि. ३१२४१, ३१७४३ प्रतिनियुक्तीवर हजर झालेबाबत पो.नि. प्रशासन विभागिय कारकुन नोंद घेणे.

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English translation of the extract from Station Diary, written in Marathi, reads thus :

Date	*Incident 18.10.06*	*Remark*
(33)	*P. S.I. Kharade states that, as per the directions of the Additional Commissioner of Police, Western Territorial Department, Mumbai, P. C. 31241/Tanaji Bhauso Desai and 31743/Vinayak Balasaheb Shinde attached to Versova Police Station, remained present at D.N. Nagar Police Station on deputation.*	*Regarding P. C. 31241 and 31743 remaining present on deputation.* *Divisional Clerk attached to P. I. Administration shall make entry.*

52.2 Relevant portion of letter dated 18th October 2006, (Exh. 613), sent by Senior P.I of Versova Police Station, Vijayrao Sonawane, to Senior P.I. D.N. Nagar Police Station reads thus :

"उपरोक्त विषयास व संदर्भास अनुसरून पो.शि.क्र. ३१२४१ तानाजी भाऊसो देसाई व ३१७४३ विनायक बाळासाहेब शिंदे यांना दा.नौ.नगर पोलीस ठाणे येथे प्रतिनियुक्तीवर मा. अपर पोलीस आयुक्त, पश्चिम प्रादेशिक विभाग मुंबई यांनी दुरध्वनीव्दारे आदेशित केल्याने नमुद पोलीस अमलदाराना दा.नौ.नगर पोलिस ठाणे येथे हजर होण्याकरीता आज दिनांक १८/१०/२००६ रोजी

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कार्यमुक्त करण्यात आले आहे."

English translation of the above extract, reads thus :

> *"In connection with the abovenoted subject and reference it is submitted that as the Additional Commissioner of Police, Western Territorial Department, Mumbai, directed on telephone to depute the police officials by names Tanaji Bhauso Desai, P. C. No. 31241 and Vinayak Balasaheb Shinde, 31743 at D.N. Nagar Police, they are relieved from their duties on this day, dated 18.10.2006 to remain present at the D.N. Nagar police station."*

53 It is pertinent to note that Tanaji Desai **(A2)** and Vinayak Shinde **(A7)** have challenged the entries made in the Station Diary and the memo of their transfer from Versova Police Station on deputation to D.N. Nagar Police Station. However, despite the challenge, Tanaji Desai **(A2)** has infact supported C.R. No. 302/2006 i.e. that it was a genuine encounter. As far as Vinayak Shinde **(A7)** is concerned, he has pleaded ignorance of C.R. No. 302/2006. It is the prosecution case that Vinayak Shinde **(A7)** was party to the abduction of the deceased and Anil Bheda. Nothing is elicited in cross of PW79-API Pratap Kharate,

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so as to discredit the testimony of this witness with regard to what has been deposed to by him and the entry in the Station Diary and the letter. Both the said exhibits reveal that **A7** and **A2** were sent to D.N. Nagar Police Station, on deputation on the oral direction of the Addl. C.P., West Region (PW78) from Versova Police Station.

54 Similarly, from a perusal of the evidence of PW20-Sanjivan Shinge, it is evident that Tanaji Desai **(A2)**, Ratnakar Kamble **(A3)**, Vinayak Shinde **(A7),** Prakash Kadam **(A16)** were on deputation and were working with Pradeep Sharma **(OA1).** The said evidence has gone unchallenged. PW20-Sanjivan Shinge has categorically deposed that he was not assigning duties to these persons and hence there were no entries made by him in the Duty Register maintained by him. This has been again admitted by PW20, in his cross. As noted earlier, the formation of squad was illegal and therefore, the question of there being anything in writing, would not arise. The evidence of PW20 also to the

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extent that he was not receiving information about the leave of these constables, who were on deputation, has gone unchallenged.

55 PW87-Ajendrasingh Thakur has deposed with respect to letters/order issued in the name of Senior P.I., D.N. Nagar Police Station and has stated that as per the oral order of Addl. C.P, West Region, **A13** was to work with **OA1** and **A9.** The relevant portion of the said letter, which is marked in the evidence of PW87 as **Exh. 668** is reproduced herein-under:

"OFFICE ORDER

As per the oral Order of Addl. Commissioner of Police, West Region, Bandra (W), Mumbai, P.C.No. 10502/D.N.Nagar Division, (Devidas G. Sakpal) has been working with P.I. Shri Pradeep Sharma and P.I. Pradeep Suryawanshi w.e.f. 21.8.2006.

Sd/-
Sr. Inspector of Police,
D.N. Nagar Police Station,
Mumbai"

56 From a perusal of the aforesaid, it is evident that there

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was a squad, albeit, illegal, to assist Pradeep Sharma **(OA1).** PW87-Ajendrasingh Thakur, in his evidence, has clearly stated that there was a squad of PI Pradeep Sharma **(OA1**) and that 4 police constables had come from outside i.e. Tanaji Desai **(A2),** Ratnakar Kamble **(A3)**, Vinayak Shinde **(A7)** and Dilip Palande **(A15)** and so was Devidas Sakpal **(A13).** According to PW87, the said appellants/accused were appointed by the orders of the Addl. C.P, West Region (PW78) and that it was an oral and not a written order. PW87 has further deposed that the squad of Pradeep Sharma **(OA1)** would do special operations under the directions of the Addl. C.P, West Region (PW78) and that the work of the said squad was confidential and as such, he did not make any inquiry about their work. It is pertinent to note, that there is absolutely no cross-examination of the said witness nor any suggestion, as to what was deposed by PW87-Ajendrasingh Thakur, with respect to formation of the squad under Pradeep Sharma **(OA1).** Similarly, PW25-Dheeraj Koli has in his evidence, stated that PC Ratnakar Kamble **(A3)** was attached as a PSI to

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Juhu Police Station. He has stated that on 29th July 2006, at 20:30 hrs., PC Kamble (A3) came to him, when he was attached to Juhu Police Station and disclosed that the Addl.C.P, West Region, had directed him to assist PI Pradeep Sharma of D.N. Nagar Police Station and therefore, necessary Station Diary entry of leaving for D.N. Nagar Police Station be made. He has stated that accordingly, PSI Nalawade, who was maintaining the Station Diary made an entry, as requested by him. The said witness has identified the handwriting of PSI Nalawade and has deposed that the said entry, which is at Exh. 228 was as per his say. Although, the said witness was confronted with the said document i.e. Exh. 228, nothing substantial is elicited in his cross-examination, so as to disbelieve his testimony with respect to the said entry. We have, while considering the evidence of PW25, as stated aforesaid, reproduced Exh. 228 with respect to the entry made at the instance of the said witness, of leaving Juhu Police Station and joining D.N. Nagar Police Station and find no reason to disbelieve the entry so made.

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57 PW79-Pratap Kharate, attached to D.N. Nagar Police Station has also placed on record the memo handed over by Vinayak Shinde **(A7)** and PC Tanaji Desai **(A2)**, who had come from Versova Police Station to D.N. Nagar Police Station on 18th October 2006. At the instance of Ajendrasingh Thakur (PW87), PW79 effected an entry in the Station Diary, in the handwriting of PSI Samir Faniband. He has stated that the said entry was made as per his instructions. The said witness has produced the original Station Diary i.e Exh. 626, relevant entry being at Serial No. 33, which is reproduced in the evidence of PW79. Although, the said witness, in his cross-examination, has admitted that he had not received any letter from Addl. C.P addressed to D.N. Nagar Police Station, nor did he make any inquiry about it at the office of the Addl. C.P, West Region (PW78), it is pertinent to note that the said appellants i.e. Vinayak Shinde **(A7)** and Tanaji Desai **(A2)** had produced a memo (Exh. 613) and as such, there was no reason for the said officer to disbelieve what was disclosed

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by his colleagues, also police officers i.e. Vinayak Shinde **(A7)** and Tanaji Desai **(A2)**. Questioning a Senior Officer, i.e. Addl. C.P, West Region, would amount to insubordination. Infact, though the said appellants/accused i.e. Vinayak Shinde **(A7)** and Tanaji Desai **(A2)** have challenged the entries made in the Station Diary and the memo of their transfer from Versova Police Station to D.N. Nagar Police Station, Tanaji Desai **(A2)** has infact supported C.R. No. 302/2006 i.e. it was a genuine encounter, whereas, Vinayak Shinde **(A7)** has pleaded ignorance of C.R. No. 302/2006. Both the said accused have not seriously disputed that they were working at D.N. Nagar Police Station at the relevant time. Infact, there is no reason to disbelieve the testimony of PW79-API Prataprao Kharate and the Station Diary entry produced by him at Exh. 626 and the memo (Exh. 613). Similarly, the evidence of PW20-Sanjivan Shinge, who was the Head Constable at D.N. Nagar Police Station and would assign duties, cannot be disbelieved, inasmuch as, he has categorically stated in his evidence that Tanaji Desai **(A2)**, Ratnakar Kamble

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(A3), Vinayak Shinde (A7), Dilip Palande (A15) were on deputation and were working with Pradeep Sharma (OA1). The said evidence has gone unchallenged. Infact, the evidence of PW20-Sanjivan Shinge that he was not assigning any duties to these persons and hence, no entries were made by him in the Duty Register maintained by him, has also been admitted by the said witness, in his cross-examination. As is evident, formation of squad was illegal and therefore, the question of there being anything in writing, would not arise. Even the evidence of PW20-Sanjivan Shinge that he was not receiving any information about the leave of these constables i.e. Tanaji Desai (A2), Ratnakar Kamble (A3), Vinayak Shinde (A7), Dilip Palande (A15), who were on deputation, has gone unchallenged. Each of these witness, as stated aforesaid, have corroborated each other with respect to the deputation of some of the appellants/accused, as discussed herein-above to D.N. Nagar Police Station, to assist Pradeep Sharma (OA1) i.e. to work in his squad and about the existence of a squad under OA1 and as such, we find no reason to

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disbelieve the overwhelming evidence that has come on record, with respect to the same.

58 PW78-Bipin Bihari, Addl. C.P, West Region, for obvious reasons, has denied the existence of the squad, since the formation of squads was banned by the previous CP and as such, was illegal. It is obvious, that PW78 was suppressing the same, lest, that would have led to some complications for him. PW78 has not only denied formation of squad under **OA1,** but has also denied deputing police personnel from other police stations to D.N. Nagar Police Station, despite the evidence of other witnesses, including entries in station diaries pointing to the contrary. Station diary entries reveal that the deputation was done on the oral orders of the Addl. C.P, West Region. The prosecution relied on several calls exchanged between **OA1** (which was on **A5**'s name) and PW78. **OA1** has denied using **A5's** mobile and PW78 has denied knowing **A5** - Hitesh Solanki @ Dhabbu. This, we will deal in greater detail whilst dealing

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with the circumstance of CDR's/Murder. Thus, in the facts, PW78 cannot be termed as a reliable witness and as such it is not possible for us to place any reliance, much less implicit reliance on his evidence having regard to the overwhelming evidence on record to show that a squad, albeit illegal existed under **OA1.**

59 There is nothing on record to suggest that the witnesses with respect to formation of squad, had any reason to depose as stated aforesaid, which evidence, to a great extent, has also gone unchallenged. There is documentary evidence adduced and proved by the prosecution also in support thereof, that officers were deputed to D.N. Nagar Police Station to work under **OA1** on the orders of PW78-Bipin Bihari, Addl. C.P, West Region. Although much ado is made by the learned counsel for the accused that the witnesses had not confirmed the veracity of what was told to them, with the Addl. C.P, West Region, it is pertinent to note, that all the witnesses were junior officers, who had no reason to disbelieve what was told to them by the accused, who

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themselves were police personnel. Even otherwise, junior officer would seldom find courage to question a high ranked officer i.e. PW78. We find no merit in the said submission. Thus, we find that the prosecution has proved through cogent, legal and admissible evidence that a squad existed under Pradeep Sharma **(OA1)** who was posted at D.N. Nagar Police Station and that some police personnel were deputed from different police stations to assist **OA1** in his squad. Some of the police personnel from other police stations were Tanaji Desai **(A2)** and Vinayak Shinde **(A7)** from Versova Police Station, Ratnakar Kamble **(A3)** from Juhu Police Station and Palande **(A15)** from Kalachowki Police Station. So also amongst others, Kadam **(A16)** and Devidas Sakpal **(A13)** were assisting **OA1**. In addition, there is documentary evidence to show that **A11, A17** and **A19** proceeded from Versova Police Station to D.N. Nagar Police Station for confidential work on 11th November 2006. There is a station diary entry to that effect, both at Versova Police Station (Exhibit 884A) and D.N. Nagar Police Station (Exhibit 669A). According

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to the prosecution, apart from the police personnel, there were some private persons, Shailendra Pandey @ Pinky **(A4),** Hitesh Solanki @ Dhabbu **(A5)** and Akhil Khan @ Bobby **(A6)**, who were also members of the said squad of **OA1**. The evidence of some of the witnesses, will show, that **A5** and **A6** would come to meet **OA1**. Infact, PW87 has identified **A5** and **A6.**

60 It is also pertinent to note, that the evidence of PW87-Ajendrasingh Thakur, reveals, and which fact is not disputed by the accused, that in the Kala-Ghoda encounter (double murder) case i.e. C.R. No.545/2006, some of the accused in the present case were also the members of the said encounter team consisting of Pradeep Sharma (**OA1)**, Pradeep Suryawanshi **(A9),** Dilip Sitaram Palande **(A15),** Arvind Sarvankar **(A22),** Anand Patade **(A18),** Prakash Kadam **(A16),** Ratnakar Kamble **(A3),** Tanaji Desai **(A2)** and Vinayak Shinde **(A7),** alongwith 2 others.

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61 We may note, that the trial Court has not accepted the formation of squad under **OA1,** by placing reliance only on the evidence of PW78–Bipin Bihari, despite there being overwhelming evidence of other witnesses as well as documentary evidence as stated aforesaid, to the contrary, showing formation of a squad under **OA1** and deputation of some of the accused to work under **OA1's** squad. The finding recorded by the trial Court being contrary to the evidence on record, cannot be sustained. We find that the prosecution has proved the existence of a squad, albeit illegal, under **OA1,** by adducing oral and documentary evidence.

ii. ABDUCTION:

62 According to the prosecution, Ramnarayan and Anil Bheda were abducted in a Qualis vehicle by plain clothes policemen on 11th November 2006 at about 12:30 hrs., whereas, according to the appellants/accused, the prosecution had miserably failed to prove the circumstance of abduction by

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cogent, legal and admissible evidence.

63 It was urged by the learned counsel for the appellants/accused that PW1 (brother of the deceased) had cooked up a story to cover up the misdeeds of his brother, who was a known criminal. Learned counsel for the appellants/accused submitted that the evidence pertaining to abduction being hearsay and thus inadmissible, none of the witnesses examined by the prosecution could have been relied upon by the prosecution.

64 The question that arises for consideration, is, whether the prosecution has proved abduction of Ramnarayan and Anil Bheda on 11th November 2006 at around 12:35 – 12:40 hrs. If it is proved, the defence of the appellants/accused becomes *fate accompli* and as such, the burden would then shift on the appellants/accused to show what happened to the deceased after his abduction, till he was shot dead.

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65 The prosecution has set-out the abduction time-line and has supported the said time-line with the evidence of witnesses. The said evidence, according to the prosecution, is duly corroborated by documentary evidence i.e. faxes, telegrams and CDRs.

10th NOVEMBER 2006

16:45 to 20:10	**A4** was outside Anil's house keeping a watch. Thereafter, **A2, A3, A6** and **A7** are also stated to have arrived near Anil Bheda's House, at Vashi.

11th NOVEMBER 2006

00:21	While at Mira Bhayandar, **A4** called Subhash Patel @ Lefty (Informer).
05:25 or 05:22	While at Mira Bhayandar, **A4** called **A7,** who was at Kalwa, Thane.
06:31 or 12:27	**A4** and **A7** alongwith **A8, A10, A12** and **A21** reached near the house of Anil Bheda. During this time, Subhash Lefty was

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	also nearby.
09:04	Ramnarayan called his wife from Anil Bheda's house.
10:29	Ramnarayan called PW38-Dheeraj Mehta from Anil Bheda's house.
12:15	Ramnarayan and Anil Bheda reached PW38's shop, at Sector 9-A, Vashi.
12:27	**A4** called **A7**. The said call started at Sector 29, Vashi. The said call was of 553 seconds. **(Exhibit - 580)**
12:31 to 12:33	After reaching PW38's shop, when Ramnarayan was waiting outside PW38's shop, he called two different persons from Sector-9-A, whilst he was standing on the road. The same is supported by CDR i.e 1st call was made at 12:31 and its duration was 50 seconds. The second call was at 12:33 and its duration was 110 seconds. (Thus, till 12:35 Ramnarayan was at Sector 9-A).
12:39	After abduction from Sector 9-A, **A7** called **OA1** and Subhash Patel @ Lefty called **A4**.
12:40	Nilesh informed PW38 that his friend and his friends' friend were

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	taken away by 5 – 6 persons in a qualis vehicle. Accordingly, several calls were thereafter exchanged between PW38, PW57, PW1, PW3 and PW2.
About 13:00	PW57 called PW38 and inquired about Ramnarayan and Anil Bheda, pursuant to which PW38 informed PW57 about their abduction.
After 13:00	PW3 received repeated calls from different persons including PW57 who informed him about the abduction.
(In the meantime) 13:14 to 13:20	**A4** and **A7** went to Bhandup Complex from Vashi and **A2, A3** and **A6** came to Bhandup Complex.
Around 14:00	PW1 received a call from PW3 informing him about the abduction. (PW1 and PW3 are brothers of Ramnarayan).
About 14:00 or 14:15	PW1 reached the shop of PW3 and was discussing with him about the information received. At that time, PW3 received one call. PW1 took the call and talked with the caller, who disclosed his name as Dheeraj (PW38), and his mobile

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	number as XXXXXX9531.
About 14:30	Ramnarayan and Anil Bheda were brought to D.N. Nagar Police station in separate vehicles.
About 14:30 to 15:00	PW38 went to PW40's (Anil Bheda's wife house), and informed her about the abduction. It was decided by PW40 to wait till 17:00 and then decide future course of action.
Around 15:00	During the said period, PW1 called PW38 and spoke to PW40 on PW38's mobile phone. PW1 told PW40 to send telegram and fax messages to the authorities, however, she expressed her inability to send the same and decided to wait till 5:00 p.m.
Between 15:00 to 16:00	PW1 and PW2 called some police officials and gave them information of abduction and requested them to make inquiries about the same and revert back, however, they did not get any information.
About 16:08	PW1 and PW2 sent Telegrams to the Commissioner of Police (C.P), Mumbai, Navi Mumbai and Thane

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	from Matunga Telegraph Office.
About 16:44	PW1 and PW2 sent Fax messages to C.P., Navi Mumbai and Thane, which was received by them.
About 17:45	PW1 was told by someone on phone that Ramnarayan and Anil Bheda were taken away by API Prakash Bhandari of Belapur Crime Branch.
About 18:28	PW1 and PW2 sent Telegrams to C.M. and Dy. C.M. Maharashtra State from Dadar Telegraph Office.
About 18:30	PW40, Aruna Bheda was dropped at Vashi Police Station by PW38 at 18:00 – 18:30 hrs. PW40, Aruna Bheda lodged a missing Complaint No. 51/2006 with the Vashi Police Station i.e. her husband Anil Bheda was missing.
About 20:00	PW1 and PW2 reached Belapur Crime Branch office to make inquiry about Ramnarayan and Anil Bheda, but did not get any information.
About 20:10 to 20:13	Alleged encounter took place at Nana Nani Park, 7 Bungalows, Andheri (W), Mumbai. (As per the FIR lodged by **A9** i.e. C.R. No.302/2006, registered with the Versova Police

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	Station).
About 20:30	PW3 informed PW1 that there was breaking news on all news channels, that their brother was shot dead in an encounter. At that time PW1 and PW2 were at Belapur C.B.D.
About 22:15	PW1 and PW2 reached Versova PS along with two advocates and and a driver.
About 22:30	PW1 and PW2 alongwith two advocates and driver reached Nana Nani Park.
About 22:44	PW1 takes a video clipping of the spot on his Mobile Camera. The said Video Clipping shows that a newspaper was placed on the spot of blood and one stone was kept on the newspaper. It also shows the electric pole number.

12th NOVEMBER 2006

13:19	**OA1** calls PW104 (A.T. Patil) to come to D.N Nagar Police Station to talk to Anil Bheda. (PW104 has turned hostile).
15:16	PW104 reaches D.N. Nagar Police Station.

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16:49	Anil was taken to Vashi Police Station, where his wife (PW40) had lodged a missing complaint. The said complaint was withdrawn by PW40 and statements of PW40 and Anil Bheda were recorded.
22.05 to 22:51	PW40 and Anil Bheda were taken from Vashi Police Station by **A2** and **A3** to their house and immediately thereafter, PW40, Anil Bheda and their son Parth, were taken to Bhatwadi, (PW40's parent's house), by **A2** and **A3.**

13th NOVEMBER 2006	Anil Bheda was taken to D.N. Nagar Police Station and from there was brought back to Bhatwadi and from there Anil, his wife (PW40) and son Parth were taken to Kolhapur by **A5** and a driver in a Konduskar bus.

14th NOVEMBER 2006	The aforesaid persons reached Kolhapur where they stayed in a hotel, opposite the bus stand for a few days i.e. from 14th November 2006 to 18th November 2006.

19th NOVEMBER 2006 to	All the aforesaid persons reached Mumbai. Anil was taken to Mid-

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11th/12th DECEMBER 2006	town hotel, Andheri, and was kept in the said hotel by the appellants/accused in confinement from 19th November 2006 till around 12th December 2006.

66 The witnesses examined by the prosecution to prove abduction are PW38-Dheeraj Mehta; PW57-Shankar @ Girish Dalsingh; PW3-Shyamsunder Gupta; PW1–Ramprasad Gupta; PW2-Ganesh Iyer; and PW40–Aruna Bheda. The documentary evidence produced and relied upon by the prosecution are faxes, telegrams, station diary entries etc, to prove that Ramnarayan and Anil Bheda were abducted on 11th November 2006 at around 12:35 hrs. CDRs are also relied upon to corroborate the evidence of the witnesses.

PW38 : Dheeraj Mehta

67 Dheeraj Mehta, a friend of Anil Bheda and Ramnarayan was examined by the prosecution, as PW38. The said witness was conducting his business from one shop by the

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name of 'Trisha Collection', after the said premises was partitioned into 3 to 4 shops. PW38 has stated that he knew Anil Bheda, as he was working as an agent in APMC market and as he had provided stones to the relatives of Bheda; that he had also visited Anil Bheda's house and as such knew Aruna Bheda (PW40); that he also knew Bheda's friend, Pandeyji (Ramnarayan), who was dealing in real estate, as he too had purchased stones from him.

67.1 According to PW38, on 11th November 2006, he had been to his shop at about 10:30 hrs.; that at about 12:15 hrs Anil Bheda and his friend Pandeyji came to his shop; that as there was no place to sit in the shop, he asked them to wait outside; that at about 12:40 hrs, one Nilesh came to his shop and informed him that your friend had been taken away by someone; that he asked Nilesh how it happened, Nilesh disclosed that his friend-Anil Bheda (who regularly visits his shop) and his friend's friend-Ramnarayan, have been taken away in a Qualis vehicle by **5-6**

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persons; that he asked Nilesh as to whether they were police persons, to which, he replied that the said persons were in civil dress; that thereafter, he tried to call on Anil Bheda's mobile, however, his phone was coming switched-off; that after 10–15 minutes, PW38 received a call from one Girish Nepali (PW57), who was a friend of Pandeyji (Ramnarayan) and Bheda; that he (PW57) asked if Anil Bheda and Pandeyji had come; that he (PW38) disclosed to him about the incident that had occurred; that PW57 told him (PW38) that he would receive a call after some time and that he should disclose all the facts to him (the caller); that he received one call from a PCO on his mobile No. XXXXXX9532; the said person introduced himself as the brother (PW3) of Pandeyji (Ramnarayan); that the said person made inquiries about Pandeyji (Ramnarayan), pursuant to which, he informed him (PW3) about the incident that had occurred; that thereafter, at about 14.00 to 14:15 hrs, he received one missed call; that he called on the said mobile number; that the said person introduced himself as Advocate Gupta (PW1) and

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stated that he wanted to speak about Pandeyji and that he was Pandeyji's brother, pursuant to which, he again informed him about the said incident; that Advocate Gupta (PW1) asked him to lodge a complaint in the police station, however, he did not reply and disconnected the phone; that he again received a call from PW1, after half an hour and that PW1 requested him to go to Anil's house, so as to enable him to talk to Anil's wife; that at about 14:30 hrs, he went to Anil's house and from his own mobile, called Gupta (PW1) to enable him to talk to PW40; that Advocate Gupta (PW1) disclosed to PW40, that there was danger to the lives of Anil and Pandeyji and hence he gave phone numbers and fax numbers of police; that he wrote down the numbers and gave it to Aruna Bheda (PW40); that Advocate Gupta (PW1) stated that it was likely that they would be killed in a fake encounter; that after he spoke to Aruna Bheda, she told him that she will wait till 5:00 pm and then decide the further course of action and as such he left.

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67.2 PW38 has further stated that Gupta (PW1) again called him and stated that as he did not lodge a complaint, he should give this information to the police by dialing 100, which he refused to do, as he did not want to get involved. According to PW38, at about 5:00 pm, he went to PW40's house and asked if she had received any information about Anil; that as no information was received, he took Aruna Bheda (PW40) and left her near Vashi Bus Depot, as she wanted to go to the Vashi Police Station, to lodge a missing complaint regarding Anil Bheda, and that thereafter, he went home. He has further stated that at about 20:00 to 20:30 hrs, he learnt from the TV news, that there was an encounter of one Ramnarayan.

67.3 PW38 has further stated that on 12th November 2006, he received a telephone call from Gupta (PW1), who disclosed that his brother was killed in a police encounter and that the said news was being shown on TV; that Gupta (PW1) told him that Pandeyji's name was Lakhanbhaiya (Ramnarayan). He has

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further stated that although Gupta (PW1) requested him to be a witness, he refused as he did not want to get involved in the matter; and that Gupta asked him to show the place from where Pandeyji (Ramnarayan) was taken away, pursuant to which he took him to his shop.

67.4 According to PW38, he met Anil Bheda after about 15-20 days of the incident; that he inquired with him about what had happened on that day, pursuant to which Anil disclosed that he had been to Shirdi on the said day and that when he asked about Pandeyji (Ramnarayan), he avoided and left.

67.5 In his cross-examination, PW38 admitted that on 11th November 2006, Anil Bheda and Pandeyji (Ramnarayan) waited outside his shop and that he could not see where the two were standing; that the distance between the shop and road was about 10 feet; that at the relevant time, he saw Nilesh standing outside the shop on the road. When a suggestion was put to him, PW38

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denied that he was deposing falsely that Anil Bheda and Pandeyji (Ramnarayan) visited his shop on 11th November 2006; that one Mr. Nilesh who has a shop next to his, had not disclosed the information to him on 11th November 2006; that he had not disclosed the name of Nilesh to Aruna Bheda; and that SIT told him to depose that Nilesh gave the information and hence on the say of SIT, he was falsely stating so.

68 Learned counsel for the appellants submitted that the evidence of PW38 with respect to abduction cannot be relied upon inasmuch as, the alleged eye-witness to the incident of abduction i.e. Nilesh's statement was not recorded by the prosecution and as such the evidence of PW38 being hearsay, no reliance can be placed on the evidence of PW38 with respect to the disclosure made by Nilesh to him.

69 Per contra, Mr. Chavan, learned Spl. P.P submitted that what was disclosed by Nilesh to PW38 would not be hearsay

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and infact, would be admissible under Illustration (a) of Section 6 of the Evidence Act i.e. under the *res gestae* principle. The said submission will be dealt with, a little later, when we analyse the evidence and the law with respect to the same.

PW57 – Mr. Shankar @ Girish Dal Singh :

70 PW57 – Shankar @ Girish Dal Singh, in his evidence has stated that on 11th November 2006, he was at home and that he received a call from Dheeraj Mehta (PW38) from Navi Mumbai between 12:30 hrs. to 13:00 hrs; that some gaonwale (villagers) had taken Ramnarayan and Anil Bheda; that as it was incomplete information, he again called on PW38's mobile, who informed him that the police from the Crime Branch had taken Ramnarayan and Anil Bheda; that immediately he called Ramnarayan's brother-in-law, Babu and Ramnarayan's brother, Ramprasad (PW1) and informed them of the disclosure made to him, by PW38. He has stated that the mobile used by him at the

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relevant time was XXXXX9998. He has further stated that after the encounter of Ramnarayan, he ran away to his village, apprehending that he too may be killed and returned back to Mumbai, after about one or one and a half year of the incident. According to PW57, when he inquired with Janaya Sheth as to who killed Ramnarayan, he replied that the *"game of Lakhan Bhayya was done by Subhash Lefty."*

70.1 In his cross-examination, the said witness confirmed that on the day of incident, he informed the incident only to Ramprasad Gupta and Babu; and it was Dheeraj (PW38) who had told him that Ramnarayan and Anil Bheda were picked up and taken away. PW57 has further admitted in his cross-examination, that he did not write down anywhere that, Janaya Sheth had told him, that Lefty "did the game of Lakhan Bhayya", and that he did not mention it anywhere or to anyone.

71 Thus, PW57 has corroborated the disclosure made to

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him by PW38 with respect to abduction of Ramnarayan and Anil Bheda, soon after the abduction and information received from Nilesh.

PW3 – Shyamsunder Vishwanath Gupta :

72 PW3–Shyamsunder Gupta, one of the brother's of deceased-Ramnarayan, has stated that on 11th November 2006, when he was sitting in his lottery shop, he received a telephone call; that the said person stated that from front of the said shop, Ramnarayan and Anil had been forcefully taken in a vehicle by persons looking like police; that the vehicle was a silver coloured Qualis vehicle; that he received a call on his mobile, at about 13:00 hrs, when he was present in his shop; that he was using mobile XXXXXX6540; that at that time, he had two mobile numbers and that the other mobile number was XXXXX4123; that within a period of 10-15 minutes, he received 2-3 calls, narrating the same incident from different persons; that he did

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not know any of the persons who called and hence he got tense and immediately called his younger brother-Ramprasad, an advocate (PW1) on his mobile number XXXXXX6490 and told him that some unknown persons have taken Ramnarayan from Vashi; that pursuant thereto, PW1 came to his shop; that when PW1 was at his shop, he again received a call; that he handed over his phone to PW1; that PW1 asked him the details; that thereafter on asking the details, PW1 told him that he will make inquiries with the police as to who the said persons were; that thereafter, PW1 left and also took his mobile with him; that PW1 informed him that he was going to the office of Ganesh Iyer (PW2); that he stayed back in his shop after Ramprasad left; that Subalaxmi, Ramnarayan's wife called him and informed him that she was trying to call Ramnarayan on his phone, but his phone was coming switched-off and that she had been informed that some persons looking like police have taken her husband. PW3 has further stated that there was a television set at his shop and while watching the television at 20:30 hrs, there was breaking

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news, in which it was relayed that *'one person from Chhota Rajan Gang, Lakhanbhaiya was killed at Versova, in an encounter'*; that he immediately called Ramprasad (PW1), who was at Belapur, as he had received information, that one Prakash Bhandari had taken Ramnarayan; that PW1 told him that he was returning and that he should come to the office of Ganesh Iyer (PW2); that he went to PW2's office within 10–15 minutes; that PW2's office was situated at Sion; that when he reached PW2's office, neither PW1 nor PW2 were present and that one Advocate Vijay Desai and another person were there; that at about 9:00 to 21:15 hrs, PW1 and PW2 came there; that PW1 gave him one mobile, which was of Reliance Company and asked him to give it at his house, after which PW1 left for Versova. PW3 has further stated that on the next day, he went to J.J. Hospital at about 21:00–21:30 hrs and was waiting for the dead body of Ramnarayan to arrive; that at about 23:00–00:00 hrs, the body arrived in an ambulance; that he asked the Hawaldar to show him the face, as he wanted to identify the body, however, initially the

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Hawaldar refused but thereafter, he showed him the dead body. PW3 has further stated that when he saw the dead boy there was red soil on his legs till the knee and that when he saw the face, he saw a hole on his forehead; that he requested the police to permit him to take a photograph of the dead body, however, he was asked to leave; that he immediately called PW1 and informed him, pursuant to which, PW1 asked him to return immediately and not to wait there. He has stated that thereafter he never went to the police, till his statement was recorded by SIT.

72.1 In his cross-examination, the said witness has admitted that on 11th November 2006, he came to his shop at 10:00 hrs. and remained in his shop till he received the phone call; and that he learnt about the incident only on receiving the phone call. He has admitted that he had not met the said caller prior to 11th November 2006 or till the date of his deposition; and that he only knows that the said person, has a mobile shop. PW3 has admitted that he has not inquired, with Girish Nepali

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(PW57) whether he had personally witnessed the incident; that from the said caller, he came to know that the incident of abduction took place in front of the caller's shop in Vashi; and that the caller informed him that there were 4-5 persons involved in the said incident.

72.2 PW3 has also admitted in his cross, that he had received 3 to 4 phone calls about the incident before he called his brother Ramprasad (PW1); that out of all the callers, he only knew one i.e. Girish Nepali (PW57); that he had informed his brother (PW1), that their brother (Ramnarayan) was taken in a silver coloured Qualis vehicle, from the front of a mobile shop at Vashi. He has further stated that Article 8 is his first statement in writing, about the incident and that he had not stated that he had not informed any other person or asked any other person to make inquiries, prior to the arrival of his brother or, about the information received by him relating to the taking away of his deceased brother.

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72.3 He has further admitted in his cross-examination, that he has not stated in his affidavit before the learned Metropolitan Magistrate that when Ramprasad (PW1) had come to his shop and was talking to him, he received another phone call from the caller who had given him the information earlier and that he handed over his phone to PW1, who asked the said caller his details, and that when PW1 left, he took his phone with him. The said witness had further admitted that he had not stated in his affidavit that he had received a call from Subalaxmi, who had requested him to search for PW1, to which the said witness informed her that PW1 had gone for making such inquiries; and that PW1 had asked PW3 to go to the office of Ganesh Iyer at Sion, where Vijay Desai and one other person was present.

72.4 The aforesaid admissions relied upon by the learned counsel for the appellants, do not in anyway discredit the testimony of PW3. These are minor omissions and not material

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omissions and as such do not impact the evidence of PW3 on all material aspects, which have been duly corroborated by other witnesses.

PW1–Ramprasad Vishwanath Gupta :

75 PW1–Ramprasad Gupta, an advocate, the brother of the deceased has in his evidence stated that he was staying at the relevant time, at Sion Koliwada. He has stated that on 11th November 2006, being a second Saturday, he was at his home; that at about 13:55 hrs, he received a call from his brother (PW3) on his mobile number XXXXXX6490, informing him that one person had called him on his telephone 2 or 3 times and had informed him that Ramnarayan and Anil Bheda were forcibly taken in a Qualis vehicle by 4 to 5 persons looking like officers from front of his shop; that at about 13:59 hrs, he called from his mobile number XXXXXX6490 on his friend's mobile i.e. Advocate Ganesh Iyer's Mobile No. XXXXXX5384 and

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informed him about the incident and told him to meet him immediately; that thereafter, he went to PW3's shop, which was situated at Pratiksha Nagar, Sion Koliwada; that when he was at PW3's shop, PW3 received a call on his mobile from one person; that he took the mobile of his brother and spoke to the said person, and asked him his name and telephone number; that the said person disclosed his name as Dheeraj (PW38) and gave his mobile number XXXXXX9531; that when he asked the said person as to whether he knew who the police officers were and from where they had come, the said person replied that he was not aware, and further disclosed that the said police officers were not like local police officers; that he told that person (PW38) to immediately go to Anil Bheda's house and tell his wife to speak to him; that thereafter, at about 14:45 hrs, he went to the office of Advocate Ganesh Iyer (PW2) at Sion and informed him in detail about the communication he had received; that at that time, Ramnarayan's wife Subalaxmi was in a hospital at Mangalore; that at about 15:30 hrs, he called Subalaxmi, and

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asked her whether Ramnarayan had done anything and whether she knew about it; that Subalaxmi informed him that she had received a call from her brother (Babu), who informed her about Anil Bheda and Ramnarayan being forcibly taken away; that when he telephoned PW38 on his mobile number XXXXXX9531 from his Reliance phone number XXXXXX0012, PW38 told him that he was at the house of Aruna Bheda (PW40); that he spoke to PW40 and asked her as to whether any police officers had visited her house and whether she knew anything, to which she replied in the negative; that PW2 took his mobile from him and spoke to PW40 and asked her, her address, pursuant to which she gave her address as Sector 29, Diamond Apartment, Plot No.C-41, Vashi, Navi Mumbai; that thereafter he spoke to PW38 and asked him his shop's address; that PW38 disclosed that his shop is at Sector 9, Vashi, Navi Mumbai and accordingly, he noted down the address on a paper; that at that time, Aruna was crying and asked him to find Ramnarayan and Anil and to save their lives; that pursuant

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thereto, he and PW2 called some of the police officers from the Property Cell and informed them about the incident and requested them to make inquiry and inform about the same to them; that he also telephoned his advocate friends and informed them about the incident and requested them to make inquiry and to inform him; that he inquired with Mahesh Mule and Shrirang Shrimane, for the fax numbers of CP of Mumbai, Thane and Navi Mumbai and that both of them gave the fax numbers, which he noted down.

75.1 According to PW1, thereafter at about 14:00 hrs, he and PW2 went to Matunga Telegraph Office and sent a telegram to the CP, Mumbai, Thane and Navi Mumbai. The contents of the telegram were *'Ramnarayan Vishwanath Gupta and Anil Bheda picked up by Plain clothes police men from Sector 9, Vashi and their lives are in danger. Please help and save their lives'* He has further stated that he also tried to send the message by fax to the office of the CP, Mumbai, Thane and Navi Mumbai, however,

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the communication could not be done due to technical fault. He has stated that the form of the telegram was written by PW2 and it was sent in the name of Aruna Bheda with her address mentioned on it. He has stated that he received receipt of payment for sending the telegram. He has further stated that in the writ petition filed by him in the High Court, the CP, Mumbai in his affidavit denied having received such a telegram and hence, he approached the BSNL on 27th November 2006 and sought the delivery report of the telegram he had sent; that on 29th November 2006, he received a report from the telegram office about delivery of those telegrams to the concerned offices. PW1 has identified the handwriting of Ganesh Iyer, as they were working in the same office. He was shown the telegram form, which was sent to the CP of Thane, written by PW2-Ganesh Iyer in the name of Aruna Bheda. He has identified the handwriting of PW2 as it was written in his presence. The telegram form was marked as Exh.–114. The telegram form sent to CP of Navi Mumbai, was also shown to PW1, which was written by PW2 and

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which was sent in the name of Aruna Bheda. The said telegram form was marked as Exh.–115. The telegram form sent to CP of Mumbai, was also shown to PW1, which was written by PW2 and sent in the name of Aruna Bheda. The said telegram form was marked as Exh.–116. PW1 has further stated that thereafter, they returned to their office from Matunga Telegraph office; that on the same day at about **16:45 hrs,** he sent faxes to CP, Thane on fax No. XXXX6660 and CP, Navi Mumbai on fax No.XXXX4929 from Ratnadeep Stores, Sion. He has stated that he tried to send a fax to CP, Mumbai on fax No. XXXX1355, however, it could not be sent as somebody from the other side would pick the phone, instead of giving a fax tone. PW1 has further stated that at about 17:45 hrs on 11th November 2006, one person telephoned him and told him that his brother and Anil were taken away by API Prakash Bhandari, Belapur Crime Branch, pursuant to which he called Advocate Amit Jambholkar and Advocate Vijay Desai and asked them to make inquiry about API Prakash Bhandari and find out his contact number and

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communicate to him, if they received any message; that he and PW2 again went to Matunga Telegraph Office, however, since the said office was closed, they went to Dadar Telegraph Office, and at about 18:28 hrs, sent a telegram to the Chief Minister and Dy. Chief Minister of Maharashtra. As far as the telegrams sent to CM and Dy. CM are concerned, the said telegrams were exhibited at Exhibits 117 and 118. He has stated that the telegram sent to CM was in the handwriting of PW2 and one of the telegrams which was sent to Dy. CM was in his own handwriting and the same were sent in the name of Aruna Bheda. The contents of the telegrams sent to the CM and Dy. CM were ***'My husband Anil Bheda and his friend Ramnarayan Gupta has been picked up by the plain clothes police men from Sector 9, Vashi, Navi Mumbai and I fear that they may be killed in a fake encounter."*** He has further stated that thereafter, he and PW2 went to Belapur Crime Branch at around 19:45 hrs; that he informed the incident to one constable who was present there in uniform and asked him, whether the police had brought any

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person; that the constable told him that API Prakash Bhandari was on leave that day and that he had not brought anybody to the Crime Branch office; that he requested the constable to show him the rooms of the Crime Branch office; that the constable showed him the rooms, however, nobody was found inside; that thereafter, they went to Belapur Railway Station; that he called from his mobile, the person, who had given him the said information about API Prakash Bhandari taking away his brother and Bheda to Crime Branch and informed him that nobody was found at Belapur Crime Branch; that when he and PW2 were having tea at Belapur Railway Station at about 20:30 hrs, PW3 telephoned him on his mobile and disclosed that there was breaking news on T.V on all channels, that Ramnarayan Gupta (Lakhanbhaiya) was killed in an encounter by the police at Versova; that on receiving the said information, he and PW2 returned to Sion on a motorcycle; that while returning, PW2 telephoned Advocate Vijay Desai and informed him that they were going to the spot at Versova; that Advocate Vijay Desai

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asked them to come to PW2's office and that he too would accompany them; that PW2 also called his driver to his office; that after they reached PW2's office, PW3, Advocate Vijay Desai, Advocate Kudart Shaikh and Driver Raja had already reached the office of PW2; and that as the battery of his Reliance mobile was discharged, he handed over the same to his brother PW3 and sent him to his house.

75.2 PW1 has further stated that thereafter he, PW2, Advocate Desai and Advocate Shaikh and Driver Raja went in the car to Versova Police Station and inquired with the police constable as to whether an encounter of any person had taken place; that the constable told them that he did not know about the same and that they should go to the spot at Nana Nani Park, Versova; that they reached Nana Nani Park at about 22:30 hrs; that at that time, there was total darkness and there was nobody and the place was totally quiet; that when they searched, they found some blood near an electric pole and on the blood a news

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paper *"Dopahar Ka Saamna"* was kept and a stone was kept on the newspaper; that they found one vehicle (Jeep type) parked at some distance and 3 to 4 persons were standing near the vehicle; that when he asked them whether there was any encounter, they told him that no encounter had taken place at that spot. According to PW1, thereafter, they went near a building, situated on the left side of the spot, by the name Magnum Opus; that one watchman Rambabu Rajaram Lodh was present there; that they asked him whether any encounter had occurred at that spot, however he replied in the negative. Although PW1 has disclosed to what was disclosed by the said watchman, we do not wish to reproduce the same, as the same would be inadmissible, being hearsay.

75.3 PW1 has categorically stated in his evidence that no police officer was present at the spot. He has stated that he asked 3 to 4 persons, who were present there to disclose their names, however they did not disclose their names. He has stated that he

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had taken a video clipping of the spot on his mobile and prepared a CD of the said clipping and had handed over the same to the police officer. He has stated that he again visited the Versova Police Station where he was informed by the police constable that nothing was found at the spot and since he did not receive any information, he was asked to go to Cooper Hospital. He has stated that he was enraged, however, his friends told him that nothing would happen by visiting the hospital and took him home. He has further stated that Ramnarayan's body was kept in Cooper Hospital; that on 12th November 2006 at about 9:00 hrs., he asked his brother Shyamsunder (PW3) to visit J.J. Hospital for identifying Ramnarayan's body; that pursuant thereto, PW3 went to J.J. Hospital and identified the body of Ramnarayan and informed him about the same; that on that day he called PW38 about 7 to 8 times on his mobile No. XXXXXX9531 and inquired with him, whether he had any information of the whereabouts of Anil Bheda, to which PW38 replied that he did not have any information. PW1 has further

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stated that on 13th November 2006 in the morning, he had gone to Matunga Telegraph Office to obtain the certified copies of the telegram sent by him on 11th November 2006; that he went to Dadar Telegraph Office and obtained two certified copies of the telegrams sent to Chief Minister and Deputy Chief Minister on 11th November 2006; that the Matunga Telegraph Office obtained his signature and date on the original telegram form for acknowledging receipt of certified copy. He has identified his signature on Exhibits 114, 115 and 116 respectively.

75.4 PW1 has further stated that on 13th November 2006 after getting the certified copies of the telegram, he prepared detailed complaints on his letter-head, and addressed the same to the Chief Minister of Maharashtra and Dy. Chief Minister of Maharashtra and sent the same by hand delivery and obtained acknowledgments of receipts of the letters from the concerned officials. He has further stated that on 14th November 2006, he sent complaints on his letter-head, to the State Human Rights

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Commission (SHRC) and CP, Mumbai; that on 14th November 2006 there was an interview of Shri R. R. Patil and Shri A. N. Roy on TV denying the fake encounter; and that on 15th November 2006 he filed a writ petition, being Writ Petition No.2473/2006 in this Court seeking several reliefs.

75.5 According to PW1, on 16th November 2006, he addressed a copy of the complaint to the President, National Human Rights Commission (NHRC), New Delhi, on his letter-head and sent the same by RPAD. According to PW1, on 16th November 2006 his writ petition was heard by this Court and one of the prayer in the writ petition was, seeking second post-mortem. He has stated that P.I Mohandas Sankhe, of Versova Police Station had shown a copy of the post-mortem report to the Court and the prosecutor had handed over a copy of the said post-mortem report to him and after going through the same, he withdrew his prayer seeking second post-mortem, orally. He has stated that on the next day, he had gone to Versova Police Station

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for claiming the dead body; that the Versova Police Station told him that the investigation of the case was taken over by the Oshiwara Police Station; that he requested the police officers of the Oshiwara Police Station to take the photographs and video of the dead body of his brother, but they refused and hence he did not take the custody of the dead body. He has stated that on 18th November 2006 he had made an application through Advocate Ganesh Iyer (PW2) on his letter-head and sought five sets of copies of telegram; and that the Dadar Telegraph Office had supplied the copies, but the Matunga Telegraph Office had refused to supply the same.

75.6 PW1 has further stated that on 20th November 2006, the matter again came up for hearing before this Court; that on 20th November 2006 the CP of Mumbai, Shri Roy filed an affidavit in reply to the writ petition; that on 21st November 2006, he had sent a letter on his letter-head to the Manager, BSNL, requesting them not to destroy the telegram forms without

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the permission of this Court or without informing him, as the matter was subjudice before this Court; that on 22nd November 2006 the matter again came up for hearing before this Court and the Court gave directions to the officers of the Oshiwara Police Station and to him to go to the J.J. Hospital, so that the dead body could be handed over to him; that on 22nd November 2006, he had been to Oshiwara Police Station for claiming the dead body; that after taking the custody of the dead body on 22nd November 2006, the last rites were performed on the deceased; that on 27th November 2006, he gave an application on his letter-head, to the Sub Divisional Engineer (G-II), BSNL, Mumbai, requesting them to inform as to whether the five telegrams which were sent on 11th November 2006 were received by the concerned authorities; that on 29th November 2006, the said authority gave him a report, with respect to delivery of telegrams by the concerned authorities, by mentioning the date and time.

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75.7 According to PW1, on 26th November 2006, he called PW38 and inquired about the whereabouts of Anil Bheda, however, he disclosed he had no information; that he requested him to file an affidavit before the High Court, however, PW38 refused; that he went to PW38's shop and saw the name of his shop 'Trisha Collection' at Sector 9, Vashi, Navi Mumbai; that thereafter he went to Anil Bheda's house alone and found that his house was locked; that he inquired with the watchmen of the building, who told him that he did not know anything and he should not inquire about him, pursuant to which he returned home; that he again visited Bheda's house on three consecutive Sundays, but on each occasion, he found the house locked.

75.8 According to PW1, he had received the receipts for the payment of five telegrams sent by him. The said five receipts have been exhibited as Exh.–119 (colly). The receipt number of Exh.-119 (colly) has been mentioned on the respective telegrams.

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75.9 PW1 has further deposed that on 11th November 2006, a fax message was written by Ganesh Iyer (PW2) in his handwriting. The witness was shown the fax message which was in the handwriting of PW2. He has further deposed that he obtained the delivery report of the fax and mentioned the name and address of Aruna Bheda and the telephone number and fax number of CP office in his handwriting on the backside and that he had also mentioned the number of his sister-in-law and number of Girish, who was a friend of Ramnarayan and number of Dheeraj on the back side of message. The said document is marked as Exh.–120. According to PW1, he had also sent a fax to CP of Mumbai, Thane and Navi Mumbai on 11th November 2006 and had received the delivery reports of the said faxes sent. PW1 has further stated that since delivery of fax messages vanishes automatically from the paper, after a few days, he removed a photo copy of one of the delivery reports by keeping the delivery report below the fax message contents. He has identified the faxes sent to the CP Office, Thane. In view of the

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objection raised by the learned counsel for the appellants, the photo copy of the delivery message of fax sent to CP Office, Thane was marked as Article 1. The fax message sent to CP Office, Navi Mumbai was marked as Article 2, alongwith the fax delivery report.

75.10 PW1 has further stated that in the last week of December 2006 on Sunday, he visited the house of Anil Bheda; that on that day Anil Bheda, his wife Aruna and their son Parth were at home and they met him; that he went there to inquire as to what had happened on 11th November 2006. Although, PW1 has stated the disclosure made by Anil Bheda, vis-a-vis the incident of 11th November 2006, we may note, that since Anil Bheda expired on 13th March 2011, the evidence with respect to what was disclosed by Anil Bheda to him, being hearsay evidence, is not taken into consideration. He has stated that after speaking to Bheda, he asked him to file an affidavit in the High Court pertaining to the incident that took place on 11th

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November 2006, however, Bheda did not file any affidavit. PW1 has further stated that he had not disclosed the conversation with Bheda to anybody because he knew that as soon as he disclosed the same, Anil Bheda would be eliminated by the accused. He has stated that when this Court directed the SIT to make investigation, he disclosed before them, the conversation he had with Bheda and the disclosures made to him by Bheda.

75.11 As far as inquiry being conducted by SLAO is concerned, PW1 has stated that he participated in the said inquiry which was being conducted under the supervision of the High Court and that his statement was also recorded in that inquiry; that in all, 37 statements of the witnesses were recorded, including that of 12 police officers and Advocate Ganesh Iyer; that after the inquiry, the SLAO filed a report in the High Court on 27th October 2007; that the High Court was not satisfied with the SLAO's report and hence, vide order dated 13th February 2008, the Court directed the learned Metropolitan Magistrate's

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Court, Andheri to conduct a fresh inquiry under Section 176(1-A) of the Cr.PC PW1 has stated that he had participated in the inquiry conducted by the Learned Metropolitan Magistrate, Railway Mobile Court, Andheri and that on completion of the inquiry, the learned Metropolitan Magistrate filed her report on 11th August 2008 before this Court. He has stated that 8 police officers filed intervention applications in the said writ petition and several affidavits therein; that one officer Nitin Sartape **(A11)** filed a separate writ petition, being Writ Petition No.181/2009, challenging the report of the learned Metropolitan Magistrate Court, Andheri; that on 13th August 2009, after hearing the parties, the High Court constituted a SIT and directed the CP, Mumbai, to register an FIR for the offence of murder of Ramnarayan Gupta and to carry out the investigation and file a report. He has stated that the High Court had also given directions to give a copy of his complaint dated 14th November 2006 to the CP, Mumbai; that pursuant thereto, he tried to contact DCP Prasanna, Head of SIT; that since he was on leave,

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PW1 contacted him again on 20th August 2009; that pursuant thereto, DCP Prasanna recorded his statement; and that he also handed over the copies of his complaint dated 14th November 2006, copy of writ petition, copy of five telegrams, copy of receipts of five telegrams, copy of fax delivery reports and two other fax delivery reports which were annexed to Writ Petition No. 2473/2006, with his forwarding letter to DCP Prasanna. PW1 has identified his statement and the signature on the FIR. He has stated the contents therein are true and correct. The FIR is marked as Exh.–121, subject to the objection with respect to the contents of the FIR to the extent it records the conversation between him and Anil. He has further stated that on 11th November 2006, he had two mobile phones of his own, being mobile Nos. XXXXXX6490 and XXXXXX0012 and from the afternoon of 11th November 2006, he was having the mobile of his brother–Shyamsunder; that he had done the video clipping of the spot on his mobile No.XXXXXX6490 of Motorola Handset; and that the video clipping of the spot is stored in the memory

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card of the said mobile. The video clipping recorded by the said witness and the video clipping of the Sahara News on the laptop was taken on record, subject to objection and marked as Exh.–122. PW1 has further stated that he had prepared the CD from the memory card of his mobile and that he had retained both the mobile as well as the memory card which was used for recording the video. He has stated that he did not produce the memory card wherein the video clipping was recorded before the police, as it was small one and there was likelihood of the same being lost. In view of the objection by the learned counsel for the appellants, production of the memory card at the stage of recording of the evidence was disallowed.

75.12 As far as video clipping is concerned, the same was produced by PW1. He has stated that on 16th December 2006, he had obtained the CD of the video clipping of the Sahara Samay from Isha Monitoring Services at Ghatkopar, after paying the necessary charges. He has produced the CD before the police.

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The said CD was marked as Exh.–123.

75.13 PW1 has further stated that he had written a letter on 13th November 2006 to the Chief Minister of Maharashtra and received acknowledgment of the hand delivery of the letter; and that the copy of the said letter bearing the endorsement acknowledging the receipt of the letter, was identified by him. A copy of the said letter was marked as Exh.–124. A copy of the letter written to Dy. CM of the Maharashtra State on 13th November 2006 was also produced showing the endorsement acknowledging the receipt of the letter. The said letter was sent by hand delivery. A copy of the said letter was marked as Exh.–125. Similarly, a letter dated 14th November 2006 written to the CP, Mumbai and delivered by hand was also produced showing the endorsement acknowledging the receipt of the letter and the same was marked as Exh.–126. Similarly, a letter dated 14th November 2006, written to the State Human Rights Commission, Mumbai, delivered by hand was also produced showing the

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endorsement acknowledging the receipt of the letter and the same was marked as Exh.–127. Similarly, a letter dated 16th November 2006, sent to the NHRC, New Delhi, delivered by Registered Post and the acknowledgment receipt from the post alongwith a xerox copy of the letter was marked as Exh.–128 colly. Similarly, a letter dated 20th November 2006, sent to the General Manager, Bharat Sanchar Nigam Limited (BSNL) for preserving the original telegram forms, sent by hand delivery and the xerox copy of the letter bearing endorsement acknowledging the receipt of the letter was marked as Exh.–129. Similarly, a letter dated 27th November 2006, sent to the S.D.E.G-II, BSNL seeking delivery reports of the telegram sent by PW1 and the xerox copy of the letter bearing the endorsement acknowledging the receipt of the letter, was marked as Exh.-130. Similarly, the reply dated 29th November 2006, received from S.D.E.G-II, BSNL office, was marked as Exh.–131, subject to objection on the premise that the contents are to be proved by the sender of the reply. (We may note that witnesses have been examined to

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prove the said documents).

75.14 On 6th March 2007, PW1 made an application to the Information Officer/ACP under the RTI Act, to get the information as to when and at what time and by whom the office of the CP, received the telegram and what action they had taken on the telegram; that he had received a xerox copy of that application and had obtained the acknowledgment of the receipt of the application from CP Office, Mumbai; that the xerox copy of the application bears his (PW1's) signature since he had typed it. PW1 has admitted the contents therein, to be true and correct. The same was marked as Exh.–133. PW1 has further deposed that he had received a reply from the CP Office, Mumbai on 20th March 2007. The said reply was placed on record and marked as Exh.–134, subject to objection. PW1 has further stated that on 17th August 2009 some of the accused i.e. Devidas Sakpal **(A13),** Prakash Kadam (**A16)**, Pandurang Kokam **(A19)** and Sandip Sardar **(A20),** challenged the order dated 13th August 2009 passed

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by this Court in Writ Petition No.2473/2006, before the Apex Court by way of an SLP and that the said SLP was dismissed on 31st August 2009 as withdrawn by the petitioners therein. Thereafter, PW1 has stated as to when the applications were made by him for recording the statements of witnesses under Section 164 Cr. PC and steps taken by him. The video clipping so produced by PW1 was seen in the presence of the accused and their advocates and the learned Spl. PP and the visible images of the video clip from the CD were noted and so also the conversation was heard. The same has been recorded in paras 64 and 65 of PW1's evidence. According to PW1, he received a call from SIT Office; that he was called on 14th July 2010 for recording his further statement; that on 24th August 2008, he received a call from the SIT Office and was called on 25th August 2008 at Vashi Bus Depot for showing the spot from where his brother was taken; that SIT recorded his statement on 25th August 2009; that on 10th October 2009, he received a call from SIT asking him to come to Nana Nani Park on 11th October 2009.

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He has stated that all the documents, including letters, faxes, telegrams were handed over by him to SIT.

75.15 In his cross-examination, PW1 has admitted that he knows Dheeraj Mehta (PW38), however he had not heard of him or known him prior to the incident of 11th November 2006; that on 11th November 2006, he had spoken to PW38 for the first time on the phone when his brother (PW3) handed over his phone to him, when he was in the shop of PW3; that he called PW38 approximately 5 to 6 times. He has further admitted that in connection with the abduction incident, (he spoke to PW3 first; and that he has already deposed what was informed to him by PW3 in para No.4 of his evidence); that he did not ask PW3 as to whether he inquired about the person who called him on phone; that PW3 did not inform him that the police had taken Ramnarayan by Qualis car. PW1 has admitted that he had received only one call from Shyamsunder at 13:55 hrs with regard to the incident.

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75.16 It is also pertinent to note that it has come in the cross of PW1, which fact, has been admitted by PW1 that it was true that Ramnarayan was residing with Anil Bheda prior to the incident. Thus, it stands to reason why watch was being kept on Ramnarayan on 10th November 2006 at Vashi on Anil Bheda's house.

75.17 The said evidence of PW1 is corroborated by the evidence of PW38 and PW3 with respect to abduction. PW1's evidence reveals the prompt action and steps taken by him on receipt of information i.e. abduction of his brother-Ramnarayan and Anil Bheda, by sending faxes, telegrams on the very same day, prior to Ramnarayan being shot dead.

75.18 Although, much ado is made by the learned counsel for the appellants that PW1 by sending faxes and telegrams, tried to fabricate/create evidence, as PW1 was well aware, that his brother-Ramnarayan was a wanted accused, we find no

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substance/merit in the said submission. It was also urged by the learned counsel for the appellants that PW1 sent faxes and telegrams in Aruna Bheda's name deliberately, though she did not want to send the same, as PW1 wanted to conceal his own identity. It is pertinent to note, that PW1 has given his explanation for sending the faxes and telegrams in Aruna Bheda's name i.e. he was shy of sending in his name since he was aware that his brother Ramnarayan had a past criminal record. PW1 voluntarily deposed that since Aruna Bheda's husband was also abducted, the telegrams were sent mentioning the name of Aruna Bheda and not in the name of PW1 or in the name of Ganesh Iyer (PW2).

76 Be that as it may, the fact that faxes/telegrams were sent, has been duly proved by the prosecution not only through PW1, but through PW2, PW4, PW41, PW42, PW44, PW46, PW49, PW92, PW93 and PW94 and so are the contents therein. The faxes and telegrams were promptly sent and infact even

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received by the authorities, prior to the encounter, and as such, the question of fabricating/creating any evidence does not arise.

PW2 – Ganesh Iyer :

77 PW2–Ganesh Iyer is an Advocate friend of PW1, who was present throughout with PW1, after PW1 informed him about the abduction of his brother. He has stated that on 11th November 2006, being a Saturday and a holiday, he had gone to Infinity Mall, Andheri, Versova to see a movie at about 12:30 hrs; that at about 14:00 hrs, he received a call from PW1 informing him that his elder brother Ramnarayan and his friend Anil Bheda were forcibly taken by 4–5 persons who looked like police, from Sector 9, Vashi, Navi Mumbai; that PW1 told him to meet him urgently; that he told PW1 to come to his Sion Office and that he would join him there; that when he reached his Office, PW1 again disclosed the same to him; that PW1 called PW38 from his mobile and spoke to Aruna Bheda and that he too spoke to Aruna

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Bheda on phone; that Aruna Bheda informed him (PW1) that her husband Anil and Ramnarayan were kidnapped by 4 to 5 persons in a Qualis vehicle from Sector 9, Navi Mumbai in front of a mobile shop and that their lives were in danger and that he should save them; that he told her to go to the nearest post office and send telegrams to the CP, Mumbai, Thane and Navi Mumbai; that PW40 told her that she did not know how to send a telegram and asked him to send telegrams on her behalf; and that he also told her to go to the nearest police station and inform about the said incident. According to PW2, they went to Rabale Police Station to find out whether Ramnarayan and Anil Bheda were taken by the police of the Property Cell of Crime Branch, Mumbai, however, they learnt that they had no idea of the same. He has further stated that when PW40 told him to send the telegram on her behalf, he asked her the address of her house on phone, pursuant to which, she gave her address as Diamond Apartment, Sector 29, Vashi, Navi Mumbai; that thereafter, he and PW1 went to Central Matunga Telegraph Office on

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motorbike; that they reached there at about 16:00 hrs. and collected 3 telegram forms; that he filled up the form and sent the telegrams to Shri A.N. Roy, CP, Mumbai, to CP, Navi Mumbai and to Mr. D. Shivanandan, CP, Thane; that the said telegrams were sent to save the lives of Ramnarayan Gupta and Anil Bheda, as there was possibility of them being killed in a fake encounter; and that he had written the messages in all the 3 telegrams. The said witness has identified the said forms. PW2 has admitted that the said telegrams, which are at Exhibits–114, 115 and 116, are in his handwriting and that he had given these telegrams to the telegraph office and had paid for the telegrams for which 4 receipts were issued. He has identified the 4 receipts [Exh.–119 (colly)] out of 6, which were issued by the Matunga Telegraph Office. PW2 has further stated that the telegrams were sent at about 16:08 hrs; that thereafter, he went to his office alongwith PW1, where they decided to send fax messages to the CP, Mumbai, Thane and Navi Mumbai; that pursuant thereto, they went to Ratnadeep Store, Jain Society, in front of SIES College,

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Sion, Mumbai; that PW1 contacted his friends and obtained the fax numbers of the above offices of the Commissioners before visiting the store; that after making some changes in the telegram message, fax message was prepared and that they handed over the message to that store, at about 16:45 hrs; that fax was sent to CP, Thane and Navi Mumbai, however, the fax message to the CP, Mumbai, could not be sent as they were not getting a clear tone; that the delivery reports of the receipt of the fax messages were received by the store owner and that they got the delivery reports from him. He has identified the Delivery Reports, which is at Article-1.

77.1 PW2 has further stated that thereafter, they came back to their office; that PW1 telephoned his friend including PI-Arun Chavan, Property Cell, Crime Branch, however, he did not get any information; that thereafter, they decided to send telegrams to the Chief Minister and Dy. Chief Minister of the Maharashtra State and accordingly, went to Matunga Telegraph

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Office at about 18:00 hrs; that Matunga Telegraph Office was closed and hence, they went to Dadar Telegraph Office and collected 2 telegram forms, one of which was written by him and the other by PW1; that he sent the telegram to Shri Vilasrao Deshmukh, CM and PW1 sent the telegram to Shri R. R. Patil, Dy. CM (Exh.–118). He has identified the forms given by the Telegraph Office and the payment receipts (Exh.–119). He has further stated that the said telegrams were sent at about 61830 hrs.

77.2 According to PW2, when they were in the Telegraph Office at Dadar, PW1 received a call on his mobile; that PW1 told him about the message received i.e. API Prakash Bhandari had taken both Anil Bheda and Ramnarayan Gupta to Belapur Crime Branch; that pursuant thereto, they went to Belapur Police Station; that they reached the Belapur Crime Branch Commissioner's Office premises at about 20:00 hrs. and asked the security guard whether two persons were brought to the

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office; that he disclosed to them that nobody was brought to the office on that day and that they could check and ascertain whether anybody was brought; that he and PW1 went inside and checked, however, nobody was found there. PW2 has further stated that when they were at Belapur Railway Station and having tea at about 20:30 hrs., PW1 received a call from his brother (PW3), who informed him, that he learnt from the TV news, that Ramnarayan was killed in a police encounter. PW2 on hearing the same, told PW1 that they should go to his office. PW2 called his friend Advocate Desai on his mobile and informed him about the death of Ramprasad's brother and told him that they were going to the spot; that Advocate Desai told them that he would also accompany them; that he told Advocate Desai to come to his office; that he also called his driver and asked him to come to his office; that when he and Ramprasad (PW1) reached the office at about 21:30 to 21:45 hrs, Advocate Vijay Desai, Advocate Kudart Shaikh and Driver Raja were already present in his office i.e. the office of PW2; that thereafter he alongwith Ramprasad,

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Advocate Desai, Advocate Kudart Shaikh and Driver Raja left in a car, to Versova Police Station; that they reached Versova Police Station at about 22:15 hrs. and inquired with the station house officer about the news of killing of Ramnarayan in a police encounter; that the officer told them that he did not receive any information and told them that in case they wanted to make further inquiry, they should go to the spot and hence they proceeded towards the spot; that they reached the Nana Nani Park at about 10:25 hrs and got down from the said vehicle, however, they did not find anything which would reveal that an encounter had taken place; that they saw an electric pole near the end of the park and found blood stains on the ground near the pole; that on the blood stains, paper was kept and on the paper a stone was placed; that he told PW1 to take a video clipping on his mobile, pursuant to which he took a video clipping of the electric pole and the place where blood and the paper was seen near the electric pole. He has stated that there was a building by the name of Magnum Opus; that when they reached the Nana

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Nani Park and inquired with the people, they learnt that no such encounter had taken place. Although, one person i.e. watchman of Magnum Opus, disclosed to them, what he had seen, the same being hearsay, is not considered, inasmuch as, the said watchman's statement was also not recorded. PW2 has identified the telegram which was sent by him to Shri Vilasrao Deshmukh, CM of Maharashtra, which was in his handwriting Exh.–117. He has accepted the contents therein, as true and correct. After seeing the video clipping, PW2 has stated that the said video clipping was taken by Ramprasad Gupta on 11th November 2006 at 22:44 hrs.

77.3 PW2 has further stated that he prepared the draft of the fax. He has identified his handwriting and as such the document is marked as Exh.-120. He has further stated that on 18th November 2006, he had written a letter to the head of the Post Office, Matunga Central Telegraph Office to preserve the telegrams, which were sent on 11th November 2006; that he

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received acknowledgment of the receipt on the copy of the letter. The same has been marked as Exh.–150.

77.4 In his cross-examination, PW2 had confirmed that he had learnt from PW1, that Ramnarayan and Anil Bheda were forcibly taken away in a silver coloured Qualis by 4 to 5 persons who were looking like police. He has stated that he had learnt that the abduction had taken place in front of a mobile shop, Sector 9, Vashi, Navi Mumbai. PW2 has admitted that he had not mentioned about the mobile shop in the telegrams, and that he had learnt from Ramprasad (PW1) that the person who informed, was not a witness to the incident. He has further stated that he himself had not seen the place of incident before sending out the telegrams. He stated that he had received a call from PW1 at about 2.00 pm. It is pertinent to note that it has been brought in the cross-examination of PW2 that he reached the spot at 10:40 p.m. i.e. at Nana Nani Park.

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77.5 He has further stated that he had not inquired with PW1 as to why he was not forwarding the telegrams in his own name, as he did not feel it was necessary to do so.

78 Not only PW1 and PW2 corroborate each other in all material particulars, but even the fax and telegrams sent by PW1 and PW2 have been duly corroborated by the witnesses, who were examined from the respective post offices. One of the fax message sent to the CP, Navi Mumbai, at **Exh.–120** reads thus:

> *"THIS IS TO BRING TO YOUR KIND NOTICE THAT MY HUSBAND ANIL BHEDA AND HIS FRIEND RAMNARAYAN VISHWANATH GUPTA HAS BEEN PICKED UP BY PLAIN CLOTHES POLICEMAN FROM SECTOR 9, VASHI, NAVI MUMBAI. THAT THE SAID POLICEMAN WERE IN A SILVER COLOUR QUALIS CAR.*
>
> *I SUSPECT THAT THEY WILL KILL THEM IN A FAKE ENCOUNTER.*
>
> *PLEASE SAVE THEIR LIFE."*
>
> *FROM*
> *ARUNA ANIL BHEDA*
> *SECTOR 29, VASHI,*
> *DIAMOND APARTMENT*

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NAVI MUMBAI."

79 The telegrams/faxes sent by PW1 and PW2 were duly received by the concerned authorities i.e. CP, Thane, Navi Mumbai and Mumbai on 11th November 2006 at about 18:00 hrs. are at Exhibits 114, 115 and 116 respectively. The contents of all telegrams are identical. One such telegram at **Exh.–115** reads thus :

> *"RAMNARAYAN VISHWANATH GUPTA AND ANIL BHEDA PICKED BY POLICE IN SILVER COLOUR QUALIS FROM SECTOR 9, VASHI. THEIR LIFE IS IN DANGER. PLEASE HELP AND SAVE THEIR LIFE.*
>
> *(ARUNA ANIL BHEDA)"*

PW40 – Aruna Bheda

80 PW40–Aruna Bheda, is the wife of Anil Bheda. She has stated that in 2006, she was residing at C-45, Room No.1, Sector 29, Diamond CHS, Vashi on rental basis with her husband-Anil Bheda and son-Parth and that Parth was studying in St. Mary's School; that her husband was earlier working as a trading

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agent in APMC, however, as he had suffered losses in the said business, he started doing real estate business; that Anil Bheda had two friends viz. Pandeyji @ Ramnarayan (deceased) and Dheeraj Mehta (PW38); that both of them were also carrying out the business of real estate; that Dheeraj (PW38) was also conducting business of selling stones relating to zodiac signs; that Pandeyji used to visit their house in relation to property dealings and hence, she knew him personally; that stones were taken from Dheeraj Mehta for her relations and hence, he also came to their house for property dealings and that she knew him personally.

80.1 PW40 has further stated that on 11th November 2006, there was an open day in her son's school and hence she had been to her son's school at about 9:30 hrs; that she returned at about 10:45 hrs; that she met her husband and Pandeyji at the building gate while returning home; that they informed that they were going to Maruti Temple and hence, Pandeyji and her husband alongwith their son-Parth left in an auto rickshaw; that they

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returned at 11:30 hrs; that they had breakfast and tea at her house; that her husband and Pandeyji left the house at about 12:15 hrs; stating that they were going to refill the mobile and that they were going to Dheeraj Mehta's shop for property deals; that her husband had at that time, a mobile of Reliance Company having number XXXXXX3863); that at about 2.30 hrs, PW38 hurriedly came to her house and told her that 4 to 5 persons had taken Anil and Pandeyji in a Qualis vehicle and that they were taken from outside the shop, and that the same was told to him by the shop owners adjacent to the road and adjacent to his shop; that PW38 also disclosed that he received a call from one Girish Nepali (PW57) and that he informed the incident to him; that he also received a call from Pandeyji's brother by name Gupta; that he informed Guptaji about the incident; that Guptaji had told him to immediately lodge a police complaint; that PW38 told her that he had informed Guptaji that he would decide future course of action after meeting her (PW40); that when PW38 came to her house, he received a call from Gupta (PW1); that PW38 handed

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over his phone to her, pursuant to which she spoke to PW1; that PW1 informed her that alongwith his brother, her husband, Anil's life was also in danger and asked her to fax higher officials; that PW1 further disclosed that he was apprehending that they would be killed in a false encounter and hence, gave her the names and addresses of officers, to whom she should fax; that as she did not know how to send a fax, she refused; that she told him that she would discuss and then decide further course of action; that she told PW38 as they did not know how to fax, they should not send a fax, and also that they did not want to get involved in any false hassles.

80.2 PW40 has further deposed that she decided to wait till 5:00 pm and then decide further course of action; that PW38 left her house and returned again at 5:00 hrs, and asked her if she had received any information about Anil; that as she did not receive any information, they decided to go to the police station and lodge a missing complaint regarding Anil; that at about 6:00

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to 6:30 pm, Dheeraj left her behind Vashi depot on his motorcycle and she went alone to the Vashi police station and met the constable in the police station and lodged a missing complaint of her husband-Anil Jethalal Bheda; and that her statement was recorded by the said police constable being Missing Complaint No. 51/06 (Exh.-306). She has accepted the correctness of the said complaint. She has further stated that on her return home, her son-Parth informed her that the police from Vashi Police Station had come to the house and had asked for a photograph of her husband, pursuant to which, she took the photograph of her husband and went to Vashi Police Station at about 21.30 hrs. and gave the photo to the same constable who had recorded her complaint (Exh.–306).

80.3 PW40 has further stated that on the next day i.e 12th November 2006, in the morning, she read in the Gujarati Newspaper that Pandeyji had been killed in a police encounter; that she called Dheeraj Mehta (PW38) from the PCO and

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informed him about the news she read; that PW38 came to her house and asked her to go to the police station and make inquiry about the missing complaint lodged by her; that she went to Vashi Police Station at about 11:30 hrs and made inquiry; that she met a senior officer of the police station D.B. Patil and gave information about the missing complaint; that D.B. Patil told her that in case her husband returns home, she should withdraw the complaint and as such she returned home; that at about 2:30 hrs, she called her brother-in-law Dhiraj Bheda and informed him about the missing complaint lodged by her and asked him to help her, since she was alone; that about 17:00 hrs. she went back to the Vashi Police Station alongwith her brother-in-law and his wife; that she went alone inside the police station; that whilst she was waiting, her husband Anil Bheda came to the police station; that she asked him where he had gone, to which he replied that he had gone to Shirdi; that at that time Senior Officer D. B. Patil came there and took them to his cabin and made inquiries with her and her husband Anil and recorded their statements; that D.

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B. Patil showed them one fax and inquired whether she had forwarded the said fax, to which she replied that she cannot read and write in English and as such had not sent the said fax; that she was asked to meet the police constable and was asked to withdraw the missing complaint and that accordingly she withdrew the missing complaint by affixing her signature (Exh.-307). PW40 has deposed that on 12th November 2006, when they came out of the Vashi Police Station, her husband-Anil informed her that Pradeep Sharma's men had taken him and his friend Pandeyji in a Qualis vehicle from Vashi, Sector 9; that they were taken to D.N. Nagar Police Station, Andheri and produced before Sharma and on that night, Pandeyji was killed in an encounter; that her husband stated that Police Officer by name A.T. Patil (PW104) mediated on his behalf and hence, he was released. The said recording of evidence i.e. disclosure made by Anil Bheda to PW40 was objected to by the learned counsel for the appellant (OA1), however, the said evidence was recorded by the trial Court, subject to objection.

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80.4 According to PW40, when they stepped out of Vashi Police Station, one Qualis vehicle was standing at a distance and that her husband had told her that they had to go in the said vehicle; that in the said vehicle, there were two police officers in plain clothes by the name Desai **(A2)** and Rattu **(A3)**.

80.5 As far as the other evidence of PW40 is concerned, it pertains to confinement of her husband-Anil Bheda and as such will be dealt with, when we discuss the said circumstance.

80.6 PW40 was cross-examined at length by the learned counsel for the appellants with respect to the incident of 11th November 2006 and 12th November 2006; with respect to what happened on 11th November 2006, pursuant to the disclosure made to her by PW38.

80.7 In her cross-examination, PW40 has admitted that Pandeyji had breakfast at her house for the first time on 11th

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November 2006, pursuant to which, both Pandeyji and Anil Bheda left to refill Bheda's mobile bearing number XXXXXX3863; that Anil Bheda had informed her that they were going to the shop of one Dhiraj; that she did not receive any message from Anil after 12:15 hrs. PW40 has further admitted that she knew one Girish Nepali (PW57) as he had come alongwith Pandeyji regarding a property deal. She further admitted that *"we did not want ……. hassles",* appearing on page no. 40/3 of her examination-in-chief, wherein "we" refers to her, PW38 and Anil.

80.8 PW40 has admitted in her cross, that on 11th November 2006, Dheeraj (PW38) had left her house about 15:00 –15:15 hrs. and before he left, they had decided to wait till 5.00 hrs; that subsequently, she had gone to Vashi Police Station alone and lodged a missing complaint; that she did not inform the police officer that Guptaji (PW1) and Ganesh Iyer (PW2) had expressed fear that her husband would be killed; and that when

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her husband went missing, one person by name Pandeyji was with him; or that her husband had gone missing from Sector 9 of Vashi.

80.9 PW40 has further admitted, in her cross-examination, that after reading the newspaper article that the police had fired at Pandeyji in defence, she did not contact the concerned police station and inquire about Anil, as she was scared; that she did not approach Versova Police Station to confirm about the incident as informed to her by Dhiraj; that she visited Vashi Police station on 12th November 2006 and inquired with regard to the said article as well as her husband's whereabouts. PW40 has stated that she saw her husband-Anil Bheda on 12th November 2006, after the incident of 11th November 2006. She has stated that Anil's life was in danger and that Anil whispered to her, when the fax was shown by D.B. Patil, that his life was saved because of the said fax. PW40 has admitted that Anil, however, did not disclose to D.B. Patil about the same.

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80.10 PW40 has corroborated the sequence of events, as disclosed by PW38, PW57, PW1, PW2 and PW3 vis-a-vis abduction of Ramanarayan and Anil Bheda. Just because PW40 did not lodge a complaint of abduction of her husband and instead lodged a missing compliant, would not render the prosecution case or even the evidence of PW40, doubtful. The reasons for not sending the faxes, was apparent, as disclosed by PW40, that they did not want hassles. The conduct of PW40 appears to be natural, inasmuch as, PW40 had learnt that Ramnarayan and Anil Bheda were picked up by the police and what was disclosed by PW1 to her, that Ramnarayan and Anil Bheda's lives were in danger. PW40's evidence inspires confidence and nothing material is brought in her cross-examination to disbelieve her testimony or to discredit her evidence.

PW6–Mahesh Manohar Mule

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81 PW6 was an advocate since 1998, practicing in the Sessions Court at Mumbai and knew Ramprasad Gupta (PW1). He has stated in his examination-in-chief, that PW1 called him at about 4 to 4:30 hrs on 11th November 2006, to inquire about the fax numbers of the CP, Mumbai and other top ranking Police Officials of Mumbai; and that he only had the number of one official in his diary and that he gave the same to PW1.

82 Although, the witness was declared hostile by learned Spl. P.P as he did not depose in his examination-in-chief with regard to disclosure made by PW1 to him, PW6 in his further examination by the learned Spl. P.P, admitted that PW1 had stated to him that his brother Lakhanbhaiya (Ramnarayan) and his friend have been taken by the police from Vashi; and that PW1 feared something untoward would happen to his brother.

83 Nothing substantial has been elicited in the cross-examination of this witness conducted by the accused. Infact, the

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suggestion i.e. PW1 had informed him that he had to create an *alibi* and hence, he asked him the phone numbers, has been denied by this witness.

PW8-Amit Ashok Jambotkar :

84 PW8, is an advocate, practicing since 2000 in the Sessions Court at Mumbai. He has stated that he received a call from PW1 between 16:00 to 16:30 hrs. on 11th November 2006 and was asked to make inquiries at the Crime Branch Office at Thane, about his brother Ramnarayan who had been picked from Vashi; that he went to the Crime Branch Office at Thane, but could not make any inquiry; that PW1 called him again at about 6:00 to 6:30, and asked him if he had received any information, to which he replied that since it was a Saturday, the office was not working and he could not find anybody there. PW8 has stated that PW1 had not disclosed anything further and that he learnt about the death of Ramnarayan Gupta in an encounter when he

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saw the news on television at about 20:00 hrs. to 20:30 hrs.

84.1 In his cross-examination, it was confirmed by PW8 that he spoke to PW1 twice on 11th November 2006, however, apart from that, nothing material has been elicited.

85 The evidence of the witnesses with respect to abduction of Ramnarayan and Anil Bheda stands corroborated *interse* with all the witnesses as stated aforesaid. The said evidence is also supported by documentary evidence i.e. faxes and telegrams sent to the authorities by PW1 and PW2 and the evidence of other witnesses vis-a-vis sending of faxes and telegrams.

86 The evidence on record shows that telegrams and faxes were sent by PW1 and PW2 on 11th November 2006 between the period 16:00 hrs and 18:30 hrs. The prosecution has examined the following witnesses to prove the sending of faxes and telegrams; PW4–Shaligram Wankhade, Sub-Divisional

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Engineer in Central Telegraph Office, PW5– Rachana Vanjare, who was working as a Clerk in B.S.N.L, PW41–Wasudeo Channe, who was working as Customer Service Centre, BSNL, Prabhadevi Exchange, Mumbai, PW42 – Bhavka Bhangare, who was working as Assistant at Matunga Telegraph Office, PW44–Arjun Satam, who was working as Telegraph Assistant at Dadar Telegraph Office; PW47–Santosh Naik, working as Writer in the Main Control Room and PW49–Ravindra Kulkarni, working as PA in the office of CP, Mumbai.

PW4 – Shaligram Kashiram Wankhade:

87 PW4 was working in the Central Telegraph Office, Mumbai at the relevant time. The original telegram forms dated 11th November 2006 were handed by him to the police on 29th March 2010. He has stated that the police verified from him that the said telegrams were sent from Dadar and Matunga Post Office and accordingly recorded his statement. PW4 has

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identified the original telegram forms i.e. Exhibits– 114 to 118. He has stated that Exhibits–114, 115 and 116 were sent from Matunga Telegraph Office, Mumbai and Exhibits–117 and 118 were sent from Dadar Telegraph Office, Mumbai, and that the said telegrams were sent on 11th November 2006. He has stated that Exh.–114 was sent to Shri D. Shivanandan, CP, Thane at 16:08 hrs, Exh.–115 was sent to the CP, Navi Mumbai, Belapur at 16:08 hrs., Exh.–116 was sent to Shri A.N. Roy, CP, Mumbai on 16:08 hrs.; Exh.-117 was sent to Shri Vilasrao Deshmukh, Chief Minister, Varsha Bungalow, Mumbai, at 18:28 hrs. and Exh.–118 was sent to Shri R.R. Patil, Deputy C.M. Chitrakut Bungalow, Malabar Hill, Mumbai at 18:28 hrs. He has also deposed with respect to whom the said telegrams were sent i.e. the authorities. He has also identified the receipts Exh.–119 (colly) issued by the office and that the said receipts were charges for sending telegrams, issued in due course of business. He has stated that although initially the police obtained certified copies of telegrams, subsequently, the original was handed over to the police. The

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correspondence exchanged between him and the police authorities was marked as Exhibits–159 and 160. Nothing material has come in the cross-examination of the said witness to discard his testimony with respect to sending of telegrams by PW1 and PW2.

PW41 – Wasudeo Chindhuji Channe:

88 PW41 was working in the Customer Service Centre, BSNL, Prabhadevi Exchange, Mumbai, as In-charge Chief Telegraph Master. He has stated that on 26th August 2011, Shri Ghorpade (PW108) of SIT came to his office and gave him a letter requesting him to give information regarding the telegrams sent from Matunga and Dadar Offices. He has stated that the said letter was received by him (Exh.–324 colly) and that along with the said letter, photocopies of the telegraph receipts were also forwarded. The said witness produced the original Telegraph Master Diary in the Court wherein the name of the staff working

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in the said Telegraph Office at the relevant time with respect to the telegraph receipts dated 11th November 2006 is mentioned. He has stated that as per the photocopies of the receipts given to him, the telegrams were sent from Dadar Telegraph Office on 11th November 2006 at about 18:28 hrs by Shri A. G. Satam, who was working at the Dadar Telegraph Office at the relevant time; that the said two telegrams of Dadar Telegraph Office were booked during the working hours of Shri Satam (PW44) and that the entries in the register were in the handwriting of V. S. Gupta and as such, he being acquainted with his handwriting, he has identified the handwriting thereon. A copy of the entry was kept with the original and marked as Exh.–325A. He has stated that the said Master Diary Register was maintained in the regular course of business.

88.1 As far as photocopies of receipts are concerned, he has stated that three telegrams were sent from Matunga Telegraph Office on 11th November 2006 at 16:08 hrs; that on perusal of

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the Telegraph Master Diary of that day, Shri Bhangare (PW42) was working at the Matunga Telegraph Office from 11:00 hrs to 19:00 hrs; that the three telegrams of Matunga Telegraph Office were booked during the working hours of said Shri Bhangare (PW42); that the entries in the register are in the handwriting of P.L. Meshram and that being acquainted with Meshram's handwriting, he has identified the entries made in the said register. The said register is marked as Exh.–326A.

88.2 The said witness was cross-examined only by the learned counsel for the **OA1.** Nothing has come in the cross-examination of the said witness to disbelieve his testimony with respect to production of documents and sending of telegrams.

PW42–Bhavka Maruti Bhangare:

89 PW42–Bhavka Bhangare, was working at the Matunga Telegraph Office as Telegraph Assistant in 2006. It was his duty to accept telegrams at the counter, book it and issue

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receipts of charges. The said witness has deposed with respect to having booked the said telegrams i.e Exh.–114. He has also deposed with respect to receipts issued by him i.e. 119 (colly). He has stated that the time, date and serial number of 119/1 tally with the endorsement on the telegraph form i.e. Exh.–114. He has stated that the endorsement on Exh.–114 was made whilst issuing certified copies. PW42 has stated that there is an endorsement of Farooq Mujawar, who was working with him and that he knew his handwriting and signature and as such has identified the same. The said witness also deposed with respect to other Exhibits i.e. Exhibits–115, 119/2, 116, 119/3 and 119/4. The said witness has deposed with respect to how telegrams are sent, how notings are made and how receipts are issued including electronic endorsement made on the said exhibits.

89.1 The said witness was cross-examined by advocate appearing for **OA1** and **A9.** Although, the said witness was cross-examined at some length, the credibility of the said witness has

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not been demolished by the said cross. He has denied the suggestion that Exhibits–114, 115 and 116 are bogus documents. He has denied the suggestion that he had prepared bogus document i.e. Exhibits–114, 115, 116 and 119 (colly) in collusion with the complainant (PW1) and that he was deposing falsely due to pressure of SIT.

PW44 – Arjun Gangaram Satam:

90 PW44 – Arjun Gangaram Satam was working at the Dadar Telegraph Office as Telegraph Assistant. At the relevant time, his duty included booking of telegrams, attending booking counter, receiving telegrams from the customers, etc. He has stated that when shown the photocopies of two telegrams sent on 11th November 2006 and on seeing the writing on the said telegram forms, he has identified his writing thereon, and has accordingly disclosed to the officer of the SIT, that he had booked the said telegrams i.e. Exh.-117. He has stated that the said

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telegram is in his handwriting and he has identified the same. He has stated that he had received the said telegram forms and accordingly had booked the said telegrams. He has given the details of the words appearing in the telegrams as to what they represent. He has stated that the said telegram was sent to the Chief Minister Shri Vilasrao Deshmukh and since the said address fell within the jurisdiction of Girgaon Telegraph Office, he forwarded it to Girgaon Telegraph Office. The said witness has stated with respect to who had booked the said telegram and has identified the handwriting on the said telegram form.

91 Although the said witness was cross-examined, there is nothing to disbelieve his evidence, inasmuch as, he is a witness who had no axe to grind against the appellants-accused. He has given his evidence and has stated the duties performed by him in the official course and has identified the telegram sent by him.

92 It is thus evident from the evidence of the aforesaid

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four witnesses, that the telegrams were sent as deposed to by PW1 and PW2, to the authorities as stated aforesaid. There is no reason to disbelieve the testimonies of the said witnesses who are all public servants nor can it be said as suggested, that they were falsely deposing of having sent the telegrams, at the behest of PW1 and PW2.

93 In addition to the aforesaid witnesses from postal authorities, the prosecution also examined witnesses from the Commissioner's Office, i.e. Mumbai, to prove receipt of telegram at the said office.

PW47-Santosh Khimji Naik :

94 The prosecution examined PW47, who was working as a Writer in the Main Control Room, Mumbai, at the relevant time with respect to receipt of telegrams sent on 11th November 2006. PW47 in his evidence has stated that he was working as a

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Writer in the Main Control Room, Mumbai, at the relevant time; that the duty of a Writer of the Main Control Room was to receive correspondence after office hours on working days; that in November 2006, he was the Writer in the said department alongwith two constables; that after correspondence is received, entry with respect to the same is made in the 'Charge Book'; that when the correspondence is delivered to the concerned officer, the acknowledgment is also taken against the same in the Charge Book. PW47 when shown the telegram dated 11th November 2006 (Exh.-116), has stated that he received the said telegram bearing No. "11 127"; that he made an entry about the receipt of the said telegram in the Charge Book; that the telegram was addressed to A. N. Roy, CP, Mumbai; that he personally made an entry in the Charge Book i.e. page No. 4 bearing No. 509; that the said entry is in his handwriting and that the contents are true and correct. The said entry was marked as Exh.–355, subject to objection; that the said telegram was handed over to the concerned department on the next working day i.e. 13th

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November 2006 (12th November 2006 being a Sunday); that the telegram had come in a sealed envelope with an address window through which, it could be seen, that it was addressed to A. N. Roy, and number "11 127" could be seen.

95 The said witness was cross-examined only by learned counsel for **OA1**. The said witness, in his cross, has admitted that the Charge Book was not in a printed form; that it was not maintained as per the Bombay Police Manual. The said witness has further admitted that despite the general practice of putting an inward stamp on any correspondence received, the said telegram did not bear any seal, signature or rubber stamp of the department. We, having regard to the evidence on record, find no reason to disbelieve PW47's testimony which clearly shows that the telegram was received by the Office of the CP on 11th November 2006. The entry register produced by the said witness with respect to having received a telegram, marked as Exh.–355, shows receipt of the said telegram addressed to the CP, Mumbai

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on 11th November 2006. The telegram addressed to A. N. Roy, CP, Mumbai, was marked as Exh.–356. In the said telegram, it is stated that **"*RAMNARAYAN VISHWANATH GUPTA AND ANIL BHEDA PICKED UP BY POLICE FROM VASHI SECTOR 9 THEIR LIFE IS IN DANGER PLEASE HELP AND SAVE THEIR LIFE - ARUNA ANIL BHEDA.*"**

PW49– Ravindra Vasudev Kulkarni:

96 PW49 was working as a PA in the Office of the CP, Mumbai, at the relevant time. He has stated that a telegram was addressed to A.N. Roy, CP i.e. Exh.–356. He has identified his initial and the date appearing on the same. The said portion is marked as 'B' on Exh.–356. He has put his initial of having received the said telegram on 13th November 2006 and the stamp of inward office put by constable Yemgekar. He has stated that the entry of the said telegram has been taken in the inward register. The said witness has produced the original register and entry bearing No.32868 dated 13th November 2006 pertaining to

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the said telegram (Exh.–356). He has stated that as the telegram indicated danger to life, it was immediately forwarded to the Addl. C.P. The relevant entry was marked as Exh.–366 and the copy of the said entry, after verifying with the original, was marked as Exh.-366A. He has stated that the original telegram was immediately sent to the Addl. CP, Crime; that the original and one photocopy of the telegram was taken and placed before the CP, since the letter was addressed to him.

97 The said witness i.e. PW49 has duly corroborated the evidence of PW47 with respect to the Office of the CP, Mumbai receiving a telegram on 11th November 2006.

98 As far as faxes are concerned, the prosecution has examined PW92-Dinkar Thakur, PW93-Sadashiv Barak, PW94-Sunil Somawanshi and PW46-Lakkaraju Narsimha.

PW92–Dinkar Shrikisanrao Thakur :

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99 PW92 tendered his affidavit dated 17th August 2012, which was marked as Exh.–694 (colly). Although exhibiting of the said affidavit was objected to, the said objection was overruled and the document i.e affidavit was marked as Exh.–694 (colly). The said affidavit tendered by this witness i.e. PW92, is with respect to his signature and also with respect to the contents of the document. The said witness in his affidavit has stated that on 1st March 2012, the Spl. P.P had issued a notice and called upon the office of the ACP, Control Room, Navi Mumbai, to produce the original fax message book containing entries of 11th November 2006 before the Court on 1st March 2012. He has stated in his affidavit that although all records of the Control Room were searched thoroughly and he had personally inquired with the concerned police personnel regarding the fax message book, however, the said fax message book could not be traced; that the said fax message book appears to have been misplaced in the shifting of the Control Room in the first week of December 2011, to the ground floor of the same building, and hence, he

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was not in a position to produce the original fax message book. He has reiterated whatever is stated in his affidavit, in his evidence. He was cross-examined with respect to misplaced fax message book, however, the said witness has denied seeing any entry anywhere as regards the misplaced fax message book.

PW93 – Sadashiv Vithoba Borale :

100 As far as PW93–Sadashiv Borale is concerned, he has stated that he was attached to CBD Control Room, to the office of the CP, Navi Mumbai, at the relevant time. He has stated that on 11th November 2006, he was on duty in the said Control Room, Mumbai. He has deposed that he would receive calls and make entries of the faxes received in the Control Room. He has stated that an entry was made in the Register with respect to fax only, and after taking entry in the Register, it was sent to the officer in whose jurisdiction the incident had taken place. PW93 was shown the xerox copy furnished by the P.I. Control Room,

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Navi Mumbai i.e. entry bearing No.1770 in his handwriting. He has stated that the said fax message was sent by Aruna Bheda from Sector No.29, Vashi, stating that **'अरूण भेडा व त्याचे मित्र यांना साधे वेशातील पोलिसांनी उचलून नेलेबाबत'.** ***(Regarding Anil Bheda and his friend being picked up by police in civil dress)***. He has stated that the Control Room received this fax on 11th November 2006 at 16:45 hrs; that he sent the said fax through a constable from the APMC Police Station to Vashi Police Station; that the fax was in Marathi and the contents in the entry are true and correct. The entry dated 11th November 2006 was marked as Exh.–696. He has stated that he inadvertently in a hurry wrote 'Arun' instead of 'Anil'.

100.1 PW93, in his cross-examination has admitted that the fax entry is taken only in the Fax Message Book; that a Station Diary is maintained in the Control Room; that he had no occasion to see the said fax again at anytime after making the entry in the fax message book and after sending it to Vashi Police

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Station and that no one made any inquiry in respect of the misplaced/lost fax message book. PW93 has further deposed in his cross, that the entry of fax message is not made in the Station Diary and was made in the fax message book and that there is nothing in Exh.–696 to show that its a page of the fax message book and that there is no mention in the said entry that a fax was received. He has further stated that except the entry dated 11th November 2006, there was no other proof to show that the Control Room had received the fax and on its basis the entry was made. At serial No.1770 of Exh.–696, there is an entry as stated aforesaid. The said entry read thus :

१७७०	अरूणा अनिल भेडा, रा. वाशी	अरूण भेडा व त्याचे मित्र यांना साध्या वेशातील पोलिसांनी उचलून नेले बाबत.	११.११.२००६ १६.४५

English translation of the above entry, reads thus :

1770	Aruna Anil Bheda R/o. Vashi	Arun Bheda and his friend were picked by plain clothes police men.	11.11.2006 14.45

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The entry appears to have been made in the usual course of business and in course of the official duty, and as such, there is no reason to disbelieve the evidence of PW93 of having received the fax on 11th November 2006, as stated aforesaid.

PW94-Sunil Sampatrao Somawanshi:

101 PW94 has stated that he was attached to the Control Room, Navi Mumbai at the relevant time. He has stated that on 12th November 2006, he was on day duty in the Control Room, Navi Mumbai. The said witness was shown entry dated 12th November 2006 at Page No.63. The said witness has stated that there are two pages of page No.63. On being shown the second page of page No.63, he has identified his handwriting on the said page from the Station Diary i.e. entries from serial Nos. 17 to 22 as well as the entries at serial Nos.20 and 21. PW94 has stated that entry at 11:45 hrs is as regards to a phone call made by PI– Sonawane from Thane City Police Control Room informing him

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that one Aruna Anil Bheda had sent a fax message to Thane City Police Control Room stating that her husband Anil Bheda and another person Ramnarayan Gupta were taken in a silver colour Qualis vehicle by police and that there lives were in danger. The incident is stated to have taken place in Sector 9, Vashi, Navi Mumbai. He has stated that he was informed of the same, as Vashi, Sector 9, was within their jurisdiction. He has stated that he informed the same to C.R.O, PSI–Bhagat and that PSI–Bhagat informed him to make an entry in the diary. PW94 has stated that he made an entry and accordingly, informed the Vashi Police Station. He has identified the entry at serial No.20 bearing his initials at the end of the entry. He has stated that he informed the Vashi Police Station accordingly after taking the said entry. He has further stated that PI–Patil from Vashi Police Station called the Control Room and informed that Aruna Anil Bheda had lodged a report in Vashi Police Station on 11th November 2006 at 6:00 hrs, that her husband Anil Bheda left home at 10:00 hrs stating that, he was going outside for refilling his mobile and did

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not return home. He has stated that a missing report was registered at Vashi Police Station on the basis of the said complaint and as per the said information, he made an entry in the Station Diary. The entry of the message on phone by Mr. Patil was reduced into writing by PW94 at 13:15 hrs. at serial No.21. PW94 has identified the entries at serial Nos.20 and 21 as true and correct and the entry at serial No.20 was marked as Exh.–702 and entry at serial No.21 was marked as Exh.–703. Since the xerox copies were taken on record, the same were marked as Exh.–702A and Exh.–703A respectively. The entries at Exhibits 702 and 703 read thus :

१		गुन्हा नोंद वही क्र. व कायदयाचे कलम (आवश्यकत या ठिकाणी) २	गुन्हयाशी संबंधित असलेल्या व्यक्ती व मालमत्ता आणि गुन्हयाची वेळ व जागा दर्शवणारा गुन्हयाचा थोडक्यात तपशील ३
क्रमांक	वेळ		
२०	११:४	नोंद	पो.नि. सोनवणे CRO ठाणे सिटी पोलीस

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	५	मिसिंग बाबत	कंट्रोल रूम यांनी कळवीले की, अरूणा अनिल भेडा हीने ठाणे सिटी पोलीस आयुक्त यांचे नांवे फॅक्स पाठवित आहे. फॅक्स मध्ये अनिल भेडा व राम नारायण विश्वनाथ गुप्ता या दोघांना सिल्व्हर रंगाचे क्वालीस पोलीस गाडी मध्ये बसवून घेवून गेले आहेत त्यांचे जिवाला धोका आहे. असे फॅक्स मध्ये नमुद केले आहे. सदर प्रकार हा वाशी से–९ येथे घडलेला असलयाने त्या बाबत खात्री करणे साठी त्यांनी नवीमुंबई CRO ला कळवीले (सदर हकीगत वाशी पो. स्टे. ला CRO नवीमुंबई यांनी कळवून खात्री व चौकशी करणेस सांगितले आहे).
२१	१३. १५	नोंद मागील नोद क्र. २० बाबत	पो.नि. वाशी पो.स्टे. श्री. पाटील यांनी कळवीले की अरूना अनिल बेडा यांनी दिलेले माहितीच्या अनुषंगाने चौकशी केली असता सदर बाई हिने दि. ११.११.२००६ रोजी १८–४० वा. वाशी पो. स्टे.मध्ये (तीचा नवरा अनिल बेडा हा १०–३० वा. मोबाईल फोनची रिफील करून येतो असे सांगुन घरातुन निघुन गेला आहे. तो अद्याप परत घरी आला नाही). त्याबाबत वाशी पो.स्टे कडे मनुष्य मिसिंग रजी. नं. ५१/०६ प्रमाणे दाखल आहे व त्याचा तपास HC/579/आंबवले वाशी पो.स्टे हे करीत आहेत. (तसेच सिल्वर रंगाचे क्वालीस पोलीस गाडी बाबत व सदर गाडीतून नेलेल्या इसमांबाबत काही एक माहिती अगर तपास लागत नाही).

English translation of the above extracts from the

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Station Diary i.e. Exh. 702 and 703, read thus :

1		*Crime Register No. and Sections (if necessary)* *2*	*Particulars in brief about the persons and property involved in the offence and showing the time and place of offence.* *3*
No.	*Time*		
20	11-45	Regarding Entry of Missing Portion Marked "A"	P. I. Sonavane, C.R.O., Thane City Police Control Room informed that Aruna Anil Bheda has sent a Fax in the name of Commissioner of Police, Thane city and in the said Fax, it has been mentioned that Anil Bheda and Ram Narayan Vishwanath Gupta have been taken away by making them sit in the silver coloured 'Qualis' police van and that their life is in danger. As this incident had occurred at Sector – 9, Vashi, he informed Control Room, Vashi to ascertain the said facts. [Therefore, instructions have been given by Vashi Police Station to the C.R.O., to ascertain the said facts and to make inquiry in respect thereof.]
21	13-15	Entry in respect of Previous Entry No.20 Portion	Thereupon, Shri Patil, the Police Inspector, Vashi Police Station has informed that on making inquiry in connection with the information given by Aruna Anil Bheda, it is found that on the date 11.11.2006 at 18-40 hrs, the "B""A

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	(Signature Illegible) Police Inspector, Control Room, Navi Mumbai.	Marked "A" Portion "B"	said lady had given intimation to Vashi Police station (that at 10-30 hrs, her husband Anil Bheda had left the home by saying that he would refill (recharge) the mobile phone (number) and that he had not yet returned at home). The entry in respect thereof has been made in Adults Missing Register vide entry No. 51/06 and that H.C./579/Ambavane, Vashi Police Station is carrying out investigation thereof. [Moreover, no information is received or nothing is investigated about the silver coloured 'Qualis' police vehicle and about the persons taken away by the said vehicle.]

101.1 Although the said witness was cross-examined, there is nothing elicited in his cross-examination to discredit his testimony with respect to the entry made by him in the Station Diary.

DW2-Dagdu Patil :

102 Although **A7** examined DW2 as a defence witness, in

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fact, the said witness supports the prosecution case.

102.1 DW2-Dagdu Patil was posted as a Police Inspector Crime in Vashi Police Station, in the year 2006. It has come in the evidence of DW2 that on 11th November 2006 at 21:00 hrs., he was informed that a message was received from the Control Room, Navi Mumbai, stating that, on the same day i.e 11th November 2006, Anil Bheda and Ramnarayan Gupta were taken in a Qualis vehicle by plain clothes policemen. It was also stated that one address alongwith name was mentioned as Aruna Bheda, Diamond Apartment, Sector No. 29, Vashi, should be checked. The Control Room passed the message at 17:45 hrs (Exh.974).

102.2 According to DW2, a report was made to him after the missing report was entered into the Station Diary. DW2 has deposed that the SHO had also told him that one Aruna Bheda had come to Vashi Police Station at 18.40 hrs and had given her full name and address; that she had disclosed that at

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about 10.30 hrs, her husband Anil Bheda went for refilling his mobile and did not return; that Anil Bheda had told her that Ramnarayan Gupta was to meet him and after which, he would return home; that as Anil Bheda did not return, Aruna Bheda contacted her husband from a PCO, however, she could not contact him, as the mobile of Anil Bheda was not reachable; that she waited for Anil Bheda and then came to the police Station to file a missing complaint; that at that time, the SHO informed Aruna Bheda that a fax message was received from the Control Room, Navi Mumbai; that the SHO asked Aruna Bheda as to whether the said fax in her name was sent by her; to which Aruna Bheda replied that she did not send the fax nor did she make any phone call.

102.3 DW2 has further deposed that on 12th November 2006 at 18:00 hrs., Aruna Bheda alongwith Anil Bheda met him; that initially she alongwith her husband reported to the SHO-ASI Mr.Patil that her husband had returned, pursuant to which, she

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came to the Police Station alongwith her husband to report of his return. DW2 further stated that ASI Mr.Patil recorded the statement of Aruna Bheda and Anil Bheda; and that on 12th November 2006, they made a secret inquiry as regards the missing complaint, however, no information could be gathered and accordingly, an entry to that effect was made in the Station Diary.

102.4 DW2 has further deposed that he made inquiry with Anil Bheda and that Anil Bheda made some disclosure to him. In view of the demise of Anil Bheda, the alleged disclosure made by Anil Bheda to DW2, would clearly be inadmissible and hence, is not reproduced nor considered.

103 Thus, the evidence of DW2, as has come on record, does not in anyway impeach the credibility of PW40 or any other witness. Infact, it supports the prosecution case with respect to receipt of a fax message from Navi Mumbai Control Room, with

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respect to abduction of Ramnarayan and Anil Bheda. There is a station diary entry to that effect.

104 Infact, we do not find any material in DW2's evidence, which in any way, dislodges the prosecution case of abduction of Ramnarayan and witness Anil Bheda on 11th November 2006.

PW46-Lakkaraju Narsimha Sai Rao:

105 PW46 has filed his affidavit which was taken on record and marked as Exh.–352. In the said affidavit marked as Exh.–352, PW46 has stated that he was working as an ACP, Main Control Room, Mumbai, since 9th January 2012; that the Spl. P.P had issued a notice to him on 26th January 2012 and called upon him to produce the original charge book containing entries of 11th November 2006; that all the records of the Main Control Room were searched thoroughly, however, the charge book was not

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traced and on making further inquiries, it was found that the charge book was destroyed on 12th March 2010 and that a station diary to that effect was made vide S.D.E. No.19/2010 dated 12th March 2010. A true copy of the said station diary entry was annexed to the affidavit. Hence, the witness was unable to produce the original charge book. PW46, however, produced the original station diary entry maintained in due course and placed a xerox copy of the same on record, which was marked after comparing with the original, as Exh.-353A. The affidavit was not objected to and hence marked as Exh.–352. What was objected to was the admissibility of the station diary entry however, subject to objection, the same was taken on record. The station diary entry is dated 12th March 2010 with respect to destruction of the said charge book. The said station diary entry was made in due course of their official duty and hence, there is no reason to disbelieve the said entry made on 12th March 2010 and brought on record through PW46.

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105.1 It is evident from the evidence of the aforesaid witnesses, oral and documentary, that the prosecution has proved by legal, cogent and admissible evidence, that Ramnarayan Gupta (deceased) and Anil Bheda were abducted on 11th November 2006 at around 12:30 hrs from Sector 9A, Vashi in a Qualis by plain cloth police and others i.e. 5–6 persons. It is the prosecution case that from Vashi, Ramnarayan and Anil Bheda were taken to Bhandup and from there to D.N. Nagar Police Station. It is the prosecution case that a police personnel i.e. **A7** and other private persons i.e. **A4, A8, A10, A12** and **A21,** abducted the two from Vashi and they were later joined by other police personnel i.e. **A2** and **A3** and a private person i.e. **A6,** at Bhandup complex. The CDRs of some of the said accused show their presence at Vashi on 10th and 11th November 2006, i.e. prior to the abduction, at the time of abduction and post the abduction. The evidence vis-a-vis CDRs will be dealt with in detail when we deal with the circumstance of 'CDRs'.

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106 Although, learned counsel for the appellants-accused made much ado about the faxes being sent in the name of Aruna Bheda and not in the name of PW1 and that the said telegrams were fabricated by PW1 to take revenge against the police, we find no merit in the same, considering the overwhelming evidence that has come on record, to the contrary. We may note, that PW1 and PW2 have not denied sending the telegrams/faxes in the name of Aruna Bheda. PW1 has offered an explanation, why the said telegrams were not sent in his name i.e. he was embarrassed to send the telegrams/faxes in his name, he being an advocate. No doubt, Aruna Bheda (PW40) had denied sending telegrams/faxes, however, the fact remains, that PW1 and PW2 have admitted having sent the said faxes/telegrams *albeit* in PW40's name. It is evident from PW40's evidence that she did not know how to send fax nor did she want any hassles and that she was scared. PW40's evidence appears natural after learning that her husband, Anil Bheda and Ramnarayan were picked up by police and we find no reason to disbelieve her testimony.

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107 That the said telegrams/faxes were infact sent to the authorities on 11th November 2006, has been duly proved through witnesses during the period from 4:00 hrs to 6:28 hrs; that the telegrams/faxes contained information as received from PW38, who in turn had received the said information from Nilesh with respect to abduction of Ramnarayan Gupta and Anil Bheda at 12:30 hrs. from Sector 9, Vashi, in a Qualis, by plain cloth policemen; and most importantly, were sent before Ramnarayan was killed in an alleged encounter at 8:30 hrs on 11th November 2006 itself, ruling out any possibility of any fabrication of evidence. The telegrams and faxes sent clearly spelt out the apprehension that there was a possibility of Ramnarayan and Anil Bheda being killed in a fake encounter, after they were picked up at Vashi.

108 It is pertinent to note, that Anil Bheda, a star witness for the prosecution, who had disclosed to the SIT, how he and

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Ramnarayan were abducted, what happened thereafter, and who were the people involved, was found dead three days before his testimony could be recorded. (Anil Bheda had also identified the accused persons who had abducted him and Ramnarayan in the TIP). Thus, in the facts, in view of Anil Bheda's death, the disclosure made by Nilesh to PW38 and by Anil Bheda to PW40-Aruna Bheda would have great significance and importance.

109 Mr. Chavan, learned Spl.P.P. submitted that the disclosure made by Nilesh to PW38 would be admissible under Section 6 of Evidence Act, inasmuch as, Section 6 carves out an exception to hearsay evidence. Thus, according to Mr. Chavan, the disclosure made by Nilesh to PW38 would squarely fall under Illustration (a) to Section 6, and thus admissible in law. He submitted that the Trial Court has also rightly accepted the disclosure made by Nilesh to PW38, as being admissible under Section 6 of the Evidence Act.

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110 Although, the learned counsel for the appellants seriously contested the admissibility of what was disclosed by Nilesh to PW38, being hearsay, we find that the said disclosure made by Nilesh to PW38 would squarely be covered under Section 6 of the Evidence Act i.e. under the principle of res gestae. The learned Trial Judge has also rightly rejected the said objection so raised by the learned counsel for the appellants that the said disclosure made by Nilesh to PW38 would be hearsay and as such, the trial Court has accepted the said disclosure, as being admissible under Section 6 of the Evidence Act.

111 Considering the objection raised by the learned counsel for the appellants with respect to Nilesh's disclosure to PW38, being hearsay evidence and thus, inadmissible, we propose to examine the law/rulings with respect to the same and whether there is any merit in the said objection.

112 Relevant part of Section 6 of the Evidence Act with

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which we are concerned, reads thus:

> ***"6. Relevancy of facts forming part of same transaction.*** *— Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.*
>
> *Illustrations*
>
> ***(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after is as to form part of the transaction, is a relevant fact.***
>
> *(b) ....*
>
> *(c) ....*
>
> *(d) ...."*

A bare perusal of this section makes it clear that the test to determine admissibility of a statement, under the rule of *"res gestae"* is postulated in the usage of the words, ***"are so connected with a fact in issue as to form a part of the same transaction".*** Section 6 chisels out an exception to the general rule, which makes hearsay evidence inadmissible.

113 The scope/principle of `*res gestae*' was elucidated by

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the Apex Court in ***Gentela Vijayavardhan Rao and Another v. State of A.P***[14]. Para 15 of the said judgment is reproduced herein-under:

> *"15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law.* ***The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself****. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the* ***spontaneity and immediacy*** *of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made* ***contemporaneous with the acts*** *which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae. In* ***R. v. Lillyman*** *[(1896) 2 QB 167 : (1895-99) All ER Rep 586] a statement made by a raped woman after the ravishment was held to be not part of the res gestae on account of some interval of time lapsing between the act of rape and the making of the statement. Privy Council while considering the extent up to which this rule of res gestae can be allowed as an exemption to the inhibition against hearsay evidence, has observed in* ***Teper v. R. [(1952) 2 All ER***

14 AIR 1996 SC 2791

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447] thus:

> *"The rule that in a criminal trial hearsay evidence is admissible if it forms part of the res gestae is based on the propositions that the human utterance is both a fact and a means of communication and that human action may be so interwoven with words that the significance of the action cannot be understood without the correlative words and the dissociation of the words from the action would impede the discovery of the truth. It is essential that the words sought to be proved by hearsay should be, if not absolutely contemporaneous with the action or event, at least so clearly associated with it that they are part of the thing being done, and so an item or part of the real evidence and not merely a reported statement."*
>
> *The correct legal position stated above needs no further elucidation."*
>
> *(emphasis supplied)*

114 The Apex Court in ***State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari & Ors.***[15], further discussed the words ***"part of the same transaction"*** as postulated in Section 6, and accordingly has, in para 41, held as under:

> *"41. .....In our considered view, the test to determine admissibility under the rule of "res gestae" is embodied in words "are so connected with a fact in issue as to form a part of the same transaction". It is therefore, that for describing the concept of "res gestae", one would*

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need to examine whether the fact is such as can be described by use of words/phrases such as, "contemporaneously arising out of the occurrence", "actions having a live link to the fact", "acts perceived as a part of the occurrence", exclamations (of hurt, seeking help, of disbelief, of cautioning, and the like) arising out of the fact, ***spontaneous reactions to a fact,*** *and the like. It is difficult for us to describe Illustration (a) under Section 6 of the Evidence Act, specially in conjunction with the words "are so connected with a fact in issue as to form a part of the same transaction", in a manner differently from the approach characterised above.* *(emphasis supplied)*

115 **Sarkar on Evidence (15th Edn.)** has summarised the law to ascertain the applicability of Section 6 of the Evidence Act thus:

> *"1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover, the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless* ***such facts are part of a transaction which is continuous.***
>
> *2. The declarations must be* ***substantially contemporaneous with the fact*** *and not merely the narrative of a past.*
>
> *3. The declaration and the act may be by the same person, or they may be by different persons, e.g, the declarations of the victim, assailant and bystanders. In conspiracy and riot, the declarations of all concerned in the common object are admissible.*
>
> *4. Though* ***admissible to explain or corroborate****, or to*

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understand the significance of the act, declarations are not evidence of the truth of the matters stated."

116 Considering the aforesaid legal position, we now proceed to consider the applicability of Section 6, to the facts in question. It has come in the evidence of Dheeraj Mehta (PW38) that at about 12:15 hrs, Anil Bheda and his friend Pandeyji had come to his shop and were waiting outside, as there was no place to sit inside the shop (according to the prosecution, Ramnarayan and Anil Bheda were abducted at around 12:35 to 12.38 hrs); that at about 12.40 hrs., one Nilesh had come to his shop and informed him that ***his friend and his friend's friend were picked up by 5-6 persons in civil dress, in a Qualis vehicle.*** Admittedly, Nilesh's statement was not recorded by the police, and as such, what is the effect of the disclosure made by Nilesh to PW38, is the question.

117 Section 6 of the Evidence Act is squarely attracted to the facts in the present case for the following reasons:

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(i) Ramnarayan made last two calls from his mobile at 12.31 and 12.33 hrs. from Sector 9A, Vashi, Navi Mumbai; (ii) After 12.35 hrs. both the mobiles i.e. used by Anil Bheda as well as Ramnarayan were switched off; and (iii) As soon as Nilesh informed PW38 at 12.40 hrs, PW38 informed PW57 and calls were exchanged between PW38, PW57, PW3 and PW1 followed by faxes and telegrams to authorities, reiterating the disclosure made by Nilesh to PW38. It is pertinent to note, that at 12.39 hrs, **A7** called **OA1** (all corroborated by CDRs i.e. location of **A7** is at Sector 9, Vashi and **OA1** at D.N.Nagar Police Station) is a circumstance which shows **A7's** presence at the spot from where Anil Bheda and Ramnarayan were abducted and that **A7** was at Vashi, outside his Commissionerate area (**A7** was deputed to D.N. Nagar Police Station, Andheri, which is a different Commissionerate).

118 It is pertinent to note that Nilesh came to Dheeraj

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Mehta's (PW38) shop at 12:40 hrs, immediately, soon after Ramnarayan and Anil Bheda's abduction at around 12:35 hrs – 12:38 hrs, and informed him of the abduction instantaneously, leaving no room whatsoever for fabrication or concoction of evidence. The disclosure made by Nilesh to PW38 was contemporaneous and utterances spontaneous.

119 The immediacy with which Nilesh went to PW38, and the spontaneity shown by his remark that *"your friend and your friend's friend have been picked up by 5-6 persons in a civil dress, in a Qualis vehicle",* are all circumstances so intertwined with each other, by proximity of time and space, that the statement of Nilesh, contemporaneously made alongwith the act of abduction, forms "fact in issue" and thus, Nilesh's act of informing the same to PW38, becomes a part of the same transaction and thus, the disclosure made by Nilesh to PW38 will not be hit by hearsay evidence and as such, is clearly admissible in law under Section 6 of the Evidence Act.

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120 The disclosure made by Nilesh to PW38 would squarely fall within the meaning of a bystander as covered under Illustration (a) of Section 6. In the present case, Nilesh being the bystander to the "fact in issue" will form part of the transaction and will squarely fall under Illustration (a) as covered in Section 6 of the Evidence Act.

121 Suffice to say, that what was disclosed by Nilesh would squarely be covered under Illustration (a) of Section 6 of the Evidence Act and as such the said disclosure made by Nilesh to PW38 will be admissible, inasmuch as, it was made absolutely spontaneously and contemporaneously; with no opportunity for fabrication and was part of the same transaction.

122 As far as the disclosure made by Anil Bheda to Aruna Bheda on 12th November 2006 within the precincts of the Vashi Police Station is concerned, the same would be admissible or not under Section 6 of the Evidence Act, also arises for consideration

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before us. According to the learned Spl.PP, and Dr.Chaudhry the same would be admissible, whereas, according to the learned counsel for the appellants/accused, the same being hearsay (in view of Anil Bheda's demise) is inadmissible and as such rightly rejected by the trial Court.

123 We may now analyse the facts and record our conclusion with respect to the testimony of PW 40. At this stage, it is apposite to reproduce the evidence of PW 40, particularly in Para 16, as under:

> *"16. On 12.11.2006 outside Vashi Police Station my husband disclosed what had happened on 11.11.2006. At that time my husband informed me that Pradeep Sharma's men had taken him and his friend Pandeji in a Qualis Vehicle from Vashi Sector 9. He stated that they were taken to Andheri DN. Nagar police station. He stated that he was produced before Shri. Sharma. He stated that on that night Pandeji was killed in an encounter. He further stated that police officer by name A.T. Patil mediated on his behalf and hence he was released. One Qualis vehicle was standing at a distance and he told me that we have to go in said vehicle. In the said vehicle there were two police in plain clothes by named Desai and Rattu."*

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124 PW40's evidence reveals that Anil Bheda was brought to Vashi Police Station by police; that on withdrawal of her missing complaint, her and Anil Bheda's statements were recorded by the police. On stepping out of the said Police Station (but within the precincts of the Police Station), Anil Bheda took the opportunity to disclose to Aruna Bheda what had happened i.e. of his and Ramnarayan's abduction by **OA1's** men and they being taken to D.N.Nagar Police Station and produced before **OA1**. Anil Bheda also disclosed that since Anant Patil (PW104) mediated, his life was safe. According to PW40, Anil showed a Qualis vehicle and told her that they had to go home in the said vehicle, pursuant to which they sat in the vehicle. **A2** and **A3** were the police personnel in the Qualis vehicle. (We have while dealing with the circumstance of confinement, held that Anil Bheda was kept in wrongful confinement from the time he was abducted i.e. 11th November 2006 till 12th November 2006.)

125 Thus, keeping in mind PW40's evidence with respect

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to disclosure made by Anil Bheda to PW40, we find that there was no opportunity for Anil Bheda to fabricate the same, considering that he was in the custody of the police i.e. A2 and A3 and had only a moment's reprieve, when he could talk to his wife i.e. Aruna Bheda (PW 40), when he had the first opportunity to meet her, before getting into the Qualis vehicle with two police personnel in plain clothes, who had been waiting at a distance. The same proves the live link between abduction of Anil Bheda and Ramnarayan by the police officials, was never snapped, as Anil Bheda continued to be in their custody even when he was brought to Vashi Police Station, abduction being a continuing offence.

126 The contemporaneous and spontaneous utterances by Anil Bheda to PW40 refer to `actions having a live link to the fact', `acts as a part of the occurrence' and exclamations (of hurt, seeking help, of disbelief, of cautioning and the like) arising out of the facts i.e. spontaneous reactions to the fact, and the like are

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relevant. The same has been discussed in detail in ***Kamal Vakil Ansari (Supra),*** as noted herein-above.

127 The evidence also shows that the disclosure forms part of the same transaction, since the said declaration is substantially contemporaneous with the fact and not merely a narrative of a past, as canvassed in ***Sukhar v. State of U.P.16.*** Hence, Anil Bheda's disclosure to PW 40 about Pradeep Sharma's men abducting him and Ramnarayan from Vashi, Sector 9, in a Qualis vehicle; taking them to D.N. Nagar Police Station, Andheri and producing them before **OA1**, will form a part of the same transaction, since the live link between his abduction and the act of him informing the same to his wife Aruna Bheda (PW 40), was never snapped as he was in continuous detention of the police officers i.e. **A2** and **A3**. The disclosure was made contemporaneously, without any opportunity to allow any deliberate fabrication, inasmuch as, forming the part of the same transaction.

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128 It is apposite to reproduce the aforesaid rule as it is stated in Wighmore's Evidence Act, which reads thus:

> *"Under the present exception [to hearsay] and utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended.* ***The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."***
>
> (emphasis supplied)

129 Applying the ratio as discussed herein-above, we have no hesitation in coming to the conclusion that the disclosure made by Nilesh to PW38 and by Anil Bheda to Aruna Bheda (PW40) would be admissible by virtue of Section 6 of the Evidence Act and as such, would squarely fall under the exception carved out therein.

130 Thus, from the aforesaid evidence as set out in detail, we find that the prosecution has proved the circumstance of

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abduction of Ramnarayan and Anil Bheda by credible, cogent and legally admissible evidence i.e. both oral evidence, as well as documentary evidence.

131 We now propose to deal with the next circumstance relied upon by the prosecution i.e. Encounter/Custodial death/Murder of Ramnarayan.

iii. ENCOUNTER/CUSTODIAL DEATH/MURDER

132 Learned counsel for some of the appellants/accused, in particular, **A2, A3, A9, A15,** submit that it was a genuine encounter, whereas some of the appellants/accused have feigned ignorance of what happened at Nana Nani Park on 11th November 2006 and whereas, some accept the correctness of C.R. No.302/2006 in their 313 statements, however, have pleaded before us that they were not part of the encounter team.

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133 According to the prosecution, once it is proved that Ramnarayan Gupta (deceased) was abducted, then the onus would fall on the appellants (accused) to show that the deceased escaped from their custody, after which the incident of encounter took place, and if not, the circumstances under which the deceased was shot, being a case of custodial death.

134 In order to prove that Ramnarayan was murdered in a fake encounter by the appellants/accused, the prosecution essentially relied on the evidence of PW1–Ramprasad Gupta, PW2-Ganesh Iyer, PW3-Shyamsunder Gupta, PW7-Vilas Kandalgaonkar, PW39-Mohandas Sankhe, PW83-Umesh Revandkar, PW77-Mahendra Tatkare, PW63-Arun Awate, PW61-Vinaykumar Chaube, PW78-Bipin Bihari, PW87-Ajendrasingh Thakur.

135 Mr. Chavan, learned Spl.P.P submitted that the fact, that the encounter was a fake and not a genuine encounter, is

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evident not only from the evidence of the aforesaid witnesses, but even from the documents on record i.e. false documents/station diary entries were prepared by the appellants–accused to show that it was a genuine encounter. He submitted that even the spot panchnama, is a false document created at the behest of A9 to support the fake encounter. In connection with the same, the learned Spl.PP relied on the deposition of PW73-Vilas Kandalgaonkar, who was the author of the spot panchnama. He submitted that the evidence on record would also show falsification of records to cover up the fake encounter. He submitted that even a revolver and railway tickets were planted on the deceased to show that it was a genuine encounter.

136 The witnesses relied upon by the prosecution,in support of the said circumstance i.e. murder/custodial death of Ramnarayan/fake encounter are as under.

a. On false FIR and Fabrication of Records/Evidence

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PW39 - Mohandas Narayan Sankhe

137 PW39- Mohandas Sankhe was working as a PI at the Versova Police Station at the relevant time; he has stated that at about 20:50 hrs., **A9** of D.N. Nagar Police Station came to the Versova Police Station and disclosed that he alongwith his team had gone to nab a wanted criminal by the name Ramnarayan Gupta @ Lakhanbhaiya at Nana Nani Park; that the said person i.e. Ramnarayan had fired at them from his revolver, pursuant to which, the police fired at him with their weapons; and that in the said incident, Ramnarayan was injured and was taken to the hospital. According to PW39, he recorded the FIR at the behest of PI Suryawanshi (**A9**), which was registered vide C.R. No.302/2006; that the said FIR bears his signature as well as the signature of **A9**; and that the FIR (Exh.–278) was written as per the say of **A9**. PW39 has further stated that while recording the complaint, **A9** received a call from Sarvankar (**A22**), who informed **A9** that the injured was declared dead before admission.

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He has stated that pursuant thereto, he directed PSI Jadhav who had left for the spot to go to Cooper Hospital to carry out the inquest panchnama. He has stated that thereafter, **A9** in the presence of two panchas produced two bullet shells, which were seized and accordingly, a panchnama (Exh.–279) was drawn between **22:05 to 22:35 hrs.** PW39 has further stated that thereafter, he alongwith **A9** and two constables went to the spot, called two panchas and prepared a spot panchnama of the incident. He has stated that **A9** showed the spot to him and to the panchas and that the said spot was near Nana Nani Park on the Link Road, opposite Magnum Opus building. He has stated that **A9** introduced two persons who were police personnel in civil dress, who were deputed to protect the place of incident; that he alongwith panchas, examined the place of incident and saw an electric pole near the place of incident, bearing number KBU 13-061; that there was a pool of blood near the said pole; that one revolver was lying near the pool of blood; that between the pool of blood and the gate of Magnum Opus building, one

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empty bullet shell was lying; that the photographs of the spot were taken with the help of a private photographer; that measurements of the place of incident and the position of the pool of blood and other places was taken; that they checked the cylinder of the revolver which was lying (allegedly belonging to Ramnarayan Gupta) and found two cartridges and two empty shells in the cylinder; that one finger print expert by the name Sawant examined the revolver for finger prints, but did not find any fingerprints and accordingly, gave his report; that he seized the said revolver; that the two live bullets in the said revolver had hammer mark on it; that the said bullets had mark .32 KF S & WL; that he seized these bullets and packed them separately and sealed the packet; that the empties also had hammer mark on it; that the said empties also had mark .32 KF S & WL; that he seized the same and packed and sealed the said empties in different packets; that he seized the empty shell which was lying at the place of incident, which had a mark KF 94 9 MM 22; that he seized the same, packed and sealed the said empty shell

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separately; that he collected the blood sample from the pool of blood lying and also collected blood stained soil from the said place and plain soil from the spot and put the same in different bottles and each of these bottles were packed and sealed separately. (It is the prosecution case that no blood was collected in 'bottles', but was collected in plastic bags, and for this, prosecution relied on the evidence of PW83-Umesh Revandkar, PW77–Mahendra Tatkare and PW102-Sahil Joshi, reporter from Aaj Tak, who took a video of the spot. The said videography was produced in evidence. The said evidence will be dealt with a little later. He has further stated that the panchnama started on 11th November 2006 at **23:00 hrs** and was over on 12th November 2006 at **01:35 hrs.** He has stated that the panchnama was read over to the panchas and signatures of the panchas were taken. He has identified the panchnama which is marked as Exh.–283. The said witness has identified the revolver (Article 49); two empty shells which had marking KF .32 S & WL (marked as Article 51 colly) (the first bullet bears marking KF S &

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WL .32 and the second bullet bears marking RP S & WL .32). Both the bullets, having indent on the rear, were marked as Article 54 (colly) and the empty shell was marked as Article 57. PW39 has identified the two police personnel who were in civil dress as PSI Patade **(A18)** and API Palande (**A15**). PW39 was shown the report of the finger print expert. The same was marked by consent, as Exh.–284. According to PW39, API–Sarvankar **(A22)** and API Palande **(A15),** later came to Versova Police Station, pursuant to which he called two panchas; that the said persons produced empty shells from their revolvers from which they had fired; that API Sarvankar **(A22)** pulled out the empty shell from his revolver; that the panchas examined the shell and made notings about the same; that API Palande (**A15)** also pulled out an empty shell; that on examination of the said shells, notings were made; that the shell of API Sarvankar **(A22)** had mark KF 98 380 2 and the shell of API Palande **(A15)** had mark KF 01 380 2. He has stated that accordingly he prepared the panchnama (Exh.–286) and the panchas put their signatures

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on the same. He has identified the shells which were marked as Articles 60 and 63. He has stated that the said panchnama was carried out on 12th November 2006 from **2:40 hrs. to 3:15 hrs.** and that accordingly an entry was made in the Station Diary at serial No.2 in his handwriting (The said entry is at Exh.–287).

137.1 According to PW39, he thereafter recorded the statements of the members of the raiding team and has identified the said persons, whose statements were recorded. He has further stated that he also recorded the statements of Ramrajpal Singh and Manohar Kulpe (DW 1); that he forwarded the body to J.J. PM Centre from Cooper Hospital alongwith the ADR form. He has identified the signature of PSI Jadhav on the ADR form. The said ADR form was exhibited by consent as Exh.–288 and the request form of PM was marked as Exh.–289. He has further in his examination stated that the mark on the bullet should read as KF .32 S & WL. Similarly, marks on other shells should read as KF and then bore. He has further stated that he forwarded the

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FIR and other documents to the learned Metropolitan Magistrate on 13th November 2006 and carried on the investigation till 15th November 2006 and thereafter, as per the directions of his superiors, he handed over the investigation to Dilip Patil of Oshiwara Police Station. He has stated that thereafter he was called by SIT on 23rd December 2009 when his statement was recorded under Section 161 Cr.PC and again on 21st April 2010 when his statement was recorded by the learned Magistrate under Section 164 Cr.PC.

137.2 According to PW39 the name of Ramrajpal Singh was informed by one of the members of the team and that the name, address and telephone number of Kulpe was given to him by API Palande **(A15)** and that his statement was recorded by SIT on that day.

137.3 PW39 was extensively cross-examined by the learned counsel for **OA1**. In the cross-examination, PW39 has stated that

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during the course of his investigation, he did not come across any evidence to doubt the genuineness and correctness of the information received during investigation of CR No.302/2006; that he confirmed that the site of encounter was Nana Nani Park, Versova, when he visited the said park for drawing panchnama; that he again re-confirmed the spot from the staff of the mobile patrol van, who had taken the injured from Nana Nani Park to Cooper Hospital. He has further admitted that he learnt from his investigation that a Mobile Patrol Van on receiving a message at **20:18 hrs.**, had reached Nana Nani Park at **20:28 hrs.**; and that the deceased was taken from Nana Nani Park at around **20:36 hrs.** and reached Cooper Hospital at **20:57 hrs.** PW39 has also admitted that on 11th November 2006, PW1 had not approached him at Versova Police Station between **20:50 hrs. to 22:35 hrs,** nor any constable from Versova Police Station had approached him, inquiring whether Ramprasad Gupta (PW1) had come to the Police Station regarding the said case. He has stated that for drawing the panchnama, he had gone from Versova

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Police Station to Nana Nani Park at **22:45 hrs.** and the entire process of drawing panchnama and seizure at the place of incident took place till **1:35 hrs** He has stated that he did not see PW1 or any other person at the spot of the incident nor did he see PW1 or any of his representative taking a video clipping or photographs, at the relevant time. It has been further brought in the cross-examination of PW39 that the investigation revealed that **A9** had called his team members to his chamber and introduced **A13, A15, A18** and **A22** and other staff of D.N. Nagar Police Station; that **A9** had given the description of the person who was to come to Nana Nani Park to the team members; that **A9** and others prepared a plan with respect to the operation to be carried out; that the team left the police station armed with service weapons, at **6:55 hrs;** that it was revealed during investigation that **A9** had made two teams; that at about **8:10 hrs,** one rickshaw came near the electric pole from Versova and stopped and one person got down from the said auto rickshaw; that the said person was loitering near the place; that **A9's**

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informant, pointed out to the said person, being associate of Chhota Rajan gang; that A9 signaled to his teams about the arrival of the said person and that it was decided to accost the said person; that the said person sensed police presence and pulled out a revolver from his waist and pointed it towards A9; that A9 warned the said person that they were police and that he should surrender and not fire; that the said person did not heed to the caution and fired in the direction of A9; that the said person also fired in the direction of the second team; that A22 called out to tell the said person, not to fire and that they were police; that the investigation also revealed that as two shots were fired by the said person, the police apprehending danger to their lives and to the public nearby, fired at the said person i.e. A9 fired two rounds at the said person; A15 fired one round and A22 fired 1 round.

137.4 PW39 has further admitted that it was revealed during investigation that the deceased was injured and had fallen

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down with a weapon in his hand; that the team members had gone near the said person and found him injured and bleeding and accordingly, called a Mobile Patrol Van; that a request was made to the people to carry the said person to the hospital, however, the request was turned down; that the two persons who were approached for help, were Ramrajpal Singh and Manohar Kulpe (DW2) and since the said two persons had witnessed the incident, the officers had noted down their names, addresses and contact numbers. According to PW39, after returning from the spot and after seizing the empties from **A9,** it transpired that **A9** had fired in self defence and that **A15** and **A22** had also fired in self defence.

137.5 PW39 has further in his cross, admitted that all the properties of the police station are required to be entered in the Muddemal register, however, he does not remember if entries regarding the property received from J.J. Hospital was made in the Muddemal Register. He has stated that if the entries are

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made, it would be made in the Muddemal register of the Versova Police Station. The said witness after checking the registers of the Versova Police Station has stated that such entry is not available in the station diary register. He has admitted that the Muddemal Entry Nos. 148/06 and 149/06 stated in Exhibits–285 and 287 respectively were made on his instructions and that the said station diary entries were made after the entries were made in the Muddemal Register. He has stated that the Muddemal Entry No.147/06 stated in Exh.–282 was made on his instructions and Muddemal Register Entry pertaining to the articles received from JJ. Hospital would be after Muddemal Entry No. 149/06. He has stated that the Muddemal Register Entry number is also noted on the packet of the said muddemal for any subsequent retrieval of the said property (witness was shown Exhibits–290 to 293). He has further admitted that on perusing Exhibits 290 to 293, the same reveals that no Muddemal Register Entry number was put on the packet i.e. with respect to property received from J.J. Hospital.

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137.6 PW39 has admitted that when FIR was registered in C.R. No. 302/2006, the name of **A11** was not disclosed by **A9**, as the person who fired the gun. He has stated that he did not seize the weapon of **A11** nor did he make any efforts to collect the scientific evidence as to whether the weapon of **A11** was used or not.

138 The evidence of PW39 cannot be relied in its entirety, inasmuch as, part of his evidence appears to be doubtful and contrary to the other evidence on record, both, oral and documentary. The circumstances on record would reveal that **A9** had lodged a false FIR alleging that Ramnarayan was shot at, in retaliation. The falsity of the FIR would be also evident from the circumstances enumerated herein-under.

b. Spot panchnama not recorded at the spot

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139 It is pertinent to note that the evidence of PW73–Vilas Kandalgaonkar with respect to preparing of spot panchnama at Nana Nani Park will show that the spot panchnama was not recorded at the spot i.e. at Nana Nani Park, as deposed to by PW39 but was infact, drawn at the Versova Police Station itself.

139.1 The fact that the spot panchnama was prepared at the spot of the incident, as disclosed by PW39, is falsified by PW73–Vilas Kandalgaonkar, the person who scribed the panchnama, the evidence of PW1-Ramprasad, PW2-Ganesh Iyer; PW83-Umesh Revandkar; and PW77-Mahendra Tatkare.

PW73 – Vilas Parmanand Kandalgaonkar

140 PW73-Vilas Kandalgaonkar was attached to Versova Police Station, as a Constable at the relevant time. He has stated that since he was on night duty after attending to a case, he returned to the police station at about 23:00 hrs; that he sat on

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the bench outside the police station; that Detection Police Head Constable Revandkar (PW83) told him that he was called by Crime PI Sankhe (PW39); that he met PI–Sankhe, who told him to go to the Detection Branch and do as per the orders of the officers in the Detection Branch; that he went to the Detection Branch; that two officers were present in the Detection Branch, who told him that a panchnama was to be reduced into writing; that he reduced the panchnama into writing as dictated by the said officers; that it was a spot panchnama; that he learnt while scribing the said panchnama, that it was with respect to exchange of firing that took place on 11th November 2006 at Saat Bangla, Nana Nani Park, which came within the jurisdiction of Versova Police Station; that after the panchnama was reduced into writing, he was told to leave and that he went to the police station. PW73 has admitted in his cross, that the panchnama (Exh.–283) was scribed by him in his writing during that night. He has stated that SIT recorded his statement on 28th August 2010. Certain omissions were sought to be brought on record in the cross-

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examination with respect to, which room he was asked to go, however, the said omissions are minor omissions and do not go to the root of the matter. The fact remains, that PI–Sankhe had asked him to do as per the orders of the officers. PW73 has denied the suggestion that he was deposing falsely at the behest of SIT. He has further admitted that he did not disclose to anyone till 28th August 2010 that the spot panchnama was prepared in the detection room of Versova Police Station. In para 12 of his cross-examination, the said witness has admitted that the panchnama was dictated by the officer and he reduced it into writing and that he did not ask the officers as to why the panchnama was not recorded on the spot. He has further in para 13 of his cross, stated that the police officer brought in writing the particulars as regards to the electricity pole number and measurements and that he had not made a complaint to anyone that the panchnama was recorded in the police station, without visiting the spot. He has denied the suggestion that he wrote the panchnama at the say of Sankhe (PW39) and that PW39 dictated the contents of the

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panchnama. Although, in his statement before SIT, the name of the officer who had dictated the contents of the panchnama is not disclosed, PW73 in his deposition, has stated that it was **A9**, who had dictated the panchnama to him. He has denied the suggestion that the said panchnama was drawn at the spot. PW39's evidence that the spot panchnama was done at the spot is also belied by PW83-Umesh Revandkar. Infact, PW83 corroborates the evidence of PW73.

141 It is also pertinent to note, that action was taken against PW39-Mohandas Sankhe and the same is revealed from the evidence of PW110-K.M.M. Prasanna. PW110 in his evidence has deposed that default report was made against PW39 for preparing a false spot panchnama in C.R. No. 302/2006 and on the basis of this report, he was given a punishment of stoppage of an annual increment for one year by the then CP, Mumbai.

PW83 - Umesh Yashwant Revandkar

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142 PW83 was attached to Versova Police Station as a Police Head Constable at the relevant time, and was attached to the Detection Branch of Versova Police Station. He has stated that API-Sartape (**A11**) was in-charge of the Detection Branch. He has stated that on 11th November 2006, he was on night duty and that he resumed duty at 20:30 hrs.; that after resuming duty, he learnt that an encounter had taken place at Nana Nani Park and therefore, police officers and police staff had gone to Nana Nani Park; that he and PC–Imade, 30367 too had gone to Nana Nani Park; and that they reached there within 15–20 minutes; that they saw a crowd at the said corner of Nana Nani Park; that when they reached there, PI–Sankhe (PW38), PSI–Harpude **(A17)** and PC–More from the Detection staff were present at the spot; that some representatives of newspapers were also present at the spot; that the news representatives were doing shooting at the spot with their cameras; that they learnt that the squad of Sharma Saheb had done encounter of a gangster by the name Gupta; that

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he learnt that the injured was admitted to Cooper Hospital; that there was pool of blood and a revolver was lying near the pool of blood and one cartridge at some distance from the pool of blood; that after some time Sr. PI - Sonawane from Versova Police Station came to the spot; that PI–Sankhe (PW39) told him to bring two panchas for recording the spot panchnama; that they produced the panchas before Mr. Sankhe; that Daddikar, Tatkare, Nandawadekar and More were collecting revolver, samples of blood; that Harpude (A17) was collecting samples of earth; that these articles were collected in plastic bags; that all articles in the plastic bags were handed over to Harpude (A17); that Sr. PI – Sonawane was at the spot, but after some time, he left the spot in his vehicle; that he was at the spot for about 30–45 minutes; that thereafter, he went for patrolling within the jurisdiction of Versova Police Station as More was doing work at the spot; that at about 11:00–11:30 hrs, he returned to Versova Police Station and learnt that the injured had died and a crime was registered at Versova Police Station; that after he returned to the police station,

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PI – Sankhe (PW39) called him in his cabin and told him to bring a police constable having good handwriting, as spot panchnama was to be recorded; that he took PC Kandalgaonkar 27503 (PW73) to PI–Sankhe (PW39); that PI–Sankhe (PW39) handed over some papers to Kandalgaonkar, that Kandalgaonkar (PW73) scribed the panchnama in the adjoining Detection Room and that thereafter, he proceeded for patrolling within the jurisdiction of Versova Police Station. The statement of the said witness was recorded by SIT on 24th August 2019 and before the Magistrate on 18th September 2010. He has stated that prior to his disclosure to SIT, he had not disclosed about what had transpired to any person; and that as he was not present, when PW73- Kandalgaonkar was writing the panchnama, he did not know the contents of the same.

143 Although an endeavour was made by the learned counsel for appellants–accused to discredit the evidence of this witness i.e. to show that he was not present at the police station,

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the said witness has explained why there is no mention in the station diary entry of his roll call on 11th November 2006 and as such there is no reason to disbelieve his testimony. As far as squad is concerned, the said witness has denied that he has deposed falsely that he learnt that the squad of Pradeep Sharma had done the encounter. He has also denied the suggestion that he was deposing under the pressure of SIT. He has further stated that he had not disclosed to anybody prior to the recording of his statement on 24th August 2010 that samples of earth (soil) were taken by Harpude **(A17)** and that the plastic bags containing articles were handed over to Harpude **(A17)** by More, Daddikar and Nandawadekar. PW83's evidence also reveals that blood was collected in plastic bags and not in bottles as deposed to, by Sankhe (PW39).

PW77–Mahendra Govind Tatkare:

144 The evidence of PW77 was also relied upon by the

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prosecution to show that none were present at the spot when the alleged spot panchnama is stated to have been prepared i.e. on the intervening night of 11th and 12th November 2006, between **23:00 hrs. to 1:20 hrs.** PW77 has stated that he was attached to Versova Police Station and was on duty on Mobile–II of Versova Police Station i.e. on night duty; that at about **20:18 hrs,** Versova Mobile–I received a message from Western Control Room stating that one injured person was lying near Nana Nani Park; that at that time, he was in the police station; that after sometime, Peter Mobile Vehicle also received a message from Western Control Room that the Peter Mobile Vehicle be taken to the spot; that after some time they were also told to go to the spot and accordingly they reached the spot between **20:45 hrs to 21:00 hrs;** that when they reached the spot, officers from their police station i.e. PI–Sankhe (PW39), PSI–Harpude (**A17**), Hawaldar Nandavadekar, More and Imle from Detection Branch were also present at the spot; that before they reached the spot the injured was already taken to the hospital by Mobile–I of Versova Police

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Station; that on reaching the spot, he learnt that there was an encounter between the police and a *Gunda*; that the police personnel were collecting samples of blood from the pool of blood and a revolver from the spot, and the same were kept in a **plastic bag**; that one empty cartridge of pistol was lying at some distance from the pool of blood; that **A17** collected samples of earth (soil) from the spot in a **plastic bag**; that representatives of TV channels were engaged in shooting and were taking interviews/bytes of the police officers in plain clothes; that **A9** from D.N. Nagar Police Station was giving an interview; that thereafter, the officers from Versova Police Station, the other officers and the police personnel left the spot, after which, he also left the spot when everything was calm and quiet. He has stated that he was at the spot for about 30 to 45 minutes. The statement of **PW77** was recorded by the SIT on 24th August 2010 and was also recorded by the learned Magistrate on 16th September 2010.

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144.1 There is nothing in the cross to disbelieve the testimony of the said witness with respect to having gone to the spot, pursuant to the message received by him from the Western Control Room. He has in his cross-examination admitted that there was a small pool of blood and it was only at one spot, however, could not tell as to in which direction from the pool of blood, the empty cartridge was lying. He has denied the suggestion that he was at the spot for about 3–4 hours, after he reached the spot. He has further in his cross stated that the officers left the spot approximately at **9:30 hrs,** however, he had not noted down the same anywhere i.e. that the officers left the spot approximately at **21:30 hrs.** He has in his cross-examination also admitted that **A17** was helping in collection of evidence at the spot and that he did not know as to when **A17** had reached the spot. The evidence of this witness also reveals that blood was collected from the spot in **plastic bags**. Thus, this witness also corroborates PW83, with respect to collection of blood in plastic bags.

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145 The aforesaid evidence goes to show that nobody was present at the time when the spot panchnama was alleged to have been done at the spot i.e. between **23:00 hrs to 1:20 hrs.** Except for PW39, the evidence of all the witnesses would reveal that the spot panchnama was not prepared at the spot. We, at the cost of repetition, note that a default report was made against PW39 for preparing a false spot panchnama in C.R. No.302/2006 and on the basis of the same, his annual increment was stopped for one year. Infact, the evidence of PW1 also duly corroborates the evidence PW83, PW73 and PW77. According to PW1, when he reached the spot at about **22:30 hrs.,** nobody was present at the spot. The said evidence of PW1 is also duly corroborated by PW2 with respect to the same. Both PW1 and PW2's evidence reveal that when they reached the spot i.e. at Nana Nani Park at 22:30 hrs., there was total darkness and none was present. PW1 has stated that when they reached the spot at 22:30 hrs., on searching, they found some blood near the electric pole; that on

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the blood, a newspaper '*Dopahar Ka Samna*' was placed and on that paper, a stone was kept; that they found one jeep type vehicle parked at some distance; that 3 to 4 persons were standing near that vehicle; that he asked them whether there was any encounter; that they told him that no encounter had occurred on the spot. The evidence of PW2 is on similar lines.

146 Thus, the aforesaid evidence shows that the spot panchnama was not prepared at the spot as alleged by PW39 i.e. between 23:00 hrs. to 1:20 hrs and as such, the evidence of PW39 to that extent is contradicted and belied by the overwhelming evidence of other witnesses vis-à-vis the same i.e. the evidence of PW83, PW73, PW77, PW1 and PW2.

c. No meeting held by A9 in his cabin

147 According to **A9**, he held a meeting in his cabin at **16:20 hrs.** to inform the police personnel of the information received from the informer that Lakhanbhaiya (Ramnarayan) was

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to come near Nana Nani Park to meet his accomplice. In the said meeting, **A9** has alleged that **A15, A22, A18, A13** and other staff were present. According to **A9**, he explained the information received from the informer and accordingly, a plan was chalked out to apprehend Lakhanbhaiya, an alleged member of the Chhota Rajan Gang.

148 Before we proceed to analyse the evidence adduced by the prosecution which falsifies the holding of any meeting, it would be apposite to reproduce the affidavit filed by **A9** in this Court and admitted and relied upon by **A9**, during the course of his arguments before us. We wish to reproduce only the relevant part of the additional affidavit filed by **A9** with respect to the sequence of events as set out by him, as under:

"ADDITIONAL AFFIDAVIT

I. PRADEEP PANDURANG SURYAWANSHI, age 54, Senior Police Inspector-In-Charge of Andheri Police Station, Mumbai for myself and on behalf of other Police Officers/Interveners do hereby state on solemn affirmation as under :-

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1. ….. ….. ….. ….. ….. ….. ….. …..

2. ….. ….. ….. ….. ….. ….. ….. …..

3. I further state that the correct and true details of the incident that took place on November, 11, 2006 at Nana Nani Park are put by way of a chart as follows:

Sr. No.	***Date and Time***	***Particulars***
1	*Nov. 11, 2006 at 4.45 p.m.*	*PI Pradeep Suryawanshi received information from his informant that one Ramnaryan @ Lakhanbhaiya Vishwanath Gupta, a wanted and absconding accused in serious crimes like murder, dacoity, extortion, etc was meeting his accomplices at Nana Nani Park, Seven Bungalows, Andheri (W).*
2	***Nov. 11, 2006 at 5.15 p.m.***	***PI Pradeep Suryawanshi informed his superior Officers i.e. the ACP D.N. Nagar Division, the DCP Zone-IX and the Addl. Commissioner of Police, West Region accordingly. The said Officers ordered Pl Suryawanshi to arrest Ramnaryan Gupta with the additional help of Officers and Policemen of Versova Police Station.***
3	*Nov. 11, 2006 at 5.40 p.m.*	*PI Suryawanshi contacted PI Sonawane of Versova Police Station for help and requested him to send available Officers to D.N. Nagar Police Station.*
4	*Nov. 11,*	*PI Sartape, PSI Harpude and PN – 26645*

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	2006 at 6.10 p.m.	*of Versova Police Station attended D.N.Nagar Police Station as ordered.*
5	*Nov. 11, 2006 at 6.30 p.m.*	*PI Suryawanshi called his staff i.e. API Sarvankar, API Palande, PSI Patade and other staff along with Officers of Versova Police Station to his cabin.*
6	*Nov 11, 2006 at 6.40 p.m.*	*PI Suryawanshi briefed all the staff about the secret information given by the informant and the informant described the absconding accused Ramnarayan. A plan to arrest Ramnarayan was made and the officers and men were given appropriate instructions. The wanted person was a hardcore criminal and was always in possession of fire arms and never hesitated to use it and therefore it was necessary to plan the operation accordingly.*
7.	*Nov. 11, 2006 at 7.10 p.m.*	*The Police squad reached the spot on motor-cycles and rickshaws where Ramnarayan was expected to come to meet his accomplices. The squad was divided into two groups and P! Suryawanshi, the informant, API Sartape, PSI Patade, Head Constable 18839, PN 26645 and PC-10502 hid themselves at the west side of Nana Nani Park near the compound. The second group of API Palande, API Sarvankar, API Harpude, Police Constable 31963, PC-31241 and PC- 33492 were waiting at East side of Nana- Nani Park opposite Trishul Building in such a way that both the groups could*

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		watch the road and vehicles on it but were not visible to a casual onlooker from the road. The site map of the place of incidence is annexed hereto and marked as Exhibit A-1.
8.	*Nov 11, 2006 at 8.10 p.m.*	*At this time, a rickshaw stopped near the Electric Pole at the South side of end of Nana Nani Park. The approximate distance of the passenger alighting from the rickshaw from both the groups of the squad was about 50 feet.*
9.	*Nov. 11, 2006 at 8.10 p.m.*	*The informant immediately gave a signal to Pl Suryawanshi that the passenger alighting from the rickshaw was the wanted accused Ramnarayan.*
10.	*Nov. 11, 2006 at 8.11 p.m.*	*PI Suryawanshi alerted the other squad under API Palande by the pre-arranged signal that Ramnarayan had arrived.*
11.	*Nov 11, 2006 at 8.12 p.m.*	*Both the groups of Police officers moved forward to arrest Ramnarayan. However perhaps due to the sudden movement of the first group headed by PI Suryawanshi, Ramnarayan became very alert and knew that he was surrounded by Police. Within a split second, he took out his firearm and pointed it towards the group of Pl Suryawanshi's men. Pl Suryawanshi*

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		shouted and warned him that they were all policemen and he should surrender. (Lakhan, hum policewale hai, fire mat karo. Surrender ho jao). However, Ramnarayan fired a round towards PI Suryawanshi who evaded the same by ducking down. At the same moment, API Sarwankar also warned Ramnarayan to surrender. Within a split second, Ramnarayan fired another round towards the second group of officers:
12.	*Nov 11, 2006 at 8.13 p.m.*	*The Police party to save themselves and to protect the innocent road users, fired total of five rounds towards Ramnarayan (Pradeep Suryawanshi two rounds, API Sarwankar, API Palande and API Sartape each one round). Ramnarayan fell down along with the firearm.*
13.	*Nov 11, 2006 at 8.14 p.m.*	*The Police officers approached the wounded Ramnarayan from all the sides as they apprehended that Ramnarayan may fire at them. On closer inspection Ramnarayan was found alive but seriously wounded and thereafter PI Suryawanshi immediately at 8.15pm reported the incidence to Police Control room.*
14.	*Nov 11, 2006 at 8.28 p.m.*	*The Police Officers in the meanwhile requested other private vehicles to take the wounded person to hospital but no body cooperated. Therefore wounded*

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		Ramnarayan was put in Versova 1- Mobile Van which had received the message from Control at 8.18p.m. and arrived at the spot at 8.28 p.m. because of the report of P.1.Suryawanshi to the Police Control. The wounded person was loaded in the Mobile-1 and it started for hospital at 8.36 p.m.
15.	*Nov 11, 2006 at 8.57 pm*	*The wounded person was brought to the OPD of Cooper Hospital by the police.*
16.	*Nov 11, 2006 at 9.00 pm*	*Ramnarayan was declared dead by the Casualty Medical Officer at 9 p.m.*
17.	*Nov 11, 2006 at 8.15 pm and 9.15 pm*	*PI Suryawanshi instructed his staff to cover and protect the spot of firing after Ramnarayan was put in the vehicle for hospitalization and thereafter went to Versova Police Station at 8.50pm to lodge FIR of the incidence. While the FIR was being recorded, API Sarwankar informed that Ramnarayan was declared dead before admission by the CMO of Cooper Hospital.*
18.	*Nov 11, 2006 at 9.50pm*	*P1 Sankhe of Versova Police Station completed recording of FIR No.302/06.*
19.	*Nov 11, 2006 at 10.05 pm to 10.35pm*	*Pl Sankhe made a panchnama of two empties (pungli) of the bullets fired from the Pt. 38 Service Revolver of Pi Suryawanshi.*

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	Nov 11, 2006 between 10.05 pm to 00.15 pm on Nov. 12, 2006	*PSI Jadhav of Versova Police Station completed Inquest Panchnama at Cooper it is pertinent to note that besides an amount of Rs.920.75 and a pocket telephone diary, there were two Local Railway tickets found on the person of the Ramnarayan;* *(i) Ticket No:94303 dated 11 Nov-14 from Sanpada to Majid/ Mulund/Bandra (via Wadala) and* *(ii) Ticket No.36825 dated 11 Nov-16 from Bombay Central to Jogeshwari. All the material found on the person of Ramnarayan wan sealed in separate envelopes in presence of Panch, witnesses and their signatures taken on the envelopes.*
20.	*Nov 11, 2006 between 11.00 p.m. to 01.35 a.m. on Nov. 12, 2006.*	*PI Sankhe of Versova Police Station made a spot Panchnama at the place of incidence. Pl Sankhe carefully took into possession a Revolver used by Ramnarayan, having wooden butt and marking "MADE IN JAPAN" lying at about 9ft from the Electric Pole No.KBU-13/061, and after its inspection removed two live cartridges with hammer marks on them and two empties, all having marks "KF.32S $ WL" from this Revolver. All this material was separately packed in 3 envelopes and sealed in presence of two panch witnesses and signed by both the*

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		witnesses. The Police also took into possession one empty having mark "KF-94 9MM22" (near entrance of Magnum Opus Bldg) at a distance of 16.5 ft (fired from 9mm Pistol of API Sartape). This empty was separately packed and sealed in the presence of panch witnesses. The Police also collected the blood sample from the accumulated blood on the spot and blood mixed with mud and only mud in 3 separate clean glass bottles which were sealed in the presence of the panchas.
21.	*Nov 12, 2006 from 2.40 a.m. to 3.15 a.m.*	*PI Sankhe of Versova Police Station made a panchnama and took into possession one empty cartridge each from the Revolvers of API Sarwankar and AP1 Palande in the presence of two panch witnesses at Versova Police Station.*

149 To the aforesaid affidavit is annexed the map of the spot of the incident. The said map has also been admitted to by A9. In the facts, we deem it necessary to reproduce the said sketch/map of the spot of incident, for a better understanding of how the encounter is alleged to have taken place, according to some of the appellants/accused.

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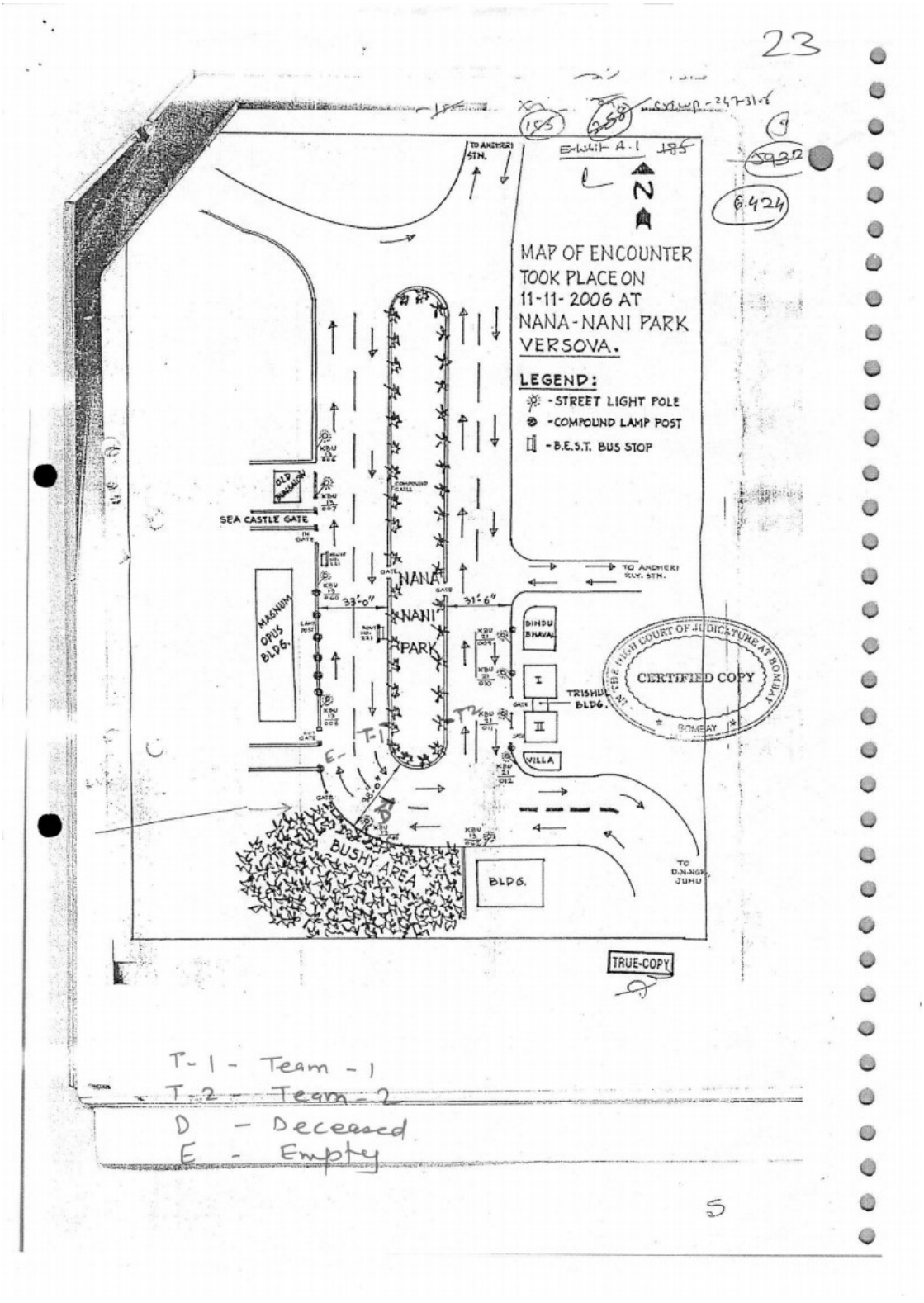

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150 The aforesaid alleged meeting held by **A9** in his cabin is disputed by some of the appellants-accused, who are alleged to have been present at the time of the meeting or at the time of the alleged encounter. The holding of the meeting is also falsified by the CDR of the accused persons i.e. the meeting that allegedly took place in **A9's** cabin at D.N. Nagar Police Station at **18:20 hrs.**

(i) According to **A17**, he never attended the meeting. Infact, he has denied the meeting. The same is evident from the answer given by **A17** in his 313 statement to Question No.1149;

(ii) The CDR (Exh. – 581) and Cell ID (Exh. – 571) show that **A9** was at Juhu–Vile Parle between **12:17 hrs.–18:21 hrs.** (The distance approximately between Juhu–Vile Parle and D.N. Nagar Police Station is 10 to 15 minutes);

(iii) The CDR (Exh. - 521) and Cell ID (Exh. – 548) show that **A15** – Palande was at Amboli, Andheri (West) and not at D.N. Nagar Police Stations, at the relevant time;

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(iv) The CDR (Exh.–936) and Cell ID (Exh.–421) show that **A17**–Harpude was at Yari Road Bridge Chowky at **18:40 p.m;**

(v) The CDR (Exh. – 521) and Cell ID (Exh.–548) show that **A22** – Sarvankar was somewhere at Juhu at 1**8:21 p.m;**

151 The aforesaid location of the police personnel who are alleged to have been present at the meeting with **A9** and the location of **A9** clearly shows that no such meeting as alleged, took place in the cabin of **A9** on 11th November 2006 at **18:20 hrs** in D.N. Nagar Police Station, as claimed by **A9** in his FIR being C.R. No.302/2006.

d. No prior information furnished to superiors by A9

152 It is the case of **A9,** that he had informed the superior officers of the information received by him and had taken their permission to conduct the operation. Admittedly, there is no document on record to support the said claim made by **A9** by way

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of a station diary entry or any other entry. Infact, the evidence is to the contrary, inasmuch as, all the superior officers have denied receiving any such information from **A9.** The prosecution in support of its case, has also relied on the evidence of the following witnesses i.e. the evidence of the superior officers of **A9** to show that they received no such information as alleged by **A9.**

PW63 – Arun Vasantrao Awate:

153 PW63-Arun Awate was working as an ACP at D.N. Nagar Division under Zone IX, at the relevant time. D.N. Nagar, Oshiwara and Versova Police Stations comes within the jurisdiction of D.N. Nagar Division. PW63 has stated that in November 2006, Mr. Ajendra Singh Thakur (PW87), was the Senior P.I. in D.N. Nagar Police Station; that **OA1**-Pradeep Sharma, **A9**-Pradeep Suryawanshi, Tavare and Avdhoot Chavan, were the police inspectors in D.N. Nagar Police Station. He has stated that at the relevant time, **OA1** alongwith some police

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personnel served in a special squad and worked as per the directions of their superior officers. He has stated that as per his knowledge API-Palande **(A15)** and some constables were on deputation in the squad of **OA1** and that as per the orders of Addl. CP (West Region), the said squad was formed. He has stated that **A15** was a member of the said squad.

153.1 PW63 has stated that on 11th November 2006, he had visited Andheri Sports Complex for preparation of a programme "Umang" to be held on 12th November 2006 at the said place and also for law and order and for security purpose, since Andheri Sports Complex came within the D.N. Nagar Division i.e. within his jurisdiction. He has stated that on the said day, when he was on bandobast duty at the venue at about **20:00 hrs. to 20:15 hrs,** Vijay Sonawane, Senior P.I of Versova Police Station met him at the venue and informed him that there was exchange of fire between the police and accused within the jurisdiction of Versova Police Station; that after informing the same, Vijay Sonawane

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immediately left the venue; that on that day, he did not receive any information as regards the said exchange of fire from any other officers; that on the next day i.e on 12th November 2006, he learnt that one Ramnarayan Gupta @ Lakhanbhaiya was killed by a joint team, from Versova Police Station and D.N. Nagar Police Station. PW63 has categorically stated that on 11th November 2006, he did not receive any information as regards Ramnarayan.

153.2 In his cross-examination, PW63 has stated that on 12th November 2006 he made inquiry as regards the person who died in the police firing and during the inquiry, learnt that the person who was killed in the police firing, was a wanted accused and that in the joint operation Ramnarayan Gupta @ Lakhanbhaiya was killed in an encounter by the police from D.N. Nagar Police Station and Versova Police Station. PW63 has further in his cross stated that the FIR, statements and investigation papers were placed before him for his endorsement;

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that he did not call the officers whose statements were recorded in C.R. No. 302/2006 for the purpose of questioning them. In his cross, PW63 has admitted that it was correct to say that as per police manual, all senior officers are required to visit the scene of offence in a serious crime and that these officers would include Senior P.I, ACP, DCP; and that he did not ascertain whether the DCP had visited the scene of offence. He has further admitted that it was expected of him to visit the scene of offence on learning of exchange of fire between the police and accused and that as he was engaged in bandobast duty, he could not visit the spot. He has further admitted that he did not inform the said information to his superiors such as DCP and Addl. CP. He has further in his cross stated that in respect of C.R. No.302/2006 of Versova Police Station, he had the occasion to supervise the inspection/investigation, however, he did not give instructions to the I.O., during the course of investigation on the basis of the papers of the crime placed before him nor had he any occasion to assist the DCP in preparation of the report to be submitted to the

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Competent Authorities. He has stated that while acting as a supervising officer, at no point of time, he had any doubt that the police firing of 11th November 2006 was not genuine. He has further admitted that he did not make inquiry with the officers who were involved in the incident and when the statements of these officers were placed before him, he was satisfied with those statements.

PW61 - Vinaykumar Keshavprasad Chaube:

154 PW61 was attached to Zone-IX, Mumbai as DCP at the relevant time. He has stated that there was one programme "Umang" to be held on 12th November 2006 at Andheri Sports Complex within the jurisdiction of Oshiwara Police Station (Under Zone-IX) for the Police Welfare Fund and that as he was the Nodal Officer of the said programme, he was required to do multifarious jobs including supervision of bandobast, organising the programme, inviting actors for the said programme and that

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he was busy for a month prior to 12th November 2006 in organising the said programme; that in the evening of 11th November 2006, there was a dress rehearsal which was attended by senior officers from their department, i.e. CP, Jt. CP, Addl. CP, etc; that on 11th November 2006, he was informed by his RTPC (Radio Telephonic Police Constable) that one Ramnarayan Gupta was killed in a police operation at Nana Nani Park; that the operation was carried out by police officers from Versova Police Station and D.N. Nagar Police Station.

154.1 In his cross-examination, the said witness has stated that as far as he recollects, the RTPC might have informed him between **21:00 to 21:30 hrs.** of the incident and that he was not aware as to whether by that time, news was flashed on TV; and that he could not visit Nana Nani Park on 11th November 2006 as he was busy in bandobast and in preparations for 'Umang' programme. He has further stated that in ordinary course, he was required to visit the place where firing had taken place. He

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has further stated in his cross that the report in respect of police firing was required to be submitted to the Addl. Chief Secretary, (Home), DGP, CP, NHRC, SHRC and to the Collector and that it was correct to say that in respect of police firing within his jurisdiction, he was supposed to submit reports to the said authorities. He has further stated that he submitted reports to the aforesaid authorities in respect of police firing at Nana Nani Park. When questioned whether the report filed by him before the authorities was true and correct, PW61 answered that "the report was submitted on the basis of police station report and FIR and that the report was correct at that time." He has stated that he had filed the report, after the report was received from Versova Police Station, after affixing his signature on it. He has further stated that at the time of submitting the said report to the said authorities, he was satisfied that there was a genuine encounter at Nana Nani Park. He has further stated that when he was DCP, Zone-IX, Ramprasad (PW1), brother of the deceased, did not approach him nor did he file any complaint with him.

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155 Thus, it is evident from the evidence of PW61 and PW63, that they had received no prior information as alleged to have been given by **A9**. Infact, it is pertinent to note, that there is no suggestion/question put to the said witnesses, that **A9** had informed them of the information so received by him.

PW78 – Bipin Mangalaprasad Singh Bihari:

156 PW78, Addl. CP, Western Region, Mumbai, who according to the prosecution, was responsible for formation of a squad under **OA1,** has denied that any such squad was formed at his behest. PW78 has also denied having being informed of any information, as allegedly given by **A9,** to his superiors. He has infact categorically denied giving any directions or instructions prior to the incident to any officer. He has further stated that he learnt about the incident on 11th November 2006 from his wireless operator. Infact, no suggestion has been given by the

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appellants-accused to this witness during the cross-examination, that **A9** had informed him about the secret information.

PW87 – Ajendrasingh Sadansingh Thakur:-

157 Similarly, PW87–Ajendrasingh Thakur, Sr. P.I. of D.N. Nagar Police Station, has categorically in his evidence stated that he was kept in the dark about the joint operation of the D.N. Nagar Police Station and Versova Police Station. It is pertinent to note that there was no cross examination on this issue.

158 The aforesaid evidence clearly shows that the claim of **A9** that he had informed the superiors about the information so received and that he had sought permission from them to conduct the special operation on the basis of the secret information, is belied by the evidence of all the witnesses i.e., **A9's** superior officers, as stated aforesaid. The evidence infact shows that no superior officers were either informed or they were aware nor

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any permission was taken to conduct the secret operation as alleged by **A9.** Even PW78-Addl. CP, Western Region, Mumbai, for reasons best known to him, has also denied being informed of the secret operation.

e. False station diary entries and documents

159 The aforesaid evidence is further corroborated by the false station diary entry created to cover up the fake encounter. In this context, it would be apposite to reproduce the following entries which would show the falsity or creation of evidence by the appellants-accused to cover up the fake encounter:-

(i) The station diary entry at the Versova Police Station at **18:05 hrs** (Exh.884-A) reads thus:

दिनांक	घटना ११/११/२००६	शेरा
१८.०५	(३३) स.पो.नि. सरतापे, पो. उपनि हरपुडे व पो.नि. क्र. २६६४५ हे मा. अतिरिक्त	गोपनीय कामाकरता रवाना

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	पोलीस आयुक्त पश्चिम प्रा. विभाग यांचे आदेशाने गोपनीय कामाकरता दा.नौ.नगर पो. ठाणे येथे रवाना झाले.	

English translation of the above station diary entry reads thus :

Date	*Incident Date 11.11.2006*	*Remark*
18.05 hrs	*As per the order of the Additional Police Commissioner, Western Region, API Sartape, P.S.I. Harpude and P.C. No. 26645 proceeded to the D.N. Nagar Police Station for confidential work.*	*Proceeded for confidential work*

(Nitin Sartape is **A11,** Ganesh Harpude is **A17** and Pandurang Kokam (**A19)** is P.C. No. 26645)

(ii) The station diary entry at the D.N. Nagar Police Station at **18:55 hrs** (Exh. – 669A), is made by **A15.** The same reads thus:

दिनांक	११/११/२००६ घटना	शेरा
१८:५५	(२५) पो.नि. सूर्यवंशी, सपो.नि पालांडे.	रवाना

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	सरवणकर. पो.नि.पाताडे आणि अंमलदार त्याचप्रमाणे वर्सोवा पोलीस ठाण्याचे सपोनि सरतापे, पो. उपनि हारपुडे पो.ना. क्र. २६६४५ हे बातमीदारासह नाना नानी पार्क जवळ, जुहू वर्सोवा लिंक रोड, चार बंगला, अंधेरी (प), मुंबईयेथे मिळालेल्या माहितीची शहानिशा करण्यासाठी आणि अनेक गंभीर गुन्हयात पाहिजे असलेला त्यांचप्रमाणे फरार असलेल्या आरोपीस अटक करण्या करीता रवाना झाले.	

English Translation of the above station diary entry reads thus:

Date	*11/11/2006 Incident*	*Remark*
18:55 Hrs.	*(25) As per the (information) received, P.I- Suryawanshi, API-Palande, Sarvankar, PSI- Patade and Police Personnel so also API-Sartape, PSI–Harpude and P.N, Buckle No. 26645 attached to Versova Police Station alongwith the informer proceeded to the place near Nana Nani Park at Juhu Versova Link Road, Four Bungalows, Andheri (W), Mumbai to confirm the information received and to arrest the accused wanted in serious offences.*	*Proceeded*

(Pradeep Suryawanshi @ Nana is **A9,** Dilip Palande is **A15,** Arvind Sarvankar is **A22,** Anand Patade is **A18,** Nitin Sartape is

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A11, Ganesh Harpude is **A17** and Pandurang Kokam-P.C. No. 26645 is **A19**).

160 The station diary entry of return of the staff to D.N. Nagar Police Station (Exh.–670) at **3:35 hrs.** on 12th November 2006, is consistent with C.R. No.302/2006. The author of the said entry is **A15.**

दिनांक	घटना	शेरा
०३:३५	(३) संदर्भ ठाणे दैनंदिनी क्रमांक २५/०६, दिनांक ११.११.२००६ अन्वये पो. नि. सूर्यवंशी स. पो. नि. पालांडे, सरवनकर, पो. उपनि. पाताडे आणि अंमलदार असे मिळालेल्या माहितीची शहानिशा व गंभीर गुन्हयात पाहिजे आरोपीस अटक करण्याकामी नाना नानी पार्क जवळ जुहू वर्सोवा लिंक रोड, सात बंगला, अंधेरी (प), येथे रवाना झाले होते ते परत आले व असे निवेदन करतात की दि. ११.११.२००६ रोजी पोलीस निरीक्षक प्रदीप सूर्यवंशी यांना खास खब–यामार्फत खबर मिळाली की छोटा राजन टोळीचा खुन, दरोडा, जबरी चोरी आणि खंडणी सारख्या अनेक गंभीर गुन्हयात पाहिजे असलेला आणि फरारी	पोलीस निरीक्षक सूर्यवंशी, सहाय्यक पोलीस निरीक्षक पालांडे, सरवनकर, पोलीस उप निरीक्षक पाताडे व अंमलदार नाना नानी पार्क, सात बंगला, अंधेरी (प), येथून त्यांना मिळालेल्या माहितीची शहानिशा करून परत व कुविख्यात गुंड रामनारायण विश्वनाथ गुप्ता, वय ३८ हा पोलीस चकमकीत जखमी होऊन

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सतत (३)	असलेला आरोपी नामे रामनारायण उर्फ लखनभैया विश्वनाथ गुप्ता, वय ३८ हा नानी पार्क, सात बंगला, अंधेरी (प), मुंबई येथे त्याचे साथीदारांना भेठण्यासाठी येणार आहे. सदरची खबर तात्काळ वरिष्ठांना कळवून त्यांच्या मार्गदर्शनपर सुचनेनुसार वरसोवा पोलिस ठाण्याचे स.पो.नि. सरतापे, पोलिस उपनिरीक्षक हारपुडे व पो.नि. २६६४५ यांची मदत घेऊन पो.नि. सूर्यवंशी, सपो.नि पालांडे, सरवणकर. पो.उपनि.पाताडे पोहा.१८८३९, २६६४५, पो.शी. १०५०२ असे सर्व अधिकारी व अंमलदार वर नमुद ठिकाणी रवाना होऊन दोन गट तयार करून नाना नानी पार्क जवळ वेगवेगळया ठिकाणी १९.१० वा. दबा धरून बसले. सुमारे २०.१० वा. नाना नानी पार्क जवळ एका रिक्षातून नमूद फरारी व पाहिजे असलेला आरोपी नामे रामनारायण उर्फ लखनभैया विश्वनाथ गुप्ता उतरला. तेव्हा त्यास बातमीदाराने ओळखून इशारा केला असता नमूद अधिकारी व अंमलदार हे त्यांस अटक करण्याकामी पुढे सरसावले असता नमूद आरोपीने त्याच्या जवळील कमरेला खोवलेले रिव्हॉल्वर काढून रोखले, तेव्हा नमुद अधिकारी व अंमलदार यांनी त्यांस पोलीस असल्याचे सांगून स्वाधीन होण्यास सांगितले असता नमुद आरोपीने गोळीबार करण्यास सुरूवात केली. त्याने पोलीसांचा इशारा न जुमानता परत गोळीबार केला असता, पोलिसांनी स्वरक्षणार्थ व जनतेच्या पादचा–यांच्या संरक्षणार्थ त्याच्यावर गोळीबार केला असता, तो गंभीर जखमी झाला. त्यावेळी पोलीस व जनतेच्या संरक्षणार्थ	कुपर रूग्णालयात दाखल होणेपूर्वी मयत.

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सतत (३)	पोलिसांनी गोळीबार केला. त्यात पोलीस निरिक्षक प्रदिप सुर्यवंशी यांनी दोन गोळया, स. पो.नि.सरवणकर, पालांडे यांनी प्रत्येकी एक गोळी त्यांच्या सर्व्हीस रिव्हॉल्वर मधुन फायर केली व स.पो.नि. सरतापे यांनी आपल्या पिस्तल मधुन एक गोळी फायर केली. सदर जखमी आरोपीस कुपर रूग्णालयात औषधोपचारा करीता नेले असता, तो दाखल होणे पूर्वीच मयत झाल्याचे तेथील डॉक्टरांना घोषीत केले. सदर मयत आरोपी इसमाच्या मृतदेहाचा सविस्तर पंचनामा केला असता एकूण सात बुलेट जखमा शरीरावर आढळल्या. तसेच घटनास्थळाच्या पंचनामा केला असता घटनास्थळावरून सदर आरोपी इसमाचे रिव्हॉल्वर जप्त करण्यात आले. सदर घटनेबाबत वर्सोवा पो.ठाणे येथे गु. र.क्र.३०२/०६ कलम ३५३, ३०७ भा.द.वि. सह कलम ३, २५, २७ भा.ह.का अन्वये गुन्हा नोंदविण्यात आला. तसेच वर्सोवा पो.ठाणे येथे पो.नि. सुर्यवंशी यांनी फायर केलेल्या दोन गोळयांचा रिकाम्या पुगळया स.पो.नि. पांलांडे व सरवणकर यांनी फायर केलेली प्रत्येकी एक गोळीची पुगळी पंचनामान्वये ताब्यात घेण्यात आली.	

English Translation of the above station diary entry reads thus:

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03.35 hrs	*As per Reference Station Diary Number 25/06 dated 11.11.2006, P.I. Suryawanshi, A.P.I. Palande, Sarvankar, P.S.I. Patade and constables who had proceeded to the place near Nana Nani Park, Juhu Versova Link Road, Saat Bungalow, Andheri (W) for ascertaining the information which they had received and for arresting the Accused wanted in a serious offence, have returned and are reporting that on the date 11.11.2006, Police Inspector Pradeep Suryawanshi received information from special informer that Ramnarayan @ Lakhanbhaiya Vishwanath Gupta, age : 38 years, the absconding Accused of Chhota Rajan Gang, wanted in many serious offences like murder, dacoity, robbery and extortion, was going to come at Nana Nani Park, Saat Bungalow, Andheri (W), Mumbai to meet his accomplices.* *He immediately gave the said information to the Superior Officer and as per his guidance and instructions, he, with the help of A.P.I. Sartape, Police Sub-Inspector Harpude and P.N. B.No. 26645, and P.I. Suryawanshi, A.P.I. Palande, Sarvankar, P.S.I. Patade, P.H.C. B. No. 18839, 26645, P.C. B.No.10502, thus all the Officers and constables proceeded to the above-mentioned place, they formed two groups and lied in wait at different places*	*Police Inspector - Suryawanshi, Assistant Police Inspector – Palande, Sarvankar, Police Sub Inspector – Patade and Police Personnel, thus all, have returned from Nana Nani Park, Seven Bungalows, Andheri after verifying and ascertaining the information that they had received and notorious gangster Ramnarayan Vishwanath Gupta, age : 38 years has been injured* ***in firing and is declared dead before admission in Cooper Hospital.***

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	near Nana Nani Park at 19.10 hrs. At around 20.10 hrs, the above-mentioned absconded and wanted Accused by name Ramnarayan @ Lakhanbhaiyya Vishwanath Gupta got down from an autorikshaw near Nana Nani Park. Thereupon, the aforesaid informer identified him and gave a signal. Thereupon, when the above-mentioned Officers and Constables proceeded ahead to arrest him, the said Accused took out a revolver with him, tucked to his waist and pointed it. At that time, the above-mentioned Officers and Constables told him that they were the Police personnel and asked him to surrender. Thereupon, the said Accused started firing. He, by disregarding the warning given by the Police, again started firing and therefore, when the Police fired at him in self defence and for the safety of the passers by, he got grievously injured. ***At that time, the Police personnel fired in self defence and for the safety of the passers by in which the Police Inspector Pradeep Suryawanshi fired two bullets and A.P.I. Sarvankar, Palande fired one bullet each from their service revolvers and A.P.I. Sartape fired one bullet from his pistol.*** *When the said injured Accused was taken to Cooper Hospital for medical treatment, the Doctor there declared him dead before admission.* *On recording detailed panchnama in*	

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	respect of the dead body of the deceased Accused, total seven bullet injuries were found on his dead body. *On recording panchnama in respect of the place of incident, the revolver of the said Accused person was seized after the incident.* *An offence has been registered vide C.R. No.302/06 under sections 353, 307 of the IPC r/w Sections 3, 25, 24 of the Indian Arms Act with Versova Police Station.* *Further, empty cartridges of two bullets fired by P.I. Suryawanshi and the cartridges of one bullet each fired by A.P.I. Palande and Sarvankar have been taken into possession under panchnama in Versova Police Station.* *(emphasis supplied)*	

(Names disclosed in the station diary entry are of Pradeep Suryawanshi @ Nana **(A9),** Dilip Palande (**A15),** Arvind Sarvankar **(A22),** Anand Patade (**A18),** Nitin Sartape (**A11),** Ganesh Harpude (**A17)** and Pandurang Kokam-P.C. No. 26645 (**A19**), Prakash Kadam-PHC B.No. 18839 **(A16)** and Devidas Gangaram Hari Sakpal- PC B.No.10502 **(A13)**.

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161 The said entries were made by **A15. A15** has not disputed C.R. No.302/2006 or firing at the deceased. The same will be further evident from the evidence on record i.e. manipulation of records, to show that it was a genuine encounter.

f. Revolver and railway tickets planted on the deceased

162 According to the prosecution, the appellants/accused, planted a revolver to cover up the fake encounter. He submitted that after the alleged encounter, Mr. Sawant, a fingerprint expert was summoned to examine the fingerprints on the revolver from which Ramnarayan allegedly fired, however, no fingerprints were found on the same. The learned counsel for the appellants refuted the said submission. They submitted that merely because no fingerprints were found on the weapon, would not, by itself, bolster the prosecution case that Ramnarayan did not fire from the same. It was submitted that there was no reason for the police to falsely come with a theory of Ramnarayan firing at them, when infact the circumstances show that it was genuine encounter.

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163 The evidence on record shows that no fingerprints were found on the said revolver. The same has also not been seriously disputed by the appellants/accused. The said evidence is further corroborated by the evidence of PW86. It appears that handwash of both the hands of the deceased (Ramnarayan) was taken at the time when he was at Cooper Hospital, however, the results were inconclusive. According to the prosecution, the same fortifies their case that the alleged weapon purportedly used by the deceased was never fired by him and was infact planted. If the said evidence is accepted, the defence theory that the deceased fired at the appellants/accused and in response, they fired at the deceased, will have to be rejected outright. It is clear from Exh.-284 that no fingerprints were found on the weapon allegedly used by the deceased i.e. revolver (Article 49) and the CA report (Exh.-290) also reveals that result of the handwash of the deceased was inconclusive. Thus, there is substance in the

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prosecution case that no bullets were fired as alleged by the appellants/accused and that the weapon appears to have been planted on the deceased.

164 It is the prosecution case that not only was the weapon planted on the deceased to show that he fired at the appellants/accused, as a result of which, they were constrained to fire at him, but the police also planted railway tickets on the person of the deceased, to show that he had travelled from Sanpada to Masjid/Mulund/Bandra (via Wadala) and from Bombay Central to Jogeshwari. There appears to be substance with respect to planting of railway tickets on the deceased, having regard to the following circumstances; (i) It is pertinent to note that Dr. Sunil Shinde (PW11) of Cooper Hospital had made necessary entries with respect to the articles found in the possession of the deceased. Exh. 174A i.e the MLC register reads thus:

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No.	Date and month of admission	Hour of Admission	Name	Caste	Age	Sex	Brought by	Occup-ation	Resid-ence
22278	5.11.06/ 42521/	9:00 pm	Ramnarayan Vishwanath Gupta		38 Yrs.	Male	PC 970043/ Versova		
				Property *Cash* *100X9 = 900* *10X1 = 10* *5X1 = 2* *2X1 = 2* *2X1 = 2* *--------* *919/-* *Wallet X I* *Telephone Diary*					

If injury, nature, causes of injury	Initials of the Medical Officer on Duty	Remarks
Pt. brought dead to casualty by PC 970043, Versova, alleged h/o bullet injuries over body at Nanipark, Versova at 8.15 p.m. today C/B Pulse – absent, Respiration – absent Ht – absent Pupils – dilated fixed NRTL 1. Circular puncture wound 1 cm forehead fresh.		

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2. Circular puncture wound 1 cm Rt. ant. Chest 4th ICS above nipple. 3. Circular puncture wound 1 cm 2nd ICS Lt. ant. chest, fresh. 4. Circular puncture wound 1 cm Lt. 4th ICS anteriorly fresh. 5. Circular punctured exit wound Rt. 3rd ICS posteriorly fresh 1 cm. 6. Circular punctured exit wound posteriorly 1 cm fresh Lt. body of scapula.		

165 The description of the articles found on the person of the deceased as stated in the MLC register were handed over to PW51-Anil More. In the said description, there is no mention of any railway ticket being found on the person of the deceased.

166 Similarly, in the station diary entry (Exh.-285A and Exh.-12), there is no mention of any railway ticket. The said station diary entry was made by PSI Vijay Jadhav on the

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directions of PW39-PI Sankhe. Infact, PW39 in his deposition, has stated that the station diary entry i.e Exh.- 285A was made after the muddemal entry (Exh.-299A) in Muddemal Register was effected. Exh.- 285A and Exh.-299A read thus ;

Exhibit- 285A

दिनांक	१२/११/०६ घटना	शेरा
०२.००	(१) संदर्भ ठाणे दैनंदिनी क्रमांक, ३८/०६ व ३०२/०६ दिनांक ११.११.०६ अन्वये रवाना झालेले पो.नि. संखे, इतर अधिकारी व अंमलदार पोलीस ठाण्यास येऊन निवेदन करतात की गु. र. क्र. ३०२/०६ कलम ३०७, ३५३, भादविसह ३, २५, २७ भा.ह.का. या गुन्हयातील घटनास्थळाचा दोन पंचांसमक्ष पंचनामा करण्यात आला त्याचप्रमाणे घटनास्थळाचे खाजगी छायाचित्रकारा मार्फत छायाचित्रे घेण्यात आले. त्याचप्रमाणे घटनास्थळी मिळून आलेल्या वस्तू सीलबंद करून ताब्यात घेण्यात आल्या. १. एक मेड इन जपान असे एका बाजूस कोरलेले रिव्हाल्वर २. रिव्हाल्वर मधील दोन जिवंत काडतुसे त्यावर KF32S $ WL तळास हॅमर मार्क असलेले. ३. रिव्हाल्वर मधील दोन रिकामी पितळी पुंगळया यांच्या तळाशी KF32S $ WL असे मार्किंग असून तळाशी हॅमर मार्क आहे. ४. घटनास्थळी पडलेली एक रिकामी पितळी पुंगळी त्यावर KF94 9mm 22 असे मार्किंग.	गु. क्र. ३०२/०६ कलम ३०७, ३५३, भादविचा घटनास्थळ व इन्क्वेस्ट पंचनामा करून परत ताब्यात घेतलेल्या वस्तू

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	५. रक्त भरलेली एक बाटली. ६. माती मिश्रित रक्त असलेली एक बाटली. ७. माती भरलेली एक बाटली.	
	त्याचप्रमाणे सदर गुन्हयातील मयत आरोपी नामे, रामनारायण उर्फ लखनभैया विश्वनाथ गुप्ता याचा मृतदेहाचा इन्क्वेस्ट पंचनामा करण्यात आला असून सदर मृतदेहाच्या शरीरावर खालील प्रमाणे जखमा होत्या. १. कपाळावर मध्यभागी अर्धा से.मी.व्यासाची खोल जखम. २. उजव्या कानाच्या पाळीच्या आतील भागात १/२ से.मी. व्यासाची जखम. ३. उजव्या स्तनाग्रहाच्या वर २ १/२" अंतरावर अर्ध्या से.मी. व्यासाची जखम. ४. डाव्या स्तनाग्रहाच्या वर तिरप्या बाजूस छातीच्या मध्य भागापासून २" अंतरावर अर्ध्या से.मी. व्यासाची जखम. ५. सदर जखमेच्या वर १" अंतरावर अर्ध्या से.मी. जखम. ६. पाठीस उजव्या बाजूस खुब्याजवळ १ से.मी. व्यासाची जखम. ७. पाठीस डाव्या बाजूच्या खुब्याजवळ १ से.मी. व्यासाची जखम. सदर मृतदेहाचे खाजगी छायाचित्रकारा कडून विहित कोनातून छायाचित्रे काढली. त्याचप्रमाण मृतदेहाचे कपडे व त्याच्या पॅन्टच्या खिश्यात मिळालेले पॉकेट, त्यातील रोख रू.९२०.७५ पैसे व टेलिफोन डायरी ताब्यात घेण्यात आली तसेच स्ट्रेचर वरील रक्त दोन बाटल्यामध्ये व वर्सोवा १ मोबाईल मध्ये साठलेल्या रक्ताची एक बाटली नमुना म्हणून घेण्यात	इन्क्वेस्ट पंचनामा जखमा ताब्यात घेतलेल्या वस्तू मुद्देमाल क.

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	आल्या. वर नमूद प्रमाणे ताब्यात घेण्यात आलेल्या वस्तूंची नोंद आयपीसी मुद्देमाल नोंद क्र.१४८/०६ प्रमाणे घेण्यात आलेली आहे. सदर गुन्हयातील घटना स्थळावर मिळून आलेल्या रिव्हॉलवरची अंगुलीमुद्रा तज्ञ श्री. सावंत यांच्याकडून तपासणी करण्यात आली असून त्यावर ठसे मिळून आले नाहीत. सदर अपमृत्यू संदर्भात अपमृत्यू नोंद क्र.५५/०६ प्रमाणे नोंद घेण्यात आली असून आरोपींच्या वारसांचा शोध घेऊन त्यांना कळविण्याची तजविज ठेवलेली आहे. सदरचा मृतदेह जे.जे.रूग्णालय येथे पाठविण्याची तजवीज ठेवलेली आहे.	१४८/०६ अन्वये नोंद अपमृत्यू क्र. ५५/०६ अन्वये नोंद

English Translation of **Exhibit- 285A** reads thus:

Date	*12/11/2006 Incident*	*Remarks*
02:00	*(5) Police Inspector Sankhe, other Officers and constabulary Police Staff, who had proceeded as per the Reference Station Diary Entry Nos. 38/06 and 302/06, dated 11.11.2006, have returned to the Police Station and state that panchnama of the Place of the Incident concerned in the Offence bearing C.R. No. 302/2006, under Sections 307, 353 of the IPC read with Sections 3, 25, 27 of the Indian Arms Act has been drawn in the presence of two Panch Witnesses and that the articles that were found at the Place of the Incident have been sealed and have been taken into possession as under:*	*Returned after having drawn panchnama of the Place of the Incident and the Inquest panchnama concerned in the Offence bearing C. R. No. 302/2006, under Sections 307, 353 of the IPC.*

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1)	*One Revolver having engraved thereon as "Made in Japan" on its one side.*	*Articles taken into possession.*
2)	*Two live cartridges from the Revolver having thereon a marking KF32S $ WL and a "Hammer" mark at its bottom.*	
3)	*Two empty brass cartridges from the Revolver having a marking viz. KF32S $ WL and a "Hammer" mark at its bottom.*	
4)	*One empty brass cartridge having a marking viz. KF94 9mm 22 thereon, found lying at the place of the incident*	
5)	*One bottle containing blood.*	
6)	*One bottle containing blood mixed soil.*	
7)	*One bottle containing soil.*	

Similarly, Inquest panchnama of the dead body of the deceased Accused by name Ramnarayan alias Lakhanbhaiya Vishwanath Gupta, involved in the said offence, has been drawn and following injuries have been noticed on the body of said deceased.

1)	*A deep injury of the size of half cm. diameter at the centre of the forehead.*	
2)	*An injury of the size of half cm. diameter at the internal portion of the right earlobe.*	
3)	*An injury of the size of half cm. diameter at the distance of 2 ½" above the right*	*Injuries*

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	nipple.	
4)	*An injury of the size of half cm. diameter at the distance of 2" away from the centre of the chest and by the side of and above the left nipple.*	
5)	*An injury of the size of half cm. at a distance of 1" above the said injury.*	
6)	*An injury of the size of 1 cm. diameter on the back, on right side near the shoulder-joint.*	
7)	*An injury of the size of 1 cm. diameter on the back, on left side near the shoulder-joint.*	
Photographs of the said dead body, from various angles, have been got clicked from a private photographer. ***Similarly, the clothes of the said deceased and the wallet, the cash amount of Rs.920.75 and a telephone diary found therein in his pant-pocket have been taken into possession.*** *Further, the blood spilt on the stretcher has been collected in two bottles and the blood spilt and accumulated in Versova-1 Mobile Van has been collected in one bottle as a sample.* *(emphasis supplied)*		
The entry about the muddemal articles that have been taken into possession as mentioned above has been made in the I.P.C. Muddemal		

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	Register at Entry No. 148/2006.	
	The revolver that was found at the place of the incident concerned in the said offence has been got examined from the Finger Print Expert by name Shri Sawant, however, no finger-print has been found thereon.	
	An entry in respect of the said accidental death has been made as per the Accidental Death Entry No. 55/06 and arrangement has been made to trace the relatives of the said Accused and to intimate them. Further, arrangement has been made to send the said dead body to J.J. Hospital.	

EXHIBIT 299A

१	खटला क्रमांक २	जप्तीचा दिनांक ३	मालमत्ता ४	(जेथे मालमत्ता ठेवली त) अभिरक्षा स्थान ५	विल्हेवाटी संबंधी शेरा ६
१४८/०६ पो.नि. संखे	गुन्हा नोंद क्रमांक ३०२/	ठाणे दैनंदीनी नोंद क्रमाक	रविवार दिनांक १२/११/०६ अ) घटनास्थळी मिळून आलेल्या वस्तू खालीलप्रमाणे	सेफ स्टोअर	जा.क्र. ६५२३/०६ दि. १३/११/२००६ अन्वये सी.ए.करीता पाठविला.

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पो.ह. क्र. २२३० ८	०६, कलम ३०७, ३५३, भादवी सह कलम ३,२५, २७, भाहका मुद्देमाल व अहवाल आणला	/०६ दिनांक / /	१) एक "MADE IN JAPAN" असे एक बाजूस कोरलेले रिवोव्हर २) रिव्हालव्हर मधील दोन जिवंत काडतुसे त्यावर KF- ३२५ $ WL व तळास हॅमर मार्क असलेले ३) रिव्हालव्हर मधील दोन रिकामे पितळी पुगळया त्यांच्या तळाशी KF- ३२५ $ WL असे मार्किग असून तळाशी हॅमर मार्क आहे. ४) घटनास्थळी पडलेली एक रिकामी पितळी पुगळी त्यावर KF-९४ TMM-२२ असे मार्किग ५) रक्त भरलेली एक बाटली. ६) माती मिश्रीत रक्त भरलेली एक बाटली ७) माती भरलेली एक बाटली ब) इन्क्वेस्ट पंचनाम्यामध्ये ताब्यात घेतलेल्या वस्तू		जावक क्रमांक १५७/०९ दि. १९/१२/०९ सदरचा मुद्देमाल मा. पोलीस उप आयुक्त वि.

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EX 299 A			खालीलप्रमाणे १) स्ट्रेचरवरील रक्त भरलेली बाटली. २) स्ट्रेचरवरील रक्त भरलेली दुसरी बाटली ३) करडया रंगाचा फुल शर्ट ४) करडया रंगाची फुल पॅन्ट ५) सफेद सॅडो बनियान ६) निळसर रंगाचा जॅगा ७) ब्राउन रंगाची बुट जोड ८) ब्राउन रंगाची पर्स त्यामध्ये १००रू ९ नोटा, १० रू. एक नोट, ५ रू. एक कॉईन, २ रू. चे दोन कॉईन, २५ पैशांची सात नाणी, एकूण ९२०.७५ व एक टेलीफोन डायरी, दोन रेल्वे तिकीट ९) वर्सोवा वन मोबाईल मध्ये सांडलेले रक्त भरलेली बाटली.		तपासी पथक मधिल श्री. चाळके यांचे ताब्यात दि. १९/१२/०९ रोजी देण्यात आला. ठाणे दैनदिनी क्रमांक २०/०९ सदरचा मुद्देमाल जा.क्र. ८१९३/वर्सोवा/०९ दि.१९/१२/०९ अन्वये मा. पोलीस उप आयुक्त वि. तपासी पथक मधिल श्री. चाळके यांचे ताब्यात देण्यात आला.

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English translation of Exhibit – 299A reads thus;

1	*Case No.* *2*	*Date of Seizure* *3*	*Muddemal* *4*	*Place where Muddemal is kept* *5*	*Remarks regarding disposal* *6*
148/06 P.I. Sankhe P.C.No. 22308	*Crime Reg.No. 302/06, registered under sections 307, 353 of the IPC r/w Sections 3,25,27 of the Indian Arms Act.*	*Station Diary Entry No. --/06 Date : --/--/---- Brought muddemal articles and report.*	*Sunday, the Date 12/11/06* ***A)*** *Articles found at the place of incident are as under :* ***1)*** *One Revolver having engraved thereon as 'Dankam Pad Shranchand' at its one side,* ***2)*** *Two live cartridges from the revolver having the marking viz. '(unintelligible) 325 + (unintelligible)' and having hammer mark at its bottom.* ***3)*** *Two empty brass cartridges from the revolver having the marking viz.*	*Safe stores*	*As per letter bearing outward No.6523/06 dated 13.11.2006, muddemal is sent for C.A.*

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			'(unintelligible) 325 + (unintelligible)' and having a hammer mark at its bottom. ***4)*** *One empty brass cartridge lying at the place of incident having a marking viz. '(unintelligible)94 (Unintelligible) 22' thereon,* ***5)*** *One bottle containing blood* ***6)*** *One bottle containing blood mixed soil* ***7)*** *One bottle containing soil.* ***B) Articles taken in to possession under Inquest panchnama.*** ***1)*** *Bottle containing blood from stretcher* ***2)*** *Another bottle containing blood from stretcher* ***3)*** *Grey coloured full sleeves shirt* ***4)*** *Grey coloured full pant*		*As per outward No. 157/09 dated 19.12.2009, the said muddemal is handed over in the possession of Shri Chalke from the Sp. Investigation Team of the Deputy Commissioner of Police, on the date 19.12.09* *Station Diary No. 20/09* *As per outward No. 157/09 dated 19.12.2009, the said muddemal is handed over in the possession of Shri Chalke*
EXHIBIT 299-A					

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			5) White 'SANDO' banian *6) Bluish coloured underwear* *7) A pair of Brown coloured shoes* *8) Brown coloured purse containing 9 currency notes of the denomination of Rs.100/-,* *one currency note of the denomination of Rs.10/-,* *one coin of the denomination of Rs.5/-,* *2 coins of the denomination of Rs.2/-,* *7 coins of the denomination of paise 25/-,* *Total amount Rs.919/-,* *one telephone diary,* ***two railway tickets.*** *9) bottle containing blood spilled in and collected from Versova one mobile van.*		*from the Sp. Investigation Team of the Deputy Commissioner of Police.*

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(i) The aforesaid discrepancy in Exhibits 285A and 299A would show that someone had planted the railway ticket receipt in the Muddemal Register, since the station diary entry Exh.-285 did not mention the railway ticket.

(iii) Also in the forwarding letter dated 13th November 2006 of Versova Police Station to FSL in respect of articles (Exh.-294 and 294A), there is no mention of any railway ticket.

g. Pool of blood not proportionate to injuries

167 With respect to pool of blood of 1 foot diameter being found at the spot, it is the prosecution case that the same was highly impossible and improbable, considering the number of wounds sustained by the deceased i.e. one on his forehead, one on his right finger and two on the chest. Admittedly, as seen from the documents/evidence on record, the pool of blood was only 1

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foot diameter. Considering the nature and place of injuries sustained i.e. on the temple and the left atrium of heart and aorta (injury Nos.1 and 4 in the PM report), it is highly improbable that one would find only a 1 feet diameter pool of blood.

168 In this context, it would be necessary to place on record the evidence of PW29-Dr. Gajanan Chavan, the doctor who conducted the post-mortem on the deceased (Ramnarayan). PW29 in his evidence has stated that he conducted the post-mortem on 12th November 2006, from 00.30 hrs to 1:30 hrs. The PM Report is at Exh.-237. Column 17 of the PM Report reveals the following injuries:

> *a) Firearm entry wound over centre of forehead of size 0.8 cm circular inverted margins with 0.1 cm abrasion collar situated 5 cm above nasion (joining portion of upper portion of nose and forehead) and 15 cm from right ear lobule. No evidence of tattooing, singeing, burning, blackening seen. On dissection, bullet passed through skin, subcutaneous tissue, frontal bone with punched in appearance directed backwards and to right side and passed through right frontal lobe and lodged in right temporal lobe. One deformed bullet was retrieved from there. All the track was lacerated and haemorrhagic*

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b) Firearm entry wound over right ear pinna of size 0.8 cm diameter, nearly circular inverted irregular margins with abrasion collar at places. No evidence of tattooing, singeing. burning, blackening seen. On dissection, bullet passed through skin, cartilage of ear, temporal bone with punched in 15 appearance, temporal lobe right and lodged in right occipital lobe. One deformed bullet was retrieved from there. All the track was lacerated and haemorrhagic.

c) Firearm entry wound over right side of chest anteriorly of size 0.8 cm circular inverted margins with 0.1 cm abrasion collar situated 10 cm from midline and 7 cm below clavicle and 6 cm above nipple. No evidence of tattooing, singeing, burning, blackening seen. On dissection, bullet passed through skin, subcutaneous tissue, third intercostal muscle through middle and lower lobes of right lung and passed out through third intercostal space posteriorly over back through firearm exit wound of size 1 cm diameter everted margins situated 135 m below shoulder and 9 cm from midline. All the track was lacerated and haemorrhagic.

d) Firearm entry wound over left anterior chest of size 0.7 cm diameter circular inverted margins with 1 cm abrasion collar situated 4 cm from midline and 8 cm below left clavicle. No evidence of tattooing, singeing, burning, blackening seen. On dissection, bullet passed backwards through skin, subcutaneous tissue, third intercostal muscles through left atrium in anterio posterior direction, descending aorta and lodged in paraspinal muscles of left side. One intact bullet retrieved from there. All the track was lacerated and haemorrhagic.

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e) Firearm entry wound over left side of chest of size 0.8 cm diameter circular inverted margins with 0.1 cm abrasion collar situated 5 cm from midline and 10 cm below clavicle. No evidence of tattooing, singeing, burning, blackening seen. On dissection, bullet passed through skin, subcutaneous tissue, fourth intercostal muscles through lower lobes of left hung directed posteriorly and passed out through fourth intercostal muscles of back through firearm exit wound situated over left back of size 1 cm diameter everted margins situated 14.5 cm from midline and 15 cm below left shoulder. All the track was lacerated and haemorrhagic.

169 In the PM report, the cause of death is stated to be "Haemorrhage and Shock due to multiple firearm injuries. (Un-natural)"

170 PW29 found that 500 CC of blood in each pleural cavity of thorax; right lung middle and lower lobe were found lacerated and haemorrhage in the track; left lung lower lobe was found lacerated and haemorrhage in the track and about 500 CC clotted blood was seen in pericardial cavity. The left atrium was found to be ruptured. The details of the injuries were stated on separate sheets. PW29 has also deposed to what was noticed

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by him in detail with respect to internal examination.

170.1 PW29 has stated that all the 5 injuries are individually and collectively sufficient to cause death of a person in normal course. He has further deposed that Injury Nos.1, 2 and 4 in Exh.-237 would cause sudden instantaneous death. He has further stated that Injury No.4 was relating to left atrium of heart and aorta would lead to profuse bleeding out of all injuries and that the other injuries would be bleeding injuries, but less in intensity than injury No.4. He has further deposed that in case of Injury Nos.1, 2 and 4, sudden shock would result and being injuries to vital organs, the person would not be upright and may collapse.

170.2 Although, the said witness was cross-examined on the nature of injuries sustained by the deceased, nothing material is brought on record, so as to disbelieve PW29's testimony.

171 Thus, having regard to the nature of injuries sustained

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by Ramnarayan and the evidence that has come on record, it is highly improbable that there would be only 1 pool of blood of around 1 foot diameter. No droplets were also seen, since deceased was allegedly taken in a vehicle nor any blood stained clothes of the persons who carried Ramnarayan, seized.

h. Map of Nana Nani Park falsifies the case of a genuine encounter

172 The map as reproduced herein-above and which is not disputed by any of the parties, crystalises the two spots where Group-1 and Group-2 were waiting and the positions taken by them i.e. one opposite Magnum Building and one at the Trishul Building end. These are the positions taken by A9 and his team members as per C.R. No. 302/2006. If from the said two spots as alleged, the deceased was fired at, it would be highly improbable and impossible for the deceased to sustain the said wounds. The ballistic report of PW86-Gautam Ghadge also falsifies the firing by some of the appellants/accused from a distance of around 40

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feet, as alleged in C.R. No. 302/2006. (**A9** is the first informant of CR No. 302/2006).

173 According to the ballistic report, the firing was done at a distance of around 2 feet. According to **A9**, Group-1 consisted of himself, **A11, A13, A19, A16** and **A18,** who were positioned at Magnum Opus building end. According to **A9**, he fired 2 rounds and **A11** one round.

174 According to **A9**, Group-2 consisted of **A2, A3, A15, A17, A20** and **A22** and the said group was positioned at the Trishul Building end. According to **A9, A22** and **A15** fired from the said end at the deceased.

175 Between the position of Group-1 and Group-2, there is a road on which regular traffic moves and the deceased was across the said road and after being shot at from across the road (40 feet distance), he fell near an electric pole being KVV

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13/0.61. From the ballistic expert's report and the map relied upon by **A9**, it becomes evident that it was highly impossible to fire at the deceased from the positions as alleged by **A9** and by some of the appellants/accused, more particularly, when there was a road between them and the deceased, on which, there is usually heavy regular traffic, without endangering the lives of people on the road.

176 Although, according to **A9** and CR No.302/2006, **A9, A11, A15** and **A22** fired at the deceased, it is the prosecution case that the said claim as far as **A11** and **A22** are concerned, is false and the same is evident from the ballistic expert's report i.e. PW86. During the course of trial, after receipt of the ballistic report, both, **A11** and **A22** challenged the taking of weapon from the Arms Division and also of surrendering one round less after the alleged encounter. However, the ballistic expert's report which is at Exh.-658 shows that the empty found on the spot matched with **Article-23** i.e. weapon of **A2** and not with the

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weapon of **A11**. Similarly, the empty produced by **A22** matched with **Article-69**, weapon of **OA1**, who was not shown as a member of the encounter team. The ballistic report and the evidence of PW86 clearly shows that the bullets were fired by **A2** and **OA1** from their weapons and not by **A11** and **A22,** as alleged by **A9** (C.R.No.302/2006).

(ix) Distance of Firing

177 According to **A9,** the complainant in C.R. No.302/2006, the incident of firing took place at Nana Nani Park from a distance of about 40 feet across the road. In this connection **A9** has annexed a map to the additional affidavit, which we have reproduced earlier. Whereas, according to the ballistic expert's report and evidence, the bullets were fired at a distance of about 2 meters. The same is borne out by the evidence of ballistic expert as well as the ballistic report, which is at Exh.-658 (colly). Thus, the ballistic expert report and the

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evidence reveal that the firing was done at the distance of about 2 meters and not as alleged by **A9** in C.R. No.302/2006. We will deal with the same in detail, while considering the ballistic expert evidence.

i. Empty found near Magnum Opus

178 As far as empty (Exh.-114) from **A2's** weapon found near Magnum Opus Building is concerned, the finding of the said empty would demolish the theory of the appellants/accused that it was a genuine encounter. We have already mentioned the accused who were part of Group-1 and Group-2, as per C.R. No. 302/2006, the earlier part. According to the spot panchnama, one empty was found near Magnum Opus Building. It appears from the Ballistic Expert's Report that the empty found on the spot near Magnum Opus Building fired from **A2's** weapon i.e. one 9mm calibre pistol auto, having body No. 15179116, Butt No. 786, (Exh. 7), belonged to **A2** (Exh.-114 is the said empty). The analysis/report of the ballistic expert shows that Exh.-14 i.e.

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empty was fired from Exh.-7 (weapon). According to C.R No. 302/2006, **A2** was at Trishul Building in Group-2, whereas according to the spot panchnama, the empty was found near Magnum Opus Building, completely on the opposite side. We may note, that if **A2** was opposite Trishul Building, the empty should have been found near Trishul Building and not near Magnum Opus Building. The same further fortifies the falsity of the FIR lodged by **A9**.

179 In the Ballistic Report at Exh.-1, Column 5, it is stated that one brass empty having mark KF 94 9MM 92 was seized from the place of incident. In the entry at Exh.-656 i.e. original letter dated 19th December 2009 sent by DCP, SIT, Mumbai, to the C.A, Mumbai, it is mentioned as KF-9MM-2z-94. According to the ballistic examination report (Exh.-658), Exh.-7 i.e. **A2's** weapon and Exh.-14 i.e. one 9mm pistol empty having indentation on the cap and head stamp markings KF 9mm 2Z 94, as also in Exh.-251, which is the earlier report dated 18th August

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2007, the empty is mentioned as KF 9mm 2z 94. Similarly, in Exh.-299A, the empty in Muddemal Register, it is mentioned as KF 94 9mm 2Z. The aforesaid documents would go to show that the empty found at the spot was not replaced with another empty, whilst sending it to FSL for examination.

j. Defence Witness

180 It is the prosecution case that a false story of contacting passers-by and Western Control Room for help to carry the deceased, was also created by the appellants/accused to support their case of a genuine encounter. According to the prosecution, there are no eye-witnesses to the alleged encounter, inasmuch as, no such encounter had taken place as alleged. It is the prosecution case, that the appellants/accused planted DW1-Manohar Kulpe as a witness, to show his presence at the spot, with a view to create evidence. It is submitted by the learned Spl.P.P that even if the evidence of DW1 is perused, his evidence lacks credibility, making him an unreliable witness.

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181 DW1-Manohar Kulpe has in fact contradicted the encounter theory. DW1 was examined by **A7** as a defence witness. DW1 has, in his evidence, stated that on 11th November 2006, in the evening he was proceeding to his residence at Santacruz to meet his friend at Yari Road; that when he was near the Nana Nani Park at about 20:00 to 20:15 hrs. he heard noise, like that of fire crackers; that he stopped his vehicle to the left of the road; that he saw one person holding a gun in his hand under the street light pole and saw him falling backwards; that the street light as well as the head lights of his vehicle were on; that he saw some persons rushing towards the said person from his right side; that one of the person came to him and told that they were police personnel and that one person has to be taken to the hospital; that he told the said person that he did not want to get involved in the matter; that the said person asked him his name and landline number; that pursuant thereto, he took a U-turn and proceeded to his home; that when he

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reached home at about 21:15 hrs. he watched on T.V that there was an encounter at Nana Nani Park.

181.1 That on 12th November 2006, Sankhe (PW39) from Versova Police Station called him to the said police station; that he received a call on his landline number; that when he reached the police station, Mr. Sankhe asked him his name and address and made inquiry with him with respect to the incident dated 11th November 2006 and accordingly, recorded his statement; that again in 2007, he received a letter from the Collector Officer, pursuant to which his statement was again recorded; that in 2009, he received two summons from the Railway Mobile Court, Andheri, pursuant to which his statements were recorded; that he received a summon from SIT, pursuant to which his statement was recorded again, with respect to the incident of 11th November 2006. The said witness has identified the statement made before the Magistrate dated 23rd December 2009, as incorrect.

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181.2 The said witness was extensively cross-examined by the learned Spl. PP with respect to the license of the tourist permit, since he was plying his vehicle as a Tourist Vehicle, to which he replied that he did not have a tourist permit; that the booking of the vehicle would be done on the mobile XXXXXX7724 which stood in the name of his son. He has stated that he would use the said mobile of his son for booking of the vehicle, however, on the day of the incident, he had not carried the mobile. He has stated that the general public would book his vehicle and that he used to travel to Ratnagiri, Sawantwadi and several areas from Konkan. The said witness although questioned that he had visited Saperli in Khed with **A15** on several occasions, has denied the said suggestion. He has stated that if one wants to go to Nana Nani Park, one has to take a left turn to Juhu–Versova Link Road; that Nana Nani Park has a length of 300 meters; that there are two roads on two sides of Nana Nani Park; that it is correct to state that there was always

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two-way traffic at Juhu, Versova Link Road in the year 2006; as well as two way traffic on the road running to the right of Nana Nani Park; that it was correct to state that there is always heavy traffic after office hours and on the weekend along side Nana Nani Park. The said witness has denied his association with **A15-** Dilip Palande. He has stated that he does not remember that there was any vehicle behind and around his vehicle when he was near Juhu–Versova Link Road near Nana Nani Park.

181.3 DW1, in his cross-examination has further stated that he does not remember as to whether those 5 to 6 persons had weapons in their hands. He has admitted in his cross that those 5 to 6 persons went by his right side, at a distance of 20 ft. from his vehicle. He has further admitted that though headlights of his vehicle were on, he did not see any weapon in the hands of those 5 to 6 persons. He has further admitted in his cross that he did not see the pool of blood, where the person had fallen down.

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181.4 It is pertinent to note that there is material omission with respect to what DW1 has stated in his examination-in-chief i.e. *"I saw one person holding a gun in his hand, under the street light pole and saw him falling backwards"* with respect to the statement recorded on 12th November 2009. The omission is with respect to the words "holding a gun in his hand" and "backwards". There is also an omission in the statement dated 12th November 2006, with respect to having witnessed the incident in the street light as well as the head lights of the vehicle. Similarly, there are several other omissions.

182 Certain omissions recorded in the evidence of DW1 were brought on record through PW39, since he had recorded the statement of DW1-Manohar Kulpe.

183 Thus, from the evidence as stated aforesaid and the evidence that has already come on record, we find it difficult to place any reliance, much less, implicit reliance on this witness.

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The said witness appears to be a completely got-up witness planted by the appellants-accused in support of their case of a genuine encounter. We have already set out the reasons in detail, for holding that no such encounter as alleged by the prosecution had taken place.

184 Keeping in mind, from the evidence that has come on record, as discussed herein-above, we find that the prosecution has proved beyond reasonable doubt, that Ramnarayan was killed brutally in cold blood by the accused, when he was in their custody and that to cover up the same, given it a colour of a genuine encounter. All circumstances and evidence adduced by the prosecution clearly points to their complicity and leaves absolutely no room for doubt, the possibility of it being a genuine encounter. As noted by us earlier, once the prosecution had successfully proved that Ramnarayan and Anil Bheda were abducted by the accused, the onus shifted on the accused, to prove to the contrary. However, the prosecution on its own

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steam and merit has also proved that Ramnarayan was killed by the police, by trigger happy cops, and the same was made to look like a genuine encounter.

185 The said evidence that Ramnarayan was killed, is also borne out by the Ballistic Evidence. The said evidence will reveal that the deceased was shot at a distance of about 2 feet, whereas, according to C.R. No.302/2006, the distance would be around 40 feet. Thus, we now proceed to consider the next circumstance relied upon by the prosecution i.e. Ballistic/Forensic Evidence.

iv. BALLISTIC EVIDENCE/FORENSIC EVIDENCE

a. Weapon History

186 Each weapon allotted to the accused can be separately identified by the butt number and the manufacturing number of the weapon. A weapon history register is maintained in the Magazine Section, where there is a separate sheet for each and

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every weapon. The weapons allotted to the accused, with which we are concerned, are as under:

OA1 – Butt no. 347 (Exh. 8)

A2 – Butt no. 786 (Exh. 7)

A9 – Butt no. 475 (Exh. 1)

A11 – Butt no. 2912 (Exh. 5)

A15 – Butt no. 624 (Exh. 4)

A18 – Butt no. 294 (Exh. 3)

A22 – Butt no. 468 (Exh. 2)

187 The prosecution, in support of the same, has examined four witnesses i.e. PW22-Vishnu Khatal, District Hawaldar attached to D.N. Nagar Police Station; PW23-Shavaka Tadvi, District Hawaldar attached to D.N. Nagar Police Station; PW17-Hanumant Kambli, Police Hawaldar attached to Versova Police Station; and PW19-Jyotiram Phasale, District Hawaldar attached to Versova Police Station.

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b. Allotment and Deposit of Arms and Ammunition in C.R. No. 302/2006

As far as allotment of arms and ammunition is concerned the following witnesses were examined;

188 **PW17-Hanumant Kambli** has deposed that on 11th November 2006, Nitin Sartape **(A11)** asked him to allot him a pistol, pursuant to which, he handed over one pistol i.e. (**Butt No. 2912** and 6 rounds of ammunition), to **A11**, on 11th November 2006. The said witness has produced the relevant station diary entry made in support thereof i.e. Exh.-197. Admittedly, **A11** does not dispute issuance of a revolver and six rounds to him, by PW17.

189 **PW22-Vishnu Khatal** was attached to D.N. Nagar Police Station as District Hawaldar at the relevant time. He has

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stated that he made station diary entries in his own handwriting in the Register marked as Exhibits 216, 217, 218 and 219. He has stated that on 11th November 2006 at 6:00 hrs, he handed over 1 revolver bearing **Butt No. 475** and 6 rounds to **A9**; and 1 revolver bearing **Butt No. 468** and 5 rounds to API Sarvankar (**A22**); 1 revolver bearing **Butt No.624** and 6 rounds to Palande (**A15**) and 1 revolver bearing **Butt No. 294** and 6 ammunition to Patade (**A18**). Admittedly, **A9** does not dispute issuance of a revolver and 6 rounds to him, by PW22-Vishnu Khatal. It appears from the evidence of this witness that all the three appellants/accused i.e. **A9, A15** and **A18** have signed having received weapons and rounds, however, inadvertently, the signature of **A22** was not taken. The said witness has produced the entries made in the station diary (Exh. 218-A and Exh. 219-A respectively).

It is pertinent to note, only **A22** has denied taking arms. Rest have not denied taking arms and ammunition.

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190 As far as deposit of arms and ammunition in the very said C.R. are concerned, the same are stated to have been deposited on 12th November 2006, the details are as under:

191 **PW23-Shavaka Tadvi,** who was attached to D.N. Nagar Police Station, at the relevant time, has deposed that **A9** surrendered 4 rounds and that 2 rounds were less. The reason given was that an encounter had taken place within the limits of Versova Police Station, in which, 2 rounds were fired. **A9** surrendered the weapon and 4 rounds at D.N. Nagar Police Station and accordingly, there is an entry made in the station diary at Exh. 221-A. PW23 has further stated that **A9** produced 2 bullet shells (Article 46 Colly.) which were seized and sealed under a panchnama (Exh. 279) by Mohandas Sankhe (PW39), on 12th November 2006.

191.1 PW23 has further deposed that on 12th November 2006, **A22** surrendered 4 rounds and that there was 1 round less.

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The reason given was that an encounter had taken place within the limits of Versova Police Station and one round was fired. The said surrender of bullets is recorded in the station diary entry which is at Exh.-222, the relevant entry being marked in red ink (Exh.-217).

191.2 According to PW23, on 12th November 2006, **A15** surrendered 5 rounds i.e. 1 round less. The reason being that an encounter had taken place within the limits of Versova Police Station and that one round was fired in the said encounter. The said entry was made in station diary Exh.-223 and relevant entry was marked as Exh.-280 in red ink.

191.3 PW23 has further deposed that **A18** also surrendered 6 rounds on 12th November 2006 and no round was found less. The said entry is at Exh. 224-A.

191.4 **PW17-Hanumant Kambli** was attached to Versova

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Police Station at the relevant time, as Police Hawaldar. He has stated that **A11** asked him to allot him a pistol. Accordingly, he handed over one pistol and 6 rounds to **A11** and that **A11** signed on the Register marked as Exh.-197, copy of the same is marked as Exh. 197A. He has identified the said entry as being in his handwriting. Although it is suggested to PW17 that he did not allot any weapon to **A11,** the said witness has denied the said suggestion. Infact, **A11** in his 313 (Question No.109 has accepted the said evidence of PW17 with respect to handing over the weapon to him.

192 **PW19-Jyotiram Phasale** was attached to Versova Police Station as District Hawaldar at the relevant time. He has deposed that at about 22:00 hrs. on 11th November 2006, **A11** deposited pistol **Butt No. 2912** and 5 rounds (one round less) with him i.e. at Versova Police Station. PW19 has stated that **A11**, on inquiry, had informed him that one round was fired in Versova C.R No. 302/2006 relating to an encounter; that there is

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an entry in the station diary when weapons are allotted; that an entry regarding deposit/return of one pistol and 5 rounds was made at Exh. 202, but there are no counter signatures thereon. (**A11** refused to answer the said question No. 111 in his 313 statement (Exh.-932).

193 As per C.R No. 302/2006, **A9** fired 2 bullets; **A11** - 1 Bullet; **A15** – 1 bullet; and **A22** - 1 bullet. However, the FSL report shows that the bullet fired from **A11** was infact fired from **A2's** weapon and the bullet fired from **A22's** weapon is stated to have been fired from **OA1's** weapon.

(It may be noted that no weapons were sent to FSL in C.R. No. 302/2006 and came to be sent only after registration of the present CR).

194 Three bullets were retrieved from the body of Ramnarayan. The FSL report shows that one bullet was fired from **OA1's** weapon; one from **A9's** weapon and one from **A15's**

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weapon. It appears that only after the FSL report was received that **A11** and **A22** disputed firing on the deceased or of taking the weapons.

195 The evidence of PW23-Shavaka Tadvi attached to the D.N. Nagar Police Station, District Hawaldar revealed that on 12th November 2006, he received arms from **A9, A15, A18** and **A22.** The said witness has given details of the arms received i.e. Exhibits 216 to 219 and Exh. 221. There is no cross whatsoever on the same or on para 3, wherein, it is stated that less rounds were produced by the said accused.

c. Investigation vis-a-vis the weapons

PW60 - Maruti Y Patil

196 PW60-Maruti Patil was attached to the Magazine Section at Naigaon Armory Depot at the relevant time. He has deposed with respect to giving and handing over of weapons and

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seizure of weapons by SIT. He has stated that there is a weapon history register maintained in Magazine Section, where entry of arms and ammunition allotted to police stations/police officers/police personnel as well as arms and ammunition deposited by police stations/police officers/police personnel is taken down. He has further stated that there is a separate sheet for each and every weapon and a particular weapon can be identified by its butt number and the manufacturing number of the weapon. He has further stated that the rounds are accepted/deposited and that even if one round is less, the same is to be accounted for. He has given history of the weapons of **OA1, A2, A9, A11, A15, A18 and A22.** According to PW60, **OA1, A2** and **A15** had got weapons allotted in their own names. He has stated that Butt No.786 was with **A2** on 11th November 2006 and that the said weapon was with **A2** from 2004 to 2009. It appears from the FSL report that **A2** fired from his weapon.

196.1 It also appears that **A11** has denied firing only on

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receipt of the FSL report, though the FIR i.e. C.R. No.302/2006, lodged by **A9** says that **A11** fired at the deceased. From the FSL report and the evidence of PW86, it appears that **A11's** bullet was used by **A2** in his weapon and therefore, **A2's** rounds were intact, whereas, **A11** deposited 29 bullets instead of 30 bullets. According to the prosecution, **A11** took 30 bullets but deposited 29, as one was used in C.R. No.302/2006, whereas **A2** took 30 bullets and deposited 30. It appears that **A2** took 1 round from **A11** and shot from his **(A2's)** weapon.

196.2 According to PW60, the weapons were given to PI Gaonkar (PW109) in connection with the present C.R. He has stated that **A15** was given weapon (Butt No.624) on 5th November 1998 and **A22** (Butt No.468). He submitted that each Butt number has a history and as such the history assumes importance since it discloses utilization of the said weapon, with whom the custody of the weapon is, and whether any firing is done from the said weapon. From the evidence of PW60, it

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appears that the weapon used by **A22** i.e. Butt No.468 was with the D.N. Nagar Police Station; that **A22** took his weapon and 5 bullets from D.N. Nagar Police Station and returned 4 bullets; that the empty was returned by **A22** after he allegedly firing. The FSL report (Exh. 658 colly) shows that the said empty returned by **A22** was fired from **OA1's** weapon. **A9's** butt history is set out in Butt No.475 and **OA1's** butt history is set out in Butt No.347. From a perusal of the Butt History of **OA1's** weapon, it appears that on 30th August 2022, **OA1** was dismissed from service and was asked to deposit his weapon with Dharavi Police Station. Accordingly, **OA1** deposited the said weapon with PW56. The said weapon was deposited by **OA1** with Dharavi Police Station on 12th December 2009. Exh. 491A gives the description of the weapon and 6 rounds submitted by **OA1**. PW60 has stated the rounds given every year. According to **A2**, he submitted 30 rounds, hence according to him he could not have fired. A letter dated 5th December 2009 (Exh. – 493) bearing signature of Senior P.I. of Arms and Ammunition Branch, for getting live bullets to

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match the empties fired from revolver (Butt No.786) of **A2,** was sent. A letter dated 4th December 2009 was also sent with respect to **OA1's** weapon (Exh. 495). It appears from the letter dated 9th December 2009 marked as Exh. 496 (colly) that the weapon and ammunition were collected from Naigaon and the weapons were accepted on 10th December 2009.

PW66 – Shabbir Mehaboob Sayyad

197 PW66-Shabbir Sayyad was attached to the Magazine Section, Armory Division, Naigaon. In para 3 of his evidence, he has given how weapon history register is maintained; how he handed over pistol i.e. Pistol Butt No.2912 of 2011 (weapon used by **A11)** and Butt No.624 (weapon used by **A15),** to PSI–Billare, Versova Police Station. In paragraphs 15 to 17 of his evidence, he has stated that he had handed over revolver and 30 rounds to **OA1**.

PW67 – Manoj Desai:

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198 PW67 – Manoj Desai, was attached to Magazine Section, Armory Division, Naigaon, at the relevant time i.e. during the period 2002 to 2005. He has stated that he gave weapons to D.N. Nagar Police i.e. Butt No. 468 (which was used by **A22**); Butt No.475 (which was used by **A9**) and Butt No.294 (used by **A18**). As far as Butt Nos. 468 and 475 used by **A22** and **A9** are concerned, it is alleged that the said weapons were fired from. As far as Butt No. 294 used by **A18** is concerned, the said weapon was not fired from. According to PW61, **OA1** had deposited a .38 T.T. Revolver, Butt No.700 and had taken Butt No.347 on 24th December 2001.

PW80 – Pravin Baliram Bhosale

199 PW80-Pravin Bhosale was attached to the Magazine Section, Armory Naigaon, at the relevant time. The said witness was examined to prove the allotment of pistol i.e. Butt No.786 to

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A2 with 30 rounds.

PW98 – Sandeep Ganpatrao Dal:

200 PW98-Sandeep Dal was attached to the Armory Section, Naigaon, as Senior P.I. at the relevant time. The said witness has produced the original copies of the register sought by SIT, pursuant to a letter addressed by them in the present C.R. He has stated that empties of revolver and pistol were also handed over to SIT. He has also proved the correspondence exchanged between SIT and the concerned department. The said witness i.e. PW98 has proved letter (Exh.-714) sent by K.M.M. Prasanna, Dy. CP to the Addl. CP, Armed Police Force, Naigaon and letter (Exh.-715) sent by Sr.PI (Armory), Naigaon to the Addl.CP, Armed Police Force, Naigon, Mumbai, regarding getting information about the firearms for the purpose of investigation in CR No.246/2009.

PW28 – Bapurao Sangappa Fulare

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201 PW28-Bapurao Fulare was examined by the prosecution, being a panch to the seizure of arms from Naigaon Division with respect to the arms of **A2, A9, A11, A15, A18** and **A22**. The said witness has also spoken about the ammunition provided of the same batch as the empty. The said panchnama is dated 10th December 2019 being Exh. – 232, with respect to the seizure of 7 weapons.

PW34 – Shamsuddin Mohd. Yunus Ansari

202 PW34-Shamsuddin Ansari, another panch, was examined by the prosecution with respect to collection of the weapon of **OA1** from Naigaon and the seizure of the said weapon i.e. panchnama (Exh. 261).

203 With respect to seizure of arms and ammunition and other investigation carried out, the prosecution examined 4 witnesses i.e. the Investigating Officers - PW107, PW108, PW109 and PW110.

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PW107 – Manoj Laxman Chalke

204 PW107-Manoj Chalke is one of the Investigating Officer. He has deposed with respect to sealing of weapons i.e. 4 revolvers and 3 pistols; with respect to the Muddemal Register at Versova Police Station; with respect to arrest of **OA1** on 7th January 2010. The said witness was cross-examined with respect to the statement of Anil Bheda being recorded by SIT for the first time on 3rd September 2009; the statement recorded of Gangadhar Sawant, Fingerprint expert on 27th October 2009 and the First Report dated 12th November 2006 given by the said Fingerprint Expert at the spot; with respect to Railway Ticket etc.

PW108 – Vinay Baburao Ghorpade

205 PW108-Vinay Ghorpade, another Investigating Officer was examined to show that he had recorded PW1's complaint i.e. FIR being Exh. – 121, pursuant to which, C.R.

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No.246/2009 was registered for production of faxes and telegrams, sketch of the spot. The said witness had taken Anil Bheda to Andheri Court to have his statement recorded; arrested Tanaji Desai **(A2),** Shailendra Pandey @ Pinky **(A4),** Hitesh Solanki @ Dhabbu **(A5**) and Akhil Khan @ Bobby **(A6)** on 7th November 2011; had taken the articles to the FSL Kalina; had arrested Sunil Solanki **(A10)** on 9th March 2010; had visited Trisha Collections and prepared a running panchnama (Exh. 753) as disclosed by Anil Bheda to him i.e. from the time of abduction till he was taken to D.N. Nagar Police Station; sealing of 6 rounds of a revolver which were in the name of **OA1,** from Dharavi Police Station etc.

206 PW107 and PW108 were cross-examined at length. The said officers stood their ground and as such, there is nothing in their testimony to disbelieve the investigation carried out by them.

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PW109 – Sunil Sahadev Gaonkar

207 PW109-Sunil Gaonkar, another Investigating Officer has also deposed with respect to the investigation carried out by him.

PW110 – K.M.M. Prasanna

208 The head of the SIT– K.M.M. Prasanna was examined by the prosecution as PW110. He had deposed with respect to the letters addressed by SIT to various authorities; with respect to SIT's letter to Versova Police Station dated 4th November 2011 (Exh. 840 seeking information of Arms and Ammunition), reply received from the Versova Police Station dated 6th November 2009 (Exh. – 841).

208.1 PW110 has in his evidence deposed that default report was made against PW39 for preparing false spot panchnama in C.R. No. 302/2006. He has further deposed about

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the actions taken against the then ACP Suryawanshi, D.N. Nagar Division (brother of A9) and Avdhoot Chavan, the then PI, D.N. Nagar Police Station. He has deposed that Avdhoot Chavan, on the instructions of the then ACP Suryawanshi, had prepared three letters with the assistance of his writer in his office, addressed to the Chief Metropolitan Magistrate, Mumbai, seeking orders to record the statements of some witnesses in Versova Police Station in CR No.302/2006 and had signed the said letters on behalf of the then Sr.PI of D.N. Nagar Police Station.

d. Movements of Weapons, Arms and Ammunition

209 At this stage, it will be apposite to place on record the movement of weapons, arms and ammunition. According to PW39- PI Mohandas Sankhe, during the course of investigation of C.R No. 302/2006, he seized, labelled and sealed 2 empties (Article 46) produced by A9. The station diary entry is at Exh. 282 and the panchnama of empties is at Exh. 279. It also appears that during the investigation of the said C.R, PW39 seized,

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labelled and sealed 9 mm empty (Article 57 Colly.). The station diary entry is at Exh. 287 and panchnama of the empty is at Exh. 86.

210 It further appears that PW39 also seized, labelled and sealed 1 empty (Article 63 Colly.) in C.R.No. 302/2006, which was produced by Arvind Sarvankar **(A22).** The station diary entry to that effect is at Exh. 287 and panchnama of the empty is at Exh. 286. It also appears that in the very same C.R, PW39 seized, labelled and sealed 1 empty (Article 60 Colly.) produced by **A15**. The station diary entry is at Exh. 287 and panchnama of the empty is at Exh. 286.

211 According to PW71, Dattatray Koyte, on 12th November 2006, at the request of PW39, he acted as a panch to the deposition of empty cartridges produced by **A15** and **A22.** The articles are Article 60 and Article 63 respectively and the panchnama is at Exh. 286.

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212 According to PW11-Dr. Sunil Shinde, Casualty Medical Officer working at Cooper Hospital, on 11th November 2016, he was working in night shift since 20:00 hrs, which ended on the next day at 8:00 hrs. PW11 has deposed that the police brought a patient involved in a medico legal case i.e. Ramnarayan Gupta was brought to Casualty by PC No. 970043 of Versova Police Station. There is an entry in the original MLC Register of Cooper Hospital, which is exhibited through this witness and the same is at Exh. 174 and 174-A. According to PW11, said entry was made in the MLC Register No. 45/2006 at serial No. 22278 on page No. 139. He has stated that on examination, the patient was found to be dead. PW11 noticed 6 injuries on the said patient.

> "*1. Circular puncture wound about 1 cm over forehead, fresh in nature*
>
> *2. Circular puncture wound about 1 cm over right anterior chest, fourth inter costal space, above nipple, fresh in nature*
>
> *3. Circular puncture wound about 1 cm in left anterior*

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chest, second inter costal space, fresh in nature

4. Circular puncture wound about 1 cm in left fourth inter costal space, anteriorly, fresh in nature

5. Circular puncture exit wound, over right third inter costal space, posteriorly, fresh in nature

6. Circular puncture wound about 1 cm posteriorly, over left body of scapula, fresh in nature."

213 According to PW29-Dr. Gajanan Chavan, on 12th November 2006, he along with Dr. S. M. Chavan, conducted post-mortem on the dead body (Ramnarayan Gupta), which was sent by PSI Jadhav of Versova Police Station and brought by PC 960428. The post-mortem report was exhibited as Exh. 237. PW29 has stated that at the time of post-mortem, he retrieved 3 bullets from the body of the deceased; that he collected 2 bottles containing blood; 2 bottles containing water-like liquid and 1 bottle containing 3 bullets. He has stated that he handed over 4 forms to be given to the Chemical Analyser, FSL to Mr. Kailas Devrao Ekilwale (PW21). The said witness has identified the 4 forms handed over by him, which have been exhibited as

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Exhibits 211 (blood form), 212 (blood form), 213 (hand wash form) and 214 (bullet form).

214 It thus appears from the aforesaid evidence that the prosecution has duly proved the movement of weapons; of arms and ammunition and seizure of articles.

e. Link evidence and Ballistic Expert's Evidence

PW29 - Dr Gajanan Shejrao Chavan -

215 PW29-Dr. Gajanan Chavan was working in J.J. Hospital since December 1998. He has deposed that as a part of his duty, he also worked in the J.J. Post-mortem centre attached to the J.J. hospital; that on 12th November 2006, while he was on duty, one dead body of Ramnarayan Vishwanath Gupta was sent by PSI Jadhav of Versova PS and was brought by PC 960428 along with panchnama and ADR form and documents; that he had conducted Post-mortem of said body from 00:30 hrs. to 1:30

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hrs.

215.1 He has further deposed that hand-wash for ballistic examination was preserved; that the three bullets retrieved were also forwarded to FSL and all the five injuries were ante mortem in nature and were fresh; that the blood, hand-wash liquid and bullets were collected in proper containers and the same were labeled and sealed and forwarded with appropriate forms to the FSL through police. He deposed that the said three bullets marked as **Article 30/1 to 30/3** were sent to the FSL in a glass bottle and the said bottle was sealed after affixing string; that the bottle marked as Article 29 bears label in his handwriting and his signature, noting that the bottle contains 3 bullets.

PW21 - Kailas Devrao Ekilwale

216 PW21-Kailas Ekilwale was deputed at Versova Police Station since November 2006. In November 2006, he was

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assigned duty of primary investigation. He has deposed that on 12th November 2006, he was handed over 5 sealed bottles by PW29-Dr. Gajanan Shejrao Chavan i.e. 2 bottles containing blood, 2 bottles containing water like liquid and 1 bottle containing 3 bullets. He has further deposed that four forms were handed over to him, to be given to the Chemical Analyser, FSL and his signatures were obtained on the copies of the forms, as acknowledgment thereof. He has stated that he signed the said forms in acknowledgment of the receipt of these articles and forms on the front side marked as `A' on each form. The said four forms received by him were exhibited as Exhibits 211 (blood form), 212 (blood form), 213 (hand-wash form) and 214 (bullet form).

216.1 PW21 has stated that he carried the articles and forms to the police station and handed over the same to PI–Sankhe (PW39), of Versova Police Station.

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PW39 - Mohandas Narayan Sankhe

217 PW39-Mohandas Sankhe has deposed that when he received articles from PW21 on 13th November 2006, he forwarded the viscera bottles and the seized articles to the FSL; that he forwarded the said property to the FSL under five letters through PW53-Vishwajit Chavan and PW91-Sudu Pattade. The five items forwarded by PW39 are (I) Hand-wash of the deceased (Exh.–290) ; (ii) Blood for alcohol (Exh. – 291); one sealed bottle of 3 bullets (Exh.–292) (iv) Blood for blood grouping (Exh.–293) (v) Letter to the C.A. by Sr.PI of Versova Police Station dated 13th November 2006.

PW53 - Vishwajit Manohar Chavan

218 PW53-Vishwajit Chavan was attached to Versova Police Station as Police Constable, since November 2005. According to PW53, he met Sudu Pattade (PW91) Store keeper

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on 13th November 2006. He has stated that thereafter they took articles seized by the police and some bottles sent by J.J. Hospital to Kalina for chemical analysis. The said muddemal was in respect of C.R. No.302/2006 of Versova Police Station and that the hospital papers (4 in numbers), police station papers (4 in numbers) and bottles were with him. The said witness has identified the same (Exhibits 290 to 293) and the documents (Exhibits – 211 to 214), already exhibited through PW29-Dr. Gajanan Chavan.

PW91 - Sudu Krushna Pattade:

219 PW91-Sudu Pattade was attached to Versova Police Station as ASI since 4th June 2004 till 30th June 2009. He has deposed that he had the charge in the capacity of Muddemal Store Keeper in Versova Police Station. He has deposed that on 13th November 2006, he took 15 sealed packets alongwith a letter to FSL, Kalina, Mumbai and there is an entry made in the Station

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Diary to that effect i.e. Exh. 297(A). The said entry is in the handwriting of Mr. Pradhan, as per his (PW91's) instructions. Exh. 297(A) is the station diary entry No.25/06 dated 13th November 2006 of Versova Police Station regarding dispatch of muddemal to FSL.

220 It appears from the evidence of PW29-Dr.Gajanan Chavan that he gave five sealed bottles i.e., two bottles containing blood, two bottles containing water like liquid and one bottle containing three bullets, to PW21 who in turn gave these articles to PW39, which were sent to FSL through PW53 and PW91. Admittedly, as noted above no weapons were sent to FSL, in C.R. No.302/2006.

PW86 – Gautam Natha Ghadge:

221 PW86–Gautam Ghadge was working as Scientific Assistant and was promoted as Assistant Chemical Analyzer in the year 2008. He has deposed that a forwarding letter No.6523/2006

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dated 13th November 2006 (Exh. 294-A) was brought by ASI Patade **(A18)** of Versova Police Station, which was initially received by Mahesh Khavanekar, who, later on, handed over the same to PW86. He has submitted that Dr. (Ms). Deshpande, the then Assistant Chemical Analyser, Kalina received 15 sealed parcels on 13th November 2006 and marked them as Exhibits 1 to 15. Dr. (Ms.) Deshpande, effected the entry of BL/938/2006 in the Entry Register and kept the sealed packets in the Strong Room. Before keeping the same in the Strong Room, the sealed packets were opened. The said 15 sealed parcels sent along with the forwarding letter (Exh. 294-A), in connection with C.R.No. 302/2006 were-

Parcel (1) (Exh.-1), One 6 Chambered country made revolver having crude markings made in Japan. (allegedly used by the deceased).

Parcel (2) (Exh.-2), 2 Two .32 – inch revolver cartridges having light indentation on the caps and head stamp marking KF .32 S & WL and RP .32 S & WL. (allegedly used by the deceased).

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Parcel (3) (Exh.-3), Two KF .32 – Inch S & WL revolver empties having indentation on the caps. (**A18's** weapon)

Parcel (4) (Exh.-4), One 9mm pistol having indentation on cap and head stamp marking KF9 mm 2z.94. (**A15's** weapon)

Parcel (5A & 5B) (Exh. 8), Two .38" revolver empties having indentation on cap & head stamp marking KF.380.2.90. (**OA1's** weapon)

Parcel (6) (Exh. 9), Two .38" revolver empties having indentation on cap & head stamp marking KF.380.2.01 (**A15's** weapon)

Parcel (7) (Exh. 10), Two .38" revolver empties having indentation on cap & head stamp marking KF.380.2.98. (**A22's** weapon)

Parcel (8) (Exh. A), Reddish liquid in a phial.

Parcel (9) (Exh. B), Reddish liquid in a phial.

Parcel (l0A) (Exh. C), Full Bush Shirt (Cut)

Parcel (l0B) (Exh. C), Full Pant

Parcel (10C) (Exh. C), Sando banian (Cut)

Parcel (10D) (Exh. C), Underwear (Cut)

Parcel (11A & 11B), (Exh. D), A pair of shoes

Parcel (12) (Exh. E), Reddish liquid in a phial

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Parcel (13) (Exh. 5). Reddish liquid in a phial

Parcel (14) (Exh. 6), Earth mixed with reddish liquid in phial

Parcel (15) (Exh. 7), Earth in a Phial

The reports Exhibits 251 (251A), 253 (253A), 254 (254A) were exhibited through this witness.

222 The ML Case No. BL/939/2006 is with respect to three deformed copper jacketed bullets having rifling marks, put in the bottle having label and seal of JJ PM Center i.e. of the deceased, were marked as Exhibits lA to IC. The details of the said Exhibits are as under:

Exh. 292 is the forwarding letter dated 12th December 2006 bearing Outward No. 6522/06 from Versova Police Station to FSL in C.R.No. 302/2006 in respect of one sealed bottle of 3 bullets.

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Exh. 292A is the letter dated 12th November 2006 to JJ PM Center, Byculla, Mumbai in C.R. No. 302/06 in respect of one sealed bottle of 3 bullets.

Exh.292B is the forwarding letter dated 12th December 2006 bearing Outward No.6522/2006 from Versova Police Station to FSL in CR.No. 302/2006 in respect of one sealed bottle of 3 bullets (fired by deceased).

The M.L Case No.BL/940/2006 pertains to two sealed bottles containing handwash of the deceased having label and seal of JJ PM Center. There is an entry in the entry register which is marked as Exhibits 1 and 2.

Exh. 290 is the forwarding letter dated 12th December 2006 from Versova Police Station to FSL in C.R No. 302/2006 in respect of handwash of deceased's right and left hand.

Exh. 290A is the letter dated 12th November 2006 from J.J. P.M Center, Byculla, to the Chemical Analyzer, State

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Government, Mumbai, in C.R. No. 302/2006 (ADR No. 55/2006) of the deceased.

223 PW86–Gautam Ghadge started analysis on all articles under ML Case No.BL/938/2006 on 28th May 2007; ML Case Nos. BL/939/2006 and BL/940/2006 on 30th May 2007 and thereafter, he prepared the reports vide Exhibits 251 (251 A), 253 (253A) and 254 (254A).

The relevant portion from Exh. 251 (251-A) reads thus :

"-----Exhibit 1 is a six chambered country made revolver in working condition. It is capable of chambering and firing .32" revolver cartridges. Residue of fired ammunition-nitrite-was detected in barrel washing of revolver exhibit 1, showing that the revolver was used for firing prior to its receipt in the laboratory.-----

----Two .32" revolver cartridges available in the laboratory were successfully test fired from the revolver exhibit 1.----

----The .32" revolver cartridges in exhibit 2 having light indentation on the caps and not suitable for comparison of firing pin impression----

----The empties in exhibit 3A and 3B are the fired 32" revolver cartridge cases. The characteristic features of the firing pin impression observed under comparison microscope on the empties in exhibit 3A and 3B tally among them-selves and on

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those cartridges test fired from the revolver exhibit 1, showing that these empties in exhibit 3A and 3B have been fired from the country made revolver exhibit 1----

----The empty in exhibit 4 is a fired 9 mm pistol cartridge case----

----The empties in exhibit 5A, 5B, 6 and 7 are the fired .38" revolver cartridge cases----

----The detection of metallic copper and lead in absence of blackening and powder residues around periphery of encircled shot holes on full bush shirt exhibit 10A and corresponding shot holes on sandow banian exhibit 10C are consistent with the passage and wipe of copper jacketed bullets having been fired from beyond the powder range of the weapon-----

----Shot holes were not observed on full pant exhibit 10B and underwear exhibit 10D.----"

The relevant portion from Exh. 253 (253-A) reads thus :

"---- In absence of control samples, results for detection of gun shot residues in turbid liquid in Exhibit 1 and 2 are inconclusive.----"

The relevant portion from Exh. 254 (254-A) reads thus :

"---- The deformed copper jacketed bullets in Exhibit 1A to 1C are the fired .38" caliber revolver bullets.----"

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224 As far as seizure of articles and FSL evidence in the present **C.R i.e. 246/2009 by SIT** is concerned, the prosecution has relied on the evidence of PW99-Suresh Nalawade, PW39-Manoj Chalke and PW86-Gautam Ghadge.

PW99 - Suresh Jagannath Nalawade:

225 PW99-Suresh Nalawade, was attached to Versova Police Station as Sr. PI, at the relevant time. He has stated that he received a letter dated 17th December 2009 (Exh. – 717) for handing over muddemal (6 packets) in a sealed condition to Mr. Manoj Laxman Chalke (PW107) vide his letter dated 19th December 2009 (Exh. 718). Exh. - 717 is the letter of SIT dated 17th December 2009 bearing O.W. No. 156/2009 addressed to Sr. PI Versova Police Station to hand over Muddemal in C.R. No. 302/2006 and Exhibits 717 /718 is the covering letter dated 19th December 2009 bearing O.W. No. 8193/09 of Sr. PI. Versova for handing over Muddemal to DCP SIT.

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PW107 - Manoj Laxman Chalke:

226 PW107 - Manoj Chalke, the Investigating Officer in the present C.R. has deposed that on 19th December 2009, he went to Versova Police Station, to receive Muddemal required in investigation of C.R. No. 246/2009 from C.R. No. 302/2006; that PW99-Suresh Nalawade handed over muddemal (6 packets) in a sealed condition to him. He has stated that he also collected 13 other sealed parcels i.e. Muddemal from C.R. No. 246/2009, which were deposited with the Muddemal Karkun of Versova Police Station, for safe custody. He has deposed that he took custody of 19 sealed packets and deposited the same at FSL, Kalina on the very day i.e. on 19th December 2009.

227 PW86-Gautam Ghadge has deposed that on 19th December 2009, original letter bearing O.W No.157/2009 addressed to Chemical Analyzer, Mumbai-98, was sent by DCP,

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SIT, Mumbai (PW110-K. M.M. Prasanna). Exh. 656 (colly) is the original letter dated 19th December 2009 by SIT to FSL, Kalina, for chemical analysis. The said original letter (Exh.–656A) and the parcels were received by Mahesh Khavanekar. 19 sealed parcels alongwith the said forwarding letter of Mr. K.M.M. Prasanna (PW110) were sent to FSL, as per PW107-Manoj Chalke. The said forwarding letter and all Exhibits therewith, were allotted number BL/975/2009 by PW86.

228 Report dated 2nd February 2010 from FSL, Kalina regarding chemical examination in ML Case No. BL/975/2009 in C.R. No. 246/2009 alongwith photographs and negatives (three roles) were marked as Exh. 658 (colly). The said 19 parcels sent to the FSL were as under :

Parcel - 1 (Exh.1) - One six chambered .38" caliber revolver having body no ....0539 butt no. 475 marking RUGER POLICE SERVICE - SICX CAL .380 (Article no- 15) bears cello

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tape label bearing no. BL-975/09 Exh. 01.

Article 25 original label of Versova Police Station, CR.No. 246/2009, BL/975/2009 Exh. 01 is in his handwriting on the label **(Envelop marked** Exh. **90).**

Parcel 2 (Exh.2) - One Six chambered .39-inch caliber revolver having body No. 00532 butt No. 468 and marking RUGER POLICE SERVICE - SICX CAL .380 yellow tag label BL/975/2009 Exh. 2 Article.16, Wrapper Article No. 26, office seal Article 91.

Parcel - 3 (Exh.3) - One six chambered .38" caliber revolver having body No. V720936, butt no. 294 & marking SMITH & WESSON .38 S & W CTG MADE IN U.S.A, **Article 17.** Cello tape label BL/975/2009 Exh. 03,Wrapper Article 27.

Parcel - 4 (Exh.4) - One Six chambered .38" caliber revolver having body no N405648 butt no. 624 and marking TITAN

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TIGER CAL. 38 PL FIE CORP MIAMI FLA, **Article 18,** bears cello tape label mentioned BL/975/2009 Exh. 4, Article 28 label of the police station on wrapper.

Parcel - 5 (Exh.5) - One 9 mm Caliber pistol having body No. 16112478 butt No. 2912 and making PISTOL AUTO 9 mm lA RFI, **Article 19** cello tape label written BL/975/2009, Wrapper article 20.

Parcel - 6 (Exh.6) - One 9 mm Caliber pistol having body No. 16112181 butt No. 2915 marking PISTOL AUTO 9MM lA RFI, Article 21 bears cello tape label mentioned BL/975/2009, Police station label Article 22.

Parcel - 7 (Exh.7) - One 9 mm Caliber pistol having body No. 15179116 butt No. 786 marking PISTOL AUTO 9MM lA RFI, **Article 23** cello tape label written BL/975/2009, Police station label Article 24.

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Parcel - 8 (Exh.8) - One Six chambered .38" caliber revolver having body no 161-21934 butt no. 347 and marking RUGER POLICE SERVICE - SICX CAL .380, **Article 69** bears cello tape label written BL/975/2009, Article 44 wrapper with label of police station.

Parcel - 9 (Exh.9) - Ten intact .38 revolver cartridges - head stamp marking KF .380 2 90, Cartridges (Article 32/1), Three (3) live cartridges (KF .380 2 90), **Article 32/2** were Five (5) fired cartridges (KF .380 2 90), **Article 32/3 -** two (2) test fired cartridges, **Article 32/4**- five test fired lead with copper jacketed bullets having rifling marks connected with **Article 32/2, Articles 32/5** was two test fired bullets lead with copper jacketed having rifling marks. Connected to **Article 32/3.**

Parcel - 10, Exh.10, (Pradarshit 'H') - Ten intact .38" revolver cartridges having head stamp markings KF .380 2 90., **Article 34/1** contained five intact .38" revc-!ver cartridges

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(KF .380 2 90.), **Article 34/2** - five test fired cartridges (empties), **Article 34/3** - five test fired bullets lead with copper jacketed bullets.

Parcel - 11, Exh.11, (Pradarshit 'H') - Ten intact .38" revolver cartridges having head stamp markings KF .380 2 98, **Article 36/1** two intact. 38" revolver cartridges (KF .380 298), **Article 36/2** three test fired cartridges (Empties) (KF .380 2 98.), **Article 36/3** five test fired cartridges (empties) (KF .380 2 98.), **Article 36/4** five test fired copper jacketed bullets (lead with copper). **Article 36/5** three test fired copper jacketed bullets (lead with copper).

Parcel - 12, Exh.12, (Pradarshit 'I')- Ten intact .38" revolver cartridges having head stamp markings KF .380 2 01, **Article 40/1** - three intact cartridges .38" revolver cartridges having head (stamp markings KF .380 2 01), **Article 40/2** were seven test fired cartridges(empties) having head (stamp markings KF .380 2 01 on

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all empties.). **Article 40/3** - five test fired lead with copper jacketed bullets, **Article 40/4** - two test fired lead with copper jacketed bullets.

Parcel - 13, Exh.13, (Pradarshit 'L') were ten intact 9 mm pistol cartridges having head stamp markings KF, 9 mm, 2 Z, 94, **Article 38/1-** one attempted to fire 9 mm pistol cartridge having indentation on the cap and head stamp markings KF 9 mm 2 Z 94., **Article 38/2** were three test fired cartridges of 9 mm pistol cartridges (Empties), stamp markings KF 9 mm 2 Z 94, **Article 38/3** -three test fired 9 mm pistol cartridges (empties), having head stamp marking, KF 9 mm 2 Z 94, **Article 38/4** were three test fired 9 mm pistol cartridges (empties) having head stamp marking KF 9 mm 2 Z 94, **Article 38/5** three test fired lead with copper jacketed bullets. **Article 38/6** were three test fired lead with copper jacketed bullets. **Article 38/7** test fired lead with copper jacketed bullets.

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Exh. - 14 - one 9 mm Pistol empty having indentation on the cap and head stamp marking KF9 MM 2Z 94, Written Versova PSTN ADR 55/2006, Cr.No. 302/2006, BL/938/2006, **Article** 57.

Exh. - 15 & 15B (Marked during receiving the Exhibits) **Article 46,** two .38 revolver empties are having indentation on the caps and head stamp marking KF 380 2 90 wrapped in paper labelled BL 938/2006, **Exh. 5A *&* 5B** (Marked at the time returning Muddemal to ASI Patade), sealed condition labelled Versova PSTN ADR 55/2006 CR/306/2006.

Exh. 16 - One .38" revolver empty marking KF.380 2 01, bears label Versova PSTN ADR 55/2006 CR/306/2006, BL/938/2006, **Exh. 06** written at the time of returning the Muddemal to Versova police station though ASI Pattade. **(Article** 16) (Marked during receiving the Exhibits).

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Exh. 17 - One .38 revolver empty having indentation on the cap & Head stamp marking KF .380 2 98 Versova PSTN ADR 55/2006 CR/306/2006, BL/938/2006, **Exh.07** Written at the time of returning the Muddemal to Versova police station though ASI Pattade. Exh. 17 (Marked during receiving the Exhibits).

Exh.18A, - **(Article 89)** (30/1, 30/2, 30/3) one deformed copper jacketed bullet having rifling marks. Exh. **18B** one deformed copper jacketed bullet having rifling marks 18C is one deformed copper jacketed bullet having rifling marks Versova PSTN ADR 55/2006 CR/306/2006, BL/938/2006,

Exh. 1A to 1C were written at the time of returning the Muddemal to Versova police station, though ASI Pattade **(A18)**. The said exhibits were marked as **18A** to **18C** (Marked during receiving the Exhibits).

Exh.19A - (Full Shirt) **Article 73**, labelled BL/938/2006 Ex.10A.

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19B (Full pant) **Article 77,** labelled BL/938/2006 Ex.10B.

19C (Sando Banian) **Article 81,** labelled BL/938/2006 EX.10C.

19D (Underwear) **Article 85,** labelled BL/938/2006 Ex.10D.

229 It is a matter of record that Muddemal articles and FSL report were handed over to Mr. Vinay Baburao Ghorpade (PW108), SIT on **2nd February 2010.** The FSL Report is marked as Exh. **658** (colly). The said FSL Report reads thus :

RESULTS OF ANALYSIS

Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4 and Exhibit 8 are the six chambered .38" caliber revolvers in working condition. .....

Randomly selected five .38" revolver cartridges from Exhibit 9 were successfully test fired from the .38" caliber revolver Exhibit 1.

Randomly selected five .38" revolver cartridges from Exhibit 10 were successfully test fired from the .38" caliber revolver Exhibit 2.

Randomly selected five .38" revolver cartridges from Exhibit 11 were successfully test fired from the .38" caliber

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revolver Exhibit 3.

Randomly selected six .38" revolver cartridges from Exhibit 12 were successfully test fired from the .38" caliber revolver Exhibit 4.

Randomly selected six .38" revolver cartridges, two from Exhibit 9, three from Exhibit 11 and one from Exhibit 12 were successfully test fired from the .38" calibre revolver Exhibit 8.

Exhibit 5, Exhibit 6 and Exhibit 7 are the 9mm caliber pistols in working condition. …..

Randomly selected three 9mm pistol cartridges from Exhibit 13 were successfully test fired from the 9mm caliber pistol Exhibit 5.

Randomly selected three 9mm pistol cartridges from Exhibit 13 were successfully test fired from the 9mm caliber pistol Exhibit 6.

Randomly selected three 9mm pistol cartridges from Exhibit 13 were successfully test fired from the 9mm caliber pistol Exhibit 7. Remaining one 9mm pistol cartridge in Exhibit 13 was found to be not live on test firing from 9mm caliber pistol Exhibit 7.

The empty in Exhibit 14 is a fired 9mm pistol cartridge case. The characteristic features of the firing pin impression (examined under comparison microscope) on the empty Exhibit 14 tally with those on the cartridges fired from the 9mm caliber pistol Exhibit 7, showing the empty has been fired from the 9mm caliber pistol Exhibit 7.

The empties in Exhibit 15A and 15B are the fired .38" revolver cartridge cases. The characteristic features of the firing pin impression in addition to breech face marks (examined under comparison microscope) on the empties Exhibit 15A and 15B tally among themselves and with those on 38" revolver cartridges

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fired from the .38" caliber revolver Exhibit 1, showing these empties have been fired from .38" caliber revolver Exhibit 1.

The empty in Exhibit 16 is a fired .38" revolver cartridge case. The characteristic features of the firing pin impression (examined under comparison microscope) on the empty Exhibit 16 tally with those on the cartridges fired from .38" caliber revolver Exhibit 4, showing the empty has been fired from the .38" caliber revolver Exhibit 4.

The empty in Exhibit 17 is a fired .38" revolver cartridge case. The characteristic features of the firing pin impression, in addition to breech face mark (examined under comparison microscope) tally with those on the .38 " revolver cartridges fired from the .38" caliber revolver Exhibit 8, showing the empty has been fired from the .38" caliber revolver Exhibit 8.

The deformed copper jacketed bullet in Exhibit 18A is a fired .38" caliber revolver bullet. This bullet (examined under comparison microscope) tally with test fired bullets from .38" caliber revolver Exhibit 1, in respect of the number and widths of the lands and grooves, direction and extent of twist of rifling and characteristic striations on the lands and grooves impression on the bullet in Exhibit 18A, showing the bullet has been fired from .38" caliber revolver Exhibit 1.

The deformed copper jacketed bullet in Exhibit 18C is a fired .38" caliber revolver bullet. This bullet (examined under comparison microscope) tally with test fired bullets from .38" caliber revolver Exhibit 4, in respect of the number and widths of the lands and grooves, direction and extent of twist of rifling and characteristic striations on the lands and grooves impression on the bullet in Exhibit 18C, showing the bullet has been fired from .38" caliber revolver Exhibit 4.

The deformed copper jacketed bullet in Exhibit 18B is a fired .38" caliber revolver bullet. This bullet (examined under comparison microscope) tally with test fired bullets from .38" caliber revolver (Exhibit 8), in respect of the number and widths

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of the lands and grooves, direction and extent of twist of rifling and characteristic striations on the lands and grooves impression on the bullet in Exhibit 18B, showing the bullet has been fired from .38" caliber revolver Exhibit 8.

Test firing in the laboratory on cloth targets done, kept at distance (touch firing, 6 inch, 2 feet, 1 meter and 2 meter) from muzzle end of revolvers and pistols Exhibit 1 to 8, the nature of shotholes on cloth targets and the shotholes on front side of full bush shirt Exhibit 19A and corresponding on sandow banian Exhibit 19C are consistent with the distance of firing is about 2 meter from revolver or pistol.

Remaining opinion please refer this office M.L.C. No. BL-938/08, BL-939/06 and BL-940/06."

(Emphasis supplied)

230 It is pertinent to note that PW86-Gautam Ghadge, started analysis of the 19 articles of BL975/09 on **22nd December 2009** and concluded the analysis on **1st February 2010.** He prepared hand-notes Exh. 657 (Colly consisting of 20 pages), in his own handwriting simultaneously, at the time of analysis; that these hand-notes also bears the counter signature of Dr. (Ms.) Deshpande (Dy. Director F.S.L Mumbai). PW86 also prepared report at Exh.658 (colly.).

230.1 PW86 has, in his report, observed physical

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parameters, weight and indentation on the cap of Exh. 14 - (One 9 mm Pistol empty). From the evidence of PW86, it is evident that he carried out microscopic comparison of empty Exh.l4 and Test Exh.7 and found that the characteristic features of the firing pin impression of Test Exh.7 tallied with Ex.14. It showed that the empty Exh. 14 had been fired from Exh.7 – (9 mm caliber pistol). Thus the empty found on the spot tallied **(Art.23)** with the pistol of Tanaji Desai **(A2).**

230.2 PW86 has further in his report observed that Exh.15A, 15B (two .38" revolver empties) and 18A (one deformed copper, jacketed bullet) tallied with test fire of Exh. 1 (One six chambered .38" caliber revolver) i.e. revolver of Pradeep Suryawanshi **(A9)**. As noted earlier, **A9** has admitted to firing on the deceased.

230.3 PW86 in his report further observed that Exh. 16 (One .38" revolver empty) and Exh. 18C (one deformed copper

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jacketed bullet) tallied with test fire of Exh.4 (one six chambered .38" caliber revolver) i.e. revolver of Dilip Palande **(A15).** As noted earlier, **A15** has also admitted to firing on deceased.

230.4 PW86 has further in his analysis observed the description of Exh. 17 (one .38" revolver empty having indentation on the cap and head stamp marking KF .380 2 98), the physical parameters, weight of empty and head stamp of empty. He has further observed that the characteristic features of the firing pin impression, in addition to breech face marks, tally with those on the .38" revolver cartridges fired from .38" caliber revolver (Exh.8) thus showing the empty (Exh.17) has been fired from the .38" caliber revolver Exh.8 (one six chambered .38" caliber revolver). Thus, the empty produced by Arvind Sarvankar **(A22)** tallied with Exh.8 (one six chambered .38" caliber revolver) i.e. Art. 69-revolver of Pradeep Sharma **(OA1).**

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230.5 PW86 has in his report further observed that the description of Exh. 18B (deformed copper jacketed bullet) having rifling marks, physical parameters, weight and caliber .38" caliber revolver bullet, number of available lands and grooves, 5L/5V, width of land and grooves LW/GW. Angle of twist R.H.T. after carrying out the microscopic comparison between Test Exh.8 (One Six chambered .38" caliber revolver) with Exh. 18B (one deformed copper jacketed bullet). These, Exhibits tallies in respect of the number and widths of the lands and grooves, direction and extent of twist of rifling and characteristic striations on the lands and grooves impression on the bullet.

231 Thus, according to PW86, the Test, Exh.8 (One Six chambered .38" caliber revolver) tallied with Exh. 18B (one deformed copper jacketed bullet). According to PW86, one of the bullet retrieved from the body of the deceased tallied with Exh.8 (One Six chambered .38" caliber revolver-**Article 69)** Pradeep Sharma **(OA1).**

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232 The evidence of PW86 and the Ballistic Report also shows that the deceased was fired at, from a distance of about 2 meters, whereas, as per C.R.No.302/2006, the distance was around 40 feet.

233 As stated aforesaid, the prosecution has relied on the evidence of the ballistic expert PW86-Gautam Ghadge, in support of the evidence to show that the bullets retrieved from the deceased's body revealed that the same were fired from **A9, A15** and **OA1's** weapons.

234 It is pertinent to note that all the appellants/accused have challenged the Ballistic Expert's Report, except **A9** and **A15. A9** and **A15** have not disputed that they fired at the deceased in the genuine encounter, which took place on 11th November 2006.

235 It is also pertinent to note that though initially **A11** and **A22** accepted firing at the deceased in the genuine encounter,

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they retracted from the same, after receiving the Ballistic Report, which revealed that the empty surrendered by **A22** was fired from **OA1's** service weapon; and the empty found at the alleged spot of incident, near Nana Nani Park, allegedly fired from **A11's** weapon was infact fired from **A2's** service weapon.

f. Law with regard to Ballistic Evidence/Forensic Evidence

236 Learned counsel for the appellants/accused submitted that the Ballistic Expert's evidence is unreliable and that the Ballistic Expert cannot be termed as an Expert, in view of what has come in his cross-examination. It is submitted that the evidentiary value of this witness needs to be viewed with caution and care, and that implicit reliance cannot be placed on PW86's evidence.

237 Mr. Ponda vehemently argued that PW86 was not an expert, as is evident from his answers in the cross-examination. He submitted that several discrepancies have come on record in

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the cross-examination of this so called expert witness, which discrepancies have remained unexplained and as such, implicit reliance cannot be placed on his evidence.

238 Per Contra, Mr. Chavan, learned Spl. P.P. and Dr. Chaudhry submitted that the ballistic expert's evidence i.e. PW86 – Gautam Ghadge was unimpeachable, credible and was not shattered, despite a grueling cross-examination. They submitted that PW86's analysis shows that he has several years of experience in the ballistic field and that there was nothing to doubt his report, which clearly reveals the firing of a bullet on the deceased from **OA1's** revolver (the said bullet was found embedded in the deceased body).

239 Dr. Chaudhry relied on the following judgments, in support of his submissions; (1) ***Leela Ram (dead) through Duli Chand v. State of Haryana & Anr.***[16] and (2) ***Sukhwant Singh v.***

16 AIR 1999 SC 3717

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State of Punjab[17].

240 It is pertinent to note, that the learned trial Judge has accepted the Ballistic Expert's evidence and his report whilst convicting the appellants-accused. The learned Judge in paras 1438, 1439 and 1475 observed that ballistic evidence shows that the bullet produced by **A22** was fired from **OA1's** revolver; has ruled out tampering; that the ballistic evidence cannot be challenged as PW86 was having sufficient experience in this field; that weapons were deposited in a sealed condition; that weapons have individual characteristics and that the fired bullets have been compared with test fired bullets under microscope and that they tallied; that it cannot be said that PW86 is not an expert or that he did not follow procedure; and that PW86 had done proper examination. Infact the learned Judge has even accepted the evidence of the Ballistic Expert *qua* **A15,** however, observes that **OA1** cannot be implicated only on the basis of the ballistic evidence, which is a weak type of evidence and his report that

17 (1995) 3 SCC 367

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OA1 fired from his weapon at the deceased and that the bullet found in the deceased's body was the one fired from **OA1's** weapon, however, acquitted **OA1** by observing that this being the only evidence *qua* **OA1** and Ballistic Expert's evidence, being of a weak type, cannot solely be relied upon without any corroboration.

241 At this juncture, it would be apposite to consider the probative value of a Ballistic Expert's Evidence/Report.

242 As far as the evidentiary value of ballistic evidence is concerned, in para 16 of ***Leela Ram (supra),*** the Apex Court observed as under:

> *"16. It is the above evidence which has prompted the High Court to ask the learned advocate appearing for the prosecution "to caricature any position in which a man can strike such an injury with a .12 bore gun …". Whether there was one shot or two shots, can it not be termed to be immaterial in the matter of assessing the culpability of the accused? The son who saw his father had been shot at and thereafter fell dead — total stunning effect on the son and it is on this score that mere hair-splitting on the available evidence ought not to be undertaken and instead the totality*

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of the situation ought to have been reviewed. ***The empty cartridges were found and the ballistic expert's report that the cartridges match with the injury. The High Court ascribes this to be an immaterial piece of evidence. We, however, do not think so. The ballistic expert's evidence cannot be brushed aside since that is in the normal course of events, a valuable material vis-à-vis the use of the gun and the injury.*** *The High Court went on to record the contradiction from the medical evidence but unfortunately the same does not find support from the evidence on record. Dr A.S. Chaudhary having done the post-mortem examination on the deceased Maman, has stated in his evidence that "Injuries 2, 4 and 5 are the exit wounds. Injuries 1 and 3 are the entry wounds". Dr Chaudhary further said that "Injury 1 is an entry wound of point-blank range". The doctor has been subjected to cross-examination and he at the end of it all said that: "It can be said that the injuries on the person of the deceased were the result of one shot". It is on this count, the High Court recorded that Dr Chaudhary "had also to agree to this position". (emphasis supplied) Needless to say that the doctor probably has not been able to match the cross-examining lawyer and there was thus an unequal duel between the medical man and a refined lawyer. Can it be said that by reason of the evidence of Dr Chaudhary the contradictions are galore in nature, so far as the evidence of Leela Ram is concerned — the High Court upon consideration of the factum of such a contradiction answers the same on a positive note. This however is not acceptable to this Court: the discrepancy does not seem to be of such a nature so as to effect the creditworthiness or the trustworthiness of the witness. As a matter of fact, it does not do so by reason of the fact that Maman fell a victim of gunshot injuries and died: it is immaterial as to whether one or two gunshots were fired — the contradiction at its highest*

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cannot but be stated to be in regard to a minor incident and does not travel to the root of the nature of the offence. The other piece of evidence is that the Sarpanch and the members of the Village Panchayat saw the accused running away towards Village Aharwan just after firing with his gun."
(emphasis supplied)

243 The Apex Court in ***Sukhwant Singh v. State of Punjab***[18]**,** in Para 21, has observed thus :

*"**21.** There is yet another infirmity in this case. We find that whereas an empty had been recovered by PW 6, ASI Raghubir Singh from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution, for reasons best known to it, did not send the recovered empty and the seized pistol to the ballistic expert for examination and expert opinion. Comparison could have provided link evidence between the crime and the accused. This again is an omission on the part of the prosecution for which no explanation has been furnished either in the trial court or before us. It hardly needs to be emphasised that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent."*

18 (1995) 3 SCC 367

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244 It is apposite to reiterate the observations made by the Apex Court in the case of ***Ravi Sharma v. State (Government of N.C.T. of Delhi & Anr.)***[19], particularly para 19, which reads thus:

> *"19. The report of the ballistic expert is obviously a scientific evidence in the nature of an opinion. It is required to use this evidence along with the other substantive piece of evidence available. The report is inconclusive with respect to the firearm belonging to the appellant being used for committing the offence."*

245 Considering the aforesaid, it is clearly evident that ballistic evidence cannot be lightly brushed aside nor can it be termed as a weak piece of evidence. Thus, the observation of the learned Judge that the ballistic evidence is of a weak type, is erroneous. We have gone through the evidence of PW86 in detail. We find that PW86 is an expert in the Ballistic field, having experience of over 20 years in the said field. We find that despite a grueling cross-examination of this witness, his evidence has not been shattered. We find that PW86 has meticulously evaluated the material before him and thereafter, after making his notes, has arrived at his conclusion. As noted aforesaid, even the

19 (2022) SCC OnLine SC 859

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trial Court has accepted PW86's evidence and ballistic report vis-a-vis firing by **A9, A2, A15** and **OA1,** (bullets retrieved from the dead body were found to have been fired from **OA1, A9** and **A15's** service weapons and the empty found on the alleged spot of incident i.e. Nana Nani Park allegedly fired from **A11's** weapon, was found to have been fired from **A2's** service weapon) but states that the said evidence being of a weak type and this being the only evidence *qua* **OA1,** there being no corroboration to the said evidence, unlike others, acquitted **OA1.** Apart from the ballistic evidence, there is other evidence to connect **OA1** to the crime in question, which we will discuss while considering the Appeal against Acquittal of **OA1.** Suffice to state, that the prosecution has proved through cogent, legal and admissible evidence of PW86 and other evidence that Ramnarayan was shot at, by **OA1, A2, A9** and **A15** from a close distance. The Ballistic report has, thus been proved by the prosecution.

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246 We now proceed to deal with next circumstance relied upon by the prosecution i.e. of wrongful confinement of Anil Bheda.

v. WRONGFUL CONFINEMENT OF ANIL BHEDA

247 According to the prosecution, Anil Bheda alongwith Ramnarayan was picked up by the police from Sector 9, Vashi on 11th November 2006; taken to D.N. Nagar Police Station; thereafter, on 12th November 2006, Anil Bheda was brought to the Vashi Police Station, Navi Mumbai at 17:00 hrs., pursuant to which, Aruna Bheda (PW40) withdrew her missing complaint; then Anil and Aruna Bheda were taken to their house and from there to Bhatwadi, Ghatkopar, where Anil Bheda's in-laws were residing; thereafter, all three i.e. Anil, Aruna and their son-Parth, were taken to Kolhapur and after return from Kolhapur, Anil Bheda was taken to Hotel Mid-Town, Andheri. It is the prosecution case that throughout the said journey i.e. from 11th

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November 2006 from the time Ramnarayan and Anil Bheda were abducted, Anil Bheda was kept in wrongful confinement till around 12th December 2006, by the appellants/accused.

248 In order to prove confinement of Anil Bheda, Mr. Chavan, learned Spl.PP relied on the evidence of PW40 - Aruna Bheda; PW32 - Sumant Bhosale; PW55 – Milind More; PW43 - Madan More; PW45 - Naresh Phalke and the evidence of PW52 - Purba Bhattacharya. It is submitted that the said evidence is also corroborated by their CDRs.

249 Learned counsel for the appellants-accused submitted that the evidence adduced by the prosecution suffers from several infirmities and that none of the aforesaid witnesses i.e. PW32 - Sumant Bhosale; PW55 – Milind More; PW43 - Madan More and PW45 - Naresh Phalke, can be relied upon considering that there are no station diary entries made by any of these witnesses whilst leaving D.N. Nagar Police Station or of their return.

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Learned counsel for the appellants – accused further submitted that the prosecution had failed to bring on record the hotel Register to show that Aruna Bheda and Anil Bheda were kept in a hotel at Kolhapur and thereafter, Anil Bheda was kept at Mid-Town Hotel, Andheri. It is submitted that not a single witness from the said hotels i.e. at Kolhapur and Mid-town have been examined by the prosecution to substantiate the circumstance vis-a-vis confinement of Anil Bheda and as such reliance cannot be placed on the said circumstance. It is also submitted that evidence of PW40 – Aruna Bheda cannot be relied upon, considering her belated statements and the inconsistencies in her evidence.

250 Per Contra, Mr. Chavan, learned Spl.PP, submitted that the prosecution has duly proved that Anil Bheda was wrongfully confined by the appellants/accused from 11th December 2006 to 12th December 2006, so that Anil Bheda does not spill the beans, since Anil Bheda was a witness to the

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abduction and what happened on 11th November 2006.

251 Considering the aforesaid, we now proceed to examine the evidence that has come on record vis-a-vis 'wrongful confinement of Anil Bheda'.

252 **PW40 – Aruna Bheda** has deposed with respect to the confinement of Anil Bheda at Bhatwadi, Ghatkopar, then Kolhapur and then at Mid-Town Hotel, Andheri.

252.1 PW40 is the wife of Anil Bheda. She has stated that she was living with her husband Anil Bheda and son Parth in Sector 29, Vashi, at the relevant time and that her son was studying in St. Mary's School. PW40 in her evidence has deposed with respect to the events that took place on 11th and 12th November 2006. We have spelt out the said evidence in detail whilst dealing with the circumstance of 'abduction' and hence, do not wish to repeat the same. We, whilst considering the said circumstance, have also set out how a missing complaint of her

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husband was filed by Aruna Bheda on 11th November 2006.

252.2 According to PW40, on 12th November 2006, at about 14:30 hrs., she called her brother-in-law Dheeraj and informed him about the missing complaint lodged by her and asked him to help her, since she was alone. She has stated that she went back to the police station at 17:00 hrs. alongwith her brother-in-law and his wife; that she went alone in the police station; that whilst she was waiting, her husband Anil Bheda came to the police station; that she asked him where he had gone, to which, he replied that he had gone to Shirdi; that at that time, Senior Officer D. B. Patil came there and took them to his cabin and made inquiries with her and her husband Anil and recorded their statements. PW40 has stated that she was shown one fax (of abduction of Ramnarayan and Anil Bheda sent by her) by D. B. Patil and that D. B. Patil inquired whether she had forwarded the said fax; that she told him that she cannot read and write English and that she had not sent the same; that she was asked to meet

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the police constable and was asked to withdraw the missing complaint. Accordingly, PW40 – Aruna withdrew the missing complaint by affixing her signature on the same (Exh. 307). She has stated that when she came outside the police station, she informed about their well being to her brother-in-law and his wife and asked them to leave. She has stated that her husband Anil informed her as to what had happened on 11th November 2006. We have set out the disclosure made by Anil Bheda to her, whilst considering the circumstance of abduction and as such, refrain from spelling out the same again. She has stated that her husband showed her one Qualis vehicle and told her that they would have to go home in the said Qualis vehicle, pursuant to which, she and her husband sat in the said vehicle; that there were two police in plain clothes in the said vehicle; that they went to their residence in the said vehicle; that she and her husband and the said two plain clothes policemen came to her house; that she and Anil took Parth and some clothes and again sat in the said Qualis vehicle and went to her parent's house at Bhatwadi, Ghatkopar.

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She has further stated that the two policemen also came with them inside her parent's house and that the said plain clothes police examined the house and locked the rear door from inside. PW40 – Aruna has further stated that two other constables came for night shift to Bhatwadi and that after the two constables arrived, the earlier two police left the house and that the night shift constables were sitting in the outer room of the house of her parents and that since the Qualis vehicle was parked in front of the neighbour's house, there was a quarrel between the neighbours and her parents. She has further stated that the earlier two policemen again returned on the next day between 9:30 – 10:00 hrs and started to take Anil away; and that on inquiry, she was told that they were taking Anil to D.N. Nagar Police Station. PW40 – Aruna has identified the said two plain clothes policemen with whom she had gone to her house (Vashi) and then to Bhatwadi and who returned the next day morning, as A2 - Tanaji Desai and A3 - Ratnakar Kamble @ Rattu, as being the plain clothes policemen. She has also stated that the said

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policemen gave her their mobile numbers and told her, that if she wanted to talk to her husband, she could call XXXXXX1323 of **A2** and XXXXXX3457 of **A3.** PW40 noted down the said numbers in her diary. PW40 has stated that her husband returned home at 18:30 hrs. in the same Qualis vehicle; that he disclosed to her that he was going out for some period; that she and her parents told Anil that they would not permit him to go alone and that she (Aruna) and her son would accompany him; that the persons who had come along consented for the same; that pursuant thereto, she, her son and her husband - Anil went to Kolhapur in the same Qualis vehicle; that on the way, the said Qualis vehicle stopped between Santacruz and Vakola and one person got down from the said vehicle and went running to his house and brought his clothes. She has stated that apart from three of them i.e. she, her son and her husband Anil, one more person was present and that the person sitting next to driver, got down from the vehicle and went to his house to bring his clothes. She has stated that thereafter, they went to Sion and from Sion

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took the Konduskar bus and went to Kolhapur; that they reached Kolhapur on 14th November 2006 at about 18:00 hrs and stayed in a hotel opposite the place where they alighted from the bus. PW40 has stated that the person who had come with them stayed in another room and that the person who accompanied them was **A5** (Hitesh Solanki @ Dhabbu). PW40 – Aruna has identified the said accused. She has further stated that at about 10:00 – 10:30 hrs, she, her husband and her son alongwith **A5** took darshan of Goddess Mahalaxmi, where they met a constable from Vashi Police Station. She has stated he was the same constable who had come to her house to take the photograph. She has stated that thereafter, her husband and **A5** went to the Court at Battis Shirala (Sangli), where a case was pending against her husband, whereas, she and her son stayed in the hotel. She has stated that she was informing about her well-being to her parents on telephone; that they were in Kolhapur for 4 – 5 days and thereafter, all of them returned to Ghatkopar, in a Konduskar bus. According to PW40 – Aruna, after some time, her husband and **A5** went to D.N.

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Nagar Police Station, from where she received a telephone call from her husband, that as there was danger to his life, he could not return home and that he would reside in a hotel at Andheri (West). She has stated that she was asked to contact him on the mobile of **A2** and **A3**. She has stated that during the said period, she was residing at Ghatkopar with her parents. PW40 – Aruna Bheda has further stated that her son was studying in a school at Vashi and that during the said period, her son was absent from school. According to PW40, her husband returned in December. After 2–3 days, they returned to their house at Vashi on 15th December 2006. She has stated that thereafter, they received a call from **A5**, who asked them to leave the said place. She has stated that since their son was studying in the said area, they refused to vacate the premises, however, they were asked to change the area. PW40 – Aruna Bheda has further stated that pursuant thereto, on 31st December 2006, they shifted from their earlier premises to J N 2/21, Mahalaxmi Society, Vashi.

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252.3 PW40 was confronted with Exh.335 in her cross-examination. She has categorically stated that she had not prepared the affidavit and that she did not disclose in Exh. 335 that she along with her husband, had gone to Versova Police Station to withdraw the missing complaint. Certain portions of the said affidavit were marked, with which she was confronted. She has denied stating so or that the contents therein i.e. Exh.335 were true and correct. She has also denied the suggestion that she, nor her husband-Anil Bheda had got prepared the said affidavit (Exhibit 335) from their advocate.

252.4 PW40 in her re-examination has deposed to with respect to **A5** handing over a prepared affidavit to her i.e. Exh. 335 to be tendered before the learned Metropolitan Magistrate, who was conducting the inquiry. The contents of the said exhibit were that Anil Bheda had gone to Shirdi (contrary to the prosecution case vis-a-vis abduction of Anil Bheda). No doubt, **A5** has not cross-examined PW40, however, learned counsel for

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OA1 has cross examined PW40, with respect to what was disclosed to by PW40 i.e. of **A5** handing over to her a prepared affidavit (Exh. 335). There is nothing in the cross, which would want us to disbelieve PW40, in the facts, vis-a-vis **A5**, handing over her affidavit (Exh. 335) for tendering it before the Metropolitan Magistrate, in the inquiry.

PW32 - Sumant Ramchandra Bhosale on wrongful confinement of Anil Bheda at Bhatwadi, Ghatkopar.

253 As far as the evidence of confinement of Anil Bheda is concerned, the prosecution has also relied on the evidence of PW32 - Sumant Bhosale. PW32 was attached to D.N. Nagar Police Station at the relevant time, as a Police Naik in the Detection Branch. The Detection Branch was headed by Crime PI and that in 2006, **A9** was PI – Crime. He has stated that **OA1** was transferred to D.N. Nagar Police Station and that he alongwith his staff was occupying the old duty officer's room, whereas, the new room constructed in the very same compound

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was used by the duty officer. He has stated that the staff of **OA1** was deputed from other police stations. He has stated that **OA1** and his staff were not doing any work of D.N. Nagar Police Station and were not participating in the activities of the D.N. Nagar Police Station. He has stated that in the staff of **OA1**, there were **A3** - Ratnakar Kamble @ Rattu and **A2** - Tanaji Desai. He has identified the said witnesses.

253.1 PW32 has deposed that on 12th November 2006, when he returned to the police station between 21:00 to 21:30 hrs, after patrolling, he was called by PI Crime **(A9)** and was told to accompany one constable to Mid-Town hotel, opposite Andheri Railway Station. Pursuant thereto, he alongwith Milind More (PW55) left for Mid-Town Hotel, however, they were again called back by **A9** and were told by **A9** to sit in a green Qualis Vehicle which was standing opposite **OA1**'s office. PW32 has further deposed that he alongwith Milind (PW55) went towards the Qualis vehicle which was a private vehicle and was used by

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the squad of **OA1;** and that one person was driving the said vehicle and Virendra @ Viru (neither an accused nor a witness) was sitting next to the said driver. He has stated that at about 10:30 hrs, they went to Bhatwadi, Ghatkopar in the said vehicle; that there were chawls next to the road; that they were taken to one of the houses in the said chawl; that the members of the squad of **OA1**, i.e. **A2** and **A3** were present there; that the said persons took them to one house and introduced them to one person by name Anil and told them that the said person was of great use to **OA1**; that they were told that the said person had fear from Chhota Rajan Gang and were asked to stay to guard Anil; that the green colour Qualis was parked opposite the said house; that at about 23:30 hrs, **A2 and A3** and Virendra (not an accused) left and he and constable Milind (PW55) stood as night guards, till 9:30 hrs. on the next day; that on 13th November 2006 at about 9:30 hrs. **A2, A3** and Virendra @ Viru came there and alongwith Anil sat in a green colour Qualis and all of them went to D.N. Nagar Police Station; that Anil was sitting in the

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back seat of the vehicle; that after the vehicle reached D.N. Nagar Police Station, he and Milind (PW55) alighted from the said vehicle and proceeded to the Detection Crime Branch, whereas **A2, A3** and Virendra @ Viru were in the said vehicle. He has stated that his statement was recorded by SIT on 2nd February 2010 and that on 4th February 2010 he was called to SIT office at Powai and that one person was shown to him. The said witness has identified that person (Anil Bheda) as the same person for whom they had gone to Bhatwadi, Ghatkopar.

253.2 The crux of the cross-examination of this witness is that there are no station diary entries with respect to him leaving the police station or returning back. The said witness has admitted that there is no station diary entry of his either going to Bhatwadi or of his return from Bhatwadi and that there was no document available in the police station to show that on 11th November 2006, he alongwith **A2, A3** and Virendra @ Viru had gone to Ghatkopar alongwith PW55 in a green Qualis vehicle. In

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his cross-examination, PW32 has further admitted that it was true, that no police officer can form his own investigating team without consultation of Sr. PI or DCP or ACP and if such a investigating team is formed, without such consultation, memo and disciplinary inquiry can be initiated against the officer. He has further admitted that only by orders of DCP can a police officer or constable be transferred from one police station to another police station while investigating a case and that the police officer investigating a case cannot on his own, call for any other police constable of other police station. He has also admitted that private vehicles can be used by the Police Officer for investigation to maintain secrecy or other such reason only with permission of Sr. PI or ACP or DCP. He has denied the suggestion that entries regarding private vehicles used with permission of Sr.PI/ACP/DCP is maintained by Sr. PI and or said officer. He has stated that he had not maintained vehicle register/log book in the police station, at any time, nor, had he used any private vehicle during investigation. He has further

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stated that the person at Ghatkopar did not identify himself as Anil. According to PW32- Sumant Bhosale, he had disclosed to SIT that Viru used to visit **OA1**'s office regularly.

253.3 PW32 - Sumant Bhosale has further stated that he knew **A2** and **A3** as they had joined on deputation and that it was true to say that they had joined D.N. Nagar Police Station on deputation. Although, suggestion was put to the said witness that he had not gone to any house in any vehicle on 12th November 2006 and that Viru was not present with him in the said vehicle and nor were **A2** and **A3** present in the said vehicle, the said suggestions have been denied by PW32.

253.4 An omission with respect to **A9** calling PW32 - Sumant Bhosale and asking him to sit in a green colour Qualis, has been brought on record. The omission pertains to **A9**. The said witness has denied the suggestion that it was not true that **A9** did not give any direction on 12th November 2006.

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PW55 – Milind Subhash More on wrongful confinement of Anil Bheda at Bhatwadi, Ghatkopar.

254 PW55 was attached to the Detection Branch, D.N. Nagar Police Station, Mumbai, as Police Constable at the relevant time. PW55 in his evidence has stated that on 12th November 2006, he was on night duty in the police station i.e. D.N. Nagar Police Station. He has stated that at about 9:30 hrs, Police Naik Sumant Bhosale (PW32) told him that **A9** had asked the two of them to go to Mid-Town Hotel, opposite Andheri Railway Station (W); that pursuant thereto, he took a pistol and five rounds from District Hawaldar and put his signature in the register, after the District Hawaldar-Khatal made an entry in the said register. He has identified the relevant entry made, which is at Exh. 467. He has stated that while he was in the compound of the police station, he and Sumant Bhosale were called back; that PW32 – Sumant went inside the police station and on returning, told him to sit in a green colour Qualis vehicle; that Sumant also sat in the said vehicle; that the said Qualis was being used by the squad of

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OA1 - Pradeep Sharma; that the said vehicle used to remain outside the office of **OA1.** He has stated that there were total four persons in the vehicle alongwith him and Bhosale i.e. a driver and Virendra, who used to work for **OA1** and who was not from the Police Department. He has stated that there was one more person who used to work for **OA1** and that the said person i.e. Hitesh Solanki @ Dhabbu **(A5)** used to be outside the office of **OA1** and would take outsiders to meet **OA1**, after making inquiry.

254.1 According to PW55, he alongwith PW32 – Sumant and others were taken in a Qualis vehicle to Bhatwadi, Ghatkopar; that they reached Bhatwadi at about 10:30 hrs.; that the vehicle stopped in front of a house situated by the side of the road; that **A2** and **A3** were present in the said house; that **A2** and **A3** were working in the squad of **OA1.** He has stated that **A2** and **A3** introduced him and Sumant (PW32) to one Anil and both told them, that there was danger to Anil Bheda from Chhota

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Rajan Gang and hence, asked them to keep a watch; and that Anil was **OA1's** man. PW55 has further stated that after ½ an hour, **A2, A3,** Viru and Driver went away and the Qualis vehicle was parked near the footpath in front of the said house (Bhatwadi) and that he and PW32-Sumant remained in the varanda of the said house for the whole night; that on 13th November 2006 at around 9:30 hrs. to 10:00 hrs, **A2** and **A3** returned to Bhatwadi, pursuant to which they got into the said vehicle. He has stated that he, PW32-Sumant, **A2, A3,** Viru and Anil got into the said Qualis vehicle and went to D.N. Nagar Police Station. He has stated that when they reached D.N. Nagar Police Station, he and PW32-Sumant got down from the said vehicle and went to the police station, whereas, the others remained in the vehicle.

254.2 In his cross-examination, in para 35, PW55 has stated that he had not spoken to the person i.e. Anil Bheda, at Bhatwadi; that even on the next day, there was no talk with the said person; that, that person's family members were present in the house and

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that the said person was free throughout the drive from his house; and that his movements were not restricted during the course of his duties. He has admitted in his cross-examination that it was correct to say that the said person was doing his own work and he was watching the said person; that he did not call any one from his phone and that there was no phone in the said room and that he did not place any order. PW53 has in his cross, stated that during his duty on those two days, he did not ask the person (Anil Bheda) his full name; that the said person also never disclosed to him that he and his friend were kidnapped and that his friend was killed, and as such, he did not feel that the said person was forcefully confined.

255 The aforesaid evidence of PW40, PW32 and PW55 is duly corroborated by each other. The evidence of the said witnesses will reveal that Anil was wrongfully confined by **A2, A3** and **A5** at Bhatwadi, at Anil's father-in-law's residence.

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256 No doubt, there are no entries made by PW32 of leaving D.N. Nagar Police Station whilst going to Bhatwadi and of his returning, but one will have to examine the same having regard to the fact, that the said witness was a constable and was directed by his superior i.e. Pradeep Suryawanshi **(A9)** to go to Bhatwadi. There is no reason to disbelieve the testimony of these witnesses with respect to confinement of Anil Bheda at Bhatwadi. As far as PW55 is concerned, it appears that he took a pistol and five rounds from District Hawaldar, who in turn, made a Station Diary Entry to that effect (Exh. 467). Infact, PW55 has denied the suggestion that there was no entry in the diary dated 12th November 2006 regarding his visit to Ghatkopar. PW40 – Aruna Bheda in her evidence has also deposed with respect to the confinement of Anil Bheda at her parent's place at Bhatwadi by the police. The aforesaid evidence is also duly corroborated by the CDRs' of **A2** and **A3**, which we will deal with, whilst dealing with the circumstance of 'CDR', which shows their presence at Bhatwadi, Ghatkopar, as deposed to by the witnesses.

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PW40-Aruna Bheda–on wrongful confinement of Anil Bheda at Kolhapur.

257 As noted above, Anil Bheda, PW40 – Aruna and their son Parth accompanied Anil from Bhatwadi to Kolhapur on being permitted to do so. In this connection, prosecution has examined PW40 – Aruna Bheda. PW40 – Aruna Bheda in her evidence has categorically stated the manner in which she alongwith her husband and son were taken from Bhatwadi by Konduskar bus to Kolhapur by **A5**. It is pertinent to note that the evidence of PW40 inspires confidence with respect to her, Anil and her son being taken to Kolhapur. Admittedly, after 11th November 2006, Anil Bheda's number was switched off and as such there are no CDRs thereafter.

258 Although, learned counsel for the appellants-accused submitted that PW40 freely moved around in Kolhapur and even visited the temple and as such, it cannot be said that they were

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being confined, it is evident from PW40's evidence that Anil Bheda went to the Court at Battis Shirala, for a court hearing alongwith **A5.** Thus, Anil was always under the watchful eyes of one or the other accused.

259 The evidence of PW40 would reveal that she, her husband Anil and son were brought back from Kolhapur by Konduskar bus to Mumbai and thereafter, her husband Anil was taken to Mid-town Hotel, Andheri where she was in touch with her husband on the mobile numbers of **A2** and **A3**. The CDR evidence also supports the calls made by PW40 on **A2** and **A3's** mobile. In connection with confinement of Anil Bheda at Mid-town Hotel, Andheri from **19th November 2006** to **12th December 2006**, the prosecution relied on the evidence of PW55 – Milind More, PW43 – Madan More and PW45 - Naresh Phalke.

PW55 - Milind Subhash More (on confinement of Anil Bheda at Mid-Town Hotel, Andheri).

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260 PW55 – Milind More, who had also accompanied PW32 to Bhatwadi, Ghatkopar to guard Anil was also sent on night duty after a few days by the orders of **A9** alongwith Naresh Phalke (PW45) to Mid-town Hotel, Andheri Railway Station. PW55 – Milind More in para 14 of his evidence has stated that by the orders of **A9,** he and PW45-Naresh went to Hotel Mid-town Hotel near Andheri Railway Station (W) and that one police personnel Mr. Devidas Sakpal **(A13)** from D.N. Nagar Police Station, met them at Hotel Mid-town. He has identified **A13**. He has stated that **A13** took them to one room on the second floor of the said hotel; that there was one person, whom he and Sumant (PW32) met, when they had gone to Ghatkopar; that his name was Anil. PW55, has further stated that **A13** introduced him and PW45-Naresh to Anil and that he and PW45-Naresh remained in the said room for the whole night to keep a watch on Anil, at the say of **A13**. He has stated that after **A13** went, he and PW45-Naresh remained their upto 9:30 hrs. to 10:00 hrs. of the next day. He has stated that on the next day at about 9:30 hrs. to

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10:00 hrs, **A13** came there alongwith Viru, after which, he and PW45-Naresh returned to the police station. PW55 has identified the photograph of Anil (Exh. – 308).

260.1 In his evidence, PW55 has stated that he was called by SIT on 19th March 2010 at about 18:00 to 19:00 hrs, in a room on the 2nd floor of Hotel Mid-town, pursuant to which he went there; that DCP Prasanna, Officers from SIT and his associate PW43-Madan More, Anil and panchas were present in the room; that Mr. Prasanna (PW110) made inqury as to in which room of 2nd floor of Hotel Mid-town, they stayed; and that pursuant thereto, he showed room No.204 to him, in the presence of panchas. PW55 has further stated that initially he had gone to Mid-town Hotel and stayed in room No.204 with Anil Bheda.

260.2 It is pertinent to note that there is no cross-examination of this witness with respect to what was deposed to by him, that he had gone to Mid-town hotel and had stayed in

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room No.204 with Anil Bheda. The said witness has admitted that there is no station diary entry with respect to his leaving the police station or returning back to Mid-Town, though the same is required. He has stated that his duty on those two days, was in the capacity of police personnel. He has further admitted that except his statement, there is no other proof to show in the form of the entry in the diary or even personal diary of having gone on duty on 19th November 2006. In his cross-examination PW55 has admitted that he did duty at Ghatkopar as well as at Mid-town Hotel in plain clothes. He has stated that as he was attached to the Detection Branch, he was not required to wear uniform and that PW45-Naresh and PW32-Sumant were also not wearing uniform, as they were attached to the Detection Branch. He has stated that even **A13**, who met him was in plain clothes.

260.3 PW55 further in his cross-examination has admitted that he did his duty in Hotel Mid-town only for one night in room No.204 and that he, PW45-Naresh and that person slept in

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the said room; that he went on duty and remained on duty upto next day morning, till he was relieved. He has stated that he did duty only of room No.204 and as such cannot assign any reason why in his statement before the police he had stated that he did duty in room Nos.202 and 204. He has stated that he did not disclose the said room numbers before SIT till 19th March 2010, till his statement was recorded.

260.4 Suggestions made to this witness, that he never did any duty at Bhatwadi, Ghatkopar and Hotel Mid-town or that he was pressurised by his superior officers to give a statement as per their wish, have been denied by him. He has also denied the suggestion that he did not go to Ghatkopar or to Mid-town hotel, at any time. He has further admitted that if any police personnel from D.N. Nagar Police Station was required to go outside the jurisdiction of D.N. Nagar Police Station, he had to inform the Senior P.I; that it was correct to say that every member of the Detection Branch had to make an entry on his own in the said

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diary with respect to his movement; that on 12th November 2006, he did not make an entry in the said diary as the said diary was not kept in the Detection Branch. He has stated that the diary was maintained in the branch one year after he resumed his duty in the Detection Branch.

261 Although there are certain minor omissions, the same do not go to the root of the matter, considering the overwhelming evidence with respect to wrongful confinement of Anil Bheda, that has come on record i.e. the evidence shows that PW55 had gone to Bhatwadi on 12th November 2006 and thereafter to Mid-town Hotel; and that PW55, a constable had acted on the directions of his superior i.e. **A9** who was a PI at the relevant time. PW55 has further stated that he personally did not inform the Crime PI or Sr. PI, that a civilian stayed outside the office of **OA1,** as everyone was aware of it and as such, personally he did not feel it necessary to produce the said civilian **A5** before the Sr. PI. He has denied the suggestion that he had never seen

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A5 outside the office of **OA1** or that the said person was called Dhabbu or he was deposing falsely about Dhabbu. He has also denied the suggestion that he was deposing falsely that he had met **A13** at Hotel Mid-town and that **A13** had taken him to the 2nd floor of Mid-town Hotel and that he and PW45 – Naresh had stayed in the hotel, at the say of **A13** and that **A13** came to meet them at Hotel Mid-town on the following day.

PW45 - Naresh Namdeo Phalke on confinement of Anil Bheda at Mid-town Hotel.

262 PW45 was examined by the prosecution to prove confinement of Anil Bheda at Mid-town Hotel. PW45 was attached to D.N. Nagar Police Station at the relevant time as Police Constable and in November 2006, was attached to the Detection Branch of the said police station. He has stated that **A9** was in-charge of Crime Branch of the said Police Station whereas **OA1** was in-charge of the squad and was not doing any work of the police station. According to PW45, on 11th November 2006,

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when he was working in night shift, he and PW55-Milind were at the police station. He has stated that he was directed by **A9** to go to Mid-town hotel near Andheri Railway Station (West) and hence, he went to the said hotel, where he met **A13-**Devidas Sakpal outside the said hotel. He has stated **A13** was working at the D.N. Nagar Police Station. According to PW45, **A13** took him to one room on the 2nd floor of the said hotel, where one Gujarati person was present and that they were asked to stay with the said person, pursuant to which, he and PW55-Milind stayed there the entire night. PW45 has further deposed that he spoke to the said person who, during the talk, disclosed that his name was Anil. He has further stated that at about 10:00 – 10:30 hrs on the next day, **A13** came to the room and that after some time, Virendra also came to the room, after which he and PW55-Milind went to the police station. He has further stated that when SIT was making inquiry, he was shown one person on 6th March 2010 and that the said person was the same Anil who was in Mid-town hotel and accordingly, he learnt that the full name of Anil,

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was Anil Jethalal Bheda. He has identified the photograph of Anil (Exh. – 308) and as such has stated that he was same person who was at the hotel.

262.1 The cross-examination of PW45 was also on similar lines i.e. no entries were made in the station diary by the said witness regarding the purpose of leaving the police station. The said witness has admitted that no such station diary entry was made while going to Mid-town Hotel. He has further admitted that he did not inform the Duty Officer of the police station that he slept in Mid-town hotel the entire night or that he had met **A13**. He has further admitted that he did not make any inquiry as to why the said person was kept in the said room in the hotel nor did he verify, if any entry was made in the hotel register. He has further admitted that the said Anil was not under any restraint and that when he went to the room, he was alone. He has denied the suggestions that he was falsely deposing that he had gone to Mid-town Hotel with PW55-Milind on the directions of **A9,** and

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stayed with Anil; and that he had identified Anil on 6th March 2010 on the say of DCP Prasanna, as he was afraid that DCP Prasanna would spoil his C.R report.

262.3 In his cross-examination, PW45 has further admitted that he did not inform his name and details to the Receptionist of Mid-town Hotel; nor did he inform the receptionist that they were staying in the room for the entire night nor did he make any entry in the hotel register about his staying in the hotel. PW45 has denied the suggestions that he did not meet **A13** in Mid-town hotel; or that he did not have any conversation with **A13;** or that **A13** did not take him to the room in the hotel. He has admitted that he did not make any entry/note in writing about his visit and meeting with **A13** in the station diary nor had he disclosed the same to any police officer.

263 The aforesaid evidence of all the witnesses inspires confidence and clearly shows that Anil Bheda was confined by the

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police from 11th November 2006 till about 12th November 2006 at D.N. Nagar Police Station, then taken to Vashi Police Station by **A2** and **A3** and after the missing complaint was withdrawn by PW40-Aruna, was taken to his house and from there, Anil, PW40-Aruna and son Parth were taken to Bhatwadi, Ghatkopar, to Anil Bheda's in-laws house, from there on the next day i.e. 13th, Anil was taken to D.N. Nagar Police Station, and from there again Anil, PW40-Aruna and Parth to Kolhapur, and on returning from Kolhapur, after 3 to 4 days, Anil was confined at Mid-Town Hotel till around 12th December 2006.

264 The aforesaid evidence of the witnesses has been duly corroborated by the Nodal Officers who were examined by the prosecution to show the presence of the said accused at the places where Anil was detained. We will deal with the said evidence of CDR, when we deal with the circumstance of CDR.

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265 Suffice it to say, that there is nothing on record to disbelieve the testimony of the aforesaid witnesses with respect to wrongful confinement of Anil as stated aforesaid. It is obvious that PW32, PW55 and PW45 were all working under **A9** in the Detection Branch. They were sent by **A9,** their superior. As has come on record in the evidence of PW55, there was a separate diary kept in the Detection Branch. Despite extensive cross-examination of the aforesaid witnesses, nothing is elicited in their cross-examination, to disbelieve their testimony or discredit them. The evidence on record clearly reveals that from the time of abduction of Ramnarayan and Anil Bheda on 11th November 2006 at around 12.35 pm, Anil Bheda was wrongfully confined by the accused till around 12th December 2006. Evidence shows that Anil Bheda was prevented from proceeding beyond certain limits i.e. beyond certain circumscribing limits, being continuously under the watchful eyes of the accused at Bhatwadi and then Kolhapur. Evidence reveals that **A5** had taken Anil Bheda, PW40 and their son to Kolhapur and that **A5**

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accompanied Anil Bheda to Battis Shirala for Anil Bheda's court case. Even PW40 could not meet her husband Anil Bheda, at Mid-town Hotel. PW40 could only contact Anil Bheda on **A2's** and **A3's** mobile phone. The last call on Anil Bheda's phone was on 11th November 2006 at 11:26:18 hrs, after which his phone was switched-off. The evidence of witnesses clearly reveals that Anil Bheda was not free to depart and was continuously under the gaze of the accused, who were monitoring his movements. The reason was far too obvious, Anil Bheda was an eye-witness, a prime witness, to his and Ramnarayan's abduction and would spill the beans and disclose the truth. There was too much at stake, for all those involved in the same, to let Anil Bheda, free, even for a moment, away from their watchful eyes.

266 Apart from the aforesaid evidence of PW40 and the police personnel i.e. PW32, PW55 and PW45 with respect to confinement of Anil Bheda, there is evidence of PW52 - Purba Bhattacharya, a primary teacher of the school where Anil and

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PW40's son Parth was studying. The prosecution has examined PW52 to prove that Parth was missing from school during the said period i.e. from 13th November 2006 to 11th December 2006.

PW52-Purba Bhattacharya

267 PW52-Purba Bhattacharya was serving as a primary teacher in St. Mary's Multi Purpose High School and Jr. College, Sector 10-A, Vashi, Navi Mumbai, at the relevant time. She has stated that the school received a letter from SIT and that the said letter was received by the Principal of the School. She has identified his signature and the letter received by the Principal. The same is marked as Exh. – 385. She has stated that the Principal asked her to answer the queries made by the SIT and to furnish all the details for preparing the letter. The said letter sent by the Principal was marked as Exh. – 386 (colly). She has stated that alongwith her reply to the queries, a copy of the leaving

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certificate and a copy of the attendance certificate was also furnished. The said witness has placed on record a copy of the school leaving certificate of Parth Anil Bheda, attested by the Principal (Exh. – 387). The said witness also during her evidence produced the original attendance register for 2 months. In the said register, the name of Parth was mentioned at serial No.4 in her handwriting. She has stated that on perusing the attendance register for the month of November 2006 to December 2006, Parth was absent from 13th November 2006 to 11th December 2006. She has stated that she being the class teacher, had written all the entries in the attendance register in her handwriting. The register is maintained in regular course and a copy of the same was furnished to SIT (Exh. 388 (colly).

267.1 PW52's statement was recorded by SIT on 3rd May 2012. She has stated in her cross-examination that the attendance register was prepared by her and that the Principal only attested the attendance register, though he did not prepare

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it. She has denied the suggestion that she and the principal have prepared false and fabricated documents at the instance of police. Nothing is elicited in the cross-examination of PW52, a school teacher to disbelieve her testimony with respect to the fact that Anil Bheda and PW40's son Parth had not attended his school during the period from 13th November to 11th December 2006. The evidence of PW52 thus corroborates the evidence of the other witnesses that Parth, son of Anil and Aruna Bheda had not attended school during the said period, for obvious reasons.

268 Thus, we have no hesitation in holding that the prosecution has proved beyond reasonable doubt, that Anil Bheda was wrongfully confined by the accused from the time of his abduction on 11th November 2006 till **11th / 12th** December, 2006, at different places. The trial Court has also rightly recorded a finding of wrongful confinement of Anil Bheda.

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269 The next circumstance relied upon by the prosecution is with respect to the pressure tactics employed by the accused to cover up C.R. No. 302/2006.

vi. PRESSURE TACTICS / MANIPULATION BY ACCUSED PERSONS TO COVER UP C.R. NO. 302/2006

270 Mr. Chavan, learned Spl. P.P submitted that it is not one of the usual cases, but it is a case where accused in uniform were trying to cover up a fake encounter i.e. C.R No. 302/2006. He submitted that there is ample evidence on record to show that the appellants/police officers/police personnel, with the help of their family members and advocates, had used pressure tactics to ensure that the witnesses do not speak the truth, by intimidating them. According to Mr. Chavan, the appellants, who are police officers/personnel, had also manipulated the records to cover up C.R No. 302/2006 in order to show a fake encounter, as a genuine one.

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270.1 In support of the aforesaid submission, Mr. Chavan learned Spl. P.P relied on the orders passed by the High Court in a writ petition filed by the deceased's brother Ramprasad Gupta (PW1); the suo motu contempt proceeding initiated against **A9**-Pradeep Suryawanshi, for interfering in the administration of justice; the evidence of PW31-Dattatray Sankhe, PI attached to D.N. Nagar Police Station; and the Investigating Officer in C.R No. 302/2006; PW15-Avadhoot Chavan, P.I, also attached to D.N. Nagar Police Station and PW35-Kiran Sonone, Sr. PI attached to Oshiwara Police Station. Mr. Chavan submitted that the evidence of the said three officers would show the pressure tactics on the police officers/IOs employed by the appellants/accused to fall in line, whilst investigating C.R No. 302/2006. Mr. Chavan also relied on the evidence of PW38-Dheeraj Mehta, to show the pressure tactics and intimidation by the family members of the accused and an advocate, on him. He submitted that the evidence of PW38-Dheeraj Mehta is duly corroborated by the evidence of PW107-Manoj Chalke; PW109-

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Sunil Gaonkar and PW110-K.M.M. Prasanna, to show that PW38-Dheeraj Mehta was pressurised to toe a particular line which was in consonance with C.R No. 302/2006. He submitted that the evidence on record would explain why PW38 had given his earlier statements dated 27th August 2009 and his 164 statement dated 4th September 2009. Mr. Chavan also relied upon the threatening calls made by **OA1's** advocate Sultan to Anil Bheda, which was heard and recorded by PW107 and PW108 and the said recorded conversation brought on record through the said witness.

270.2 According to Mr. Chavan, Anil Bheda was never called upon to show Trisha collection by SIT, for reasons mentioned by the IO-K.M.M. Prasanna (PW110). He submitted that ofcourse, later, Anil Bheda showed all the spots, right from his abduction at Vashi, to Bhandup, to D.N. Nagar Police Station, to Vashi Police Station, to Bhatwadi, to Kolhapur and then to Mid-town Hotel and the same was drawn under a running

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panchnama. He further submitted that PW40-Aruna Bheda's evidence would also throw light as to why Aruna Bheda (wife of Anil Bheda) lodged a missing complaint with respect to her husband's disappearance and the circumstances in which the said missing complaint was withdrawn by her subsequently. He submitted that even PW50-Jayesh Kesariya's statement is a testimony of why he had toed the line initially with Anil Bheda i.e. as he felt that Anil Bheda's family life was in danger. He submitted that it is in those circumstances that PW50 gave his statement before the SLAO that he had gone with Anil Bheda to Shirdi, when infact, the same was not true, and that subsequently, PW50 disclosed the truth before the SIT, after Anil Bheda gave his statement to SIT.

270.3 Mr. Chavan also relied on the additional affidavit of **A9,** to show how **A9** had manipulated and created false evidence i.e. the statement of Gangadhar Sawant (fingerprint expert), after nearly 3 years of the incident, when A9 was in no way concerned

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with the investigation of C.R. No. 302/2006. Mr. Chavan also relied on the 161 statement of PW2-Ganesh dated 14th March 2007, recorded by **A9,** although the I.O. of the said case was PI Dilip Patil.

271 Learned counsel for the appellants/accused denied any pressure tactics/ intimidation/ manipulation by the appellants/accused to cover up C.R No. 302/2006. They submitted that to the contrary, what was disclosed to, by the witnesses before the SLAO was correct and that SIT had subsequently recorded statements of witnesses under duress and by intimidating the said witnesses. Learned counsel for the appellants vehemently denied any pressure tactics being employed by the appellants/accused or creation of false evidence.

272 Considering the aforesaid, we now proceed to examine the evidence adduced by the prosecution in this regard and consider whether the appellants/accused had exerted any

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pressure tactics or had intimidated the witnesses or manipulated the records as alleged by the prosecution to cover up C.R No. 302/2006.

273 It is not in dispute, that this Court vide order dated 13th February 2008 had directed an inquiry to be conducted by the learned Metropolitan Magistrate under Section 176(1-A) Cr.P.C, into the encounter, as this Court was not satisfied with the report submitted by the SLAO. Pursuant to the said direction, the learned Metropolitan Magistrate conducted an inquiry as mandated under section 176(1-A) Cr.P.C and accordingly submitted her report dated 11th August 2008 to this Court. It is not in dispute that the said report submitted by the learned Magistrate revealed that it was a fake encounter, pursuant to which, this Court, vide order dated 13th August 2009 constituted SIT and directed registration of an FIR as against the accused and investigation into the said case. We have, herein-above, reproduced the relevant part of the orders in the sequence of

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events spelt out in para 28.2 herein-above.

274 It appears that this Court was constrained to issue suo motu contempt proceedings against A9 being Suo Motu Criminal Contempt Petition No. 10/2010. The said suo motu contempt petition was initiated pursuant to a letter addressed by the learned Metropolitan Magistrate Railway Court, Andheri, with respect to the threats extended by A9, who was then attached to Andheri Police Station, Mumbai. The Metropolitan Magistrate had made a representation to this Court for taking action against A9, for his illegal activities and for giving threats to her. In her letter, the learned Magistrate had complained that after she submitted her 176(1) report to the High Court, A9, started pressurizing people to make complaints against her. The Magistrate has also mentioned in her letter, that she was given threats on telephone and that the telephone of the A.P.P was used for that purpose. The Magistrate was allegedly told, "I will see her and her children". It was further mentioned that the President of the

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Andheri Bar Association had told her that Mr. Suryawanshi had put up a blank paper before him and had asked him to sign on that, so that, he could make a complaint against the Magistrate. This Court, after observing that *prima facie,* the acts constituted gross contempt of Court, issued notice to **A9** to show cause why contempt proceedings should not be proceeded against him.

275 During the hearing of the contempt proceeding, this Court sought better particulars from the learned Magistrate, pursuant to which, the same were submitted. The contemnor **(A9)** also filed his affidavit rebutting the allegations made against him. This Court, after hearing the parties, vide order dated 4th February 2011 held **A9** (contemnor) guilty of committing criminal contempt and as such, directed him to suffer simple imprisonment for 3 months and to pay a fine of Rs. 2,000/-. In paras 24 and 25 of the said order (***High Court on its own motion v. Pradeep Pandurang Suryawanshi, Police Inspector[20]***), this Court observed in paras 24 and 25 as under :

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"24. The allegations as to interfering in the administration of justice process by way of giving threats to the Judicial Officer is definitely a serious matter, more so, when such threats are coming from a responsible senior Police Officer i.e Contemnor in the present case. On this aspect, following observations from the Authority "King v. Davies, 1906 1 KB 32 (40) are reproduced with advantage :

> *"175. Attacks on Judge Cause Obstruction in Justice Attacks upon the Judges excite in the mind of the people a general dissatisfaction with all the judicial determination and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of judges as private individuals but because they are the channels by which the King Justice is conveyed to the people;"*

25. Considering the above, in our opinion, the present Contemnor is to be dealt with sternly when the acts imputed against the Contemnor are established in present contempt proceedings being a summary proceedings which can be decided on the strength of the papers available including the statement of A.P.P Shri Chandrashekhar Patil. More so, because the Contemnor has taken defence which to say the least is after thought and untenable."

276 It is not in dispute that the SLP filed against the said order by the contemnor **(A9)** was dismissed by the Apex Court

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and as such, the order dated 4th February 2011 of this Court stood confirmed. It also appears that disciplinary inquiry was initiated against the contemnor (A9), and his two annual increments were stopped. It appears that only one document i.e. written complaint by the learned Magistrate was relied upon during the said inquiry.

277 The aforesaid incident would indicate the extent to which A9, an officer in uniform, tried to impede the justice system, only because the learned Metropolitan Magistrate submitted her report pursuant to an order passed by the High Court, stating therein that it was a fake encounter.

278 In the context of pressure tactics by police officers/family members of accused, it will be necessary to also consider the evidence of the officers investigating C.R No. 302/2006.

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PW31-Dattatray Sankhe

279 PW31-Dattatray Sankhe was working at the Oshiwara Police Station at the relevant time i.e. from 29th July 2007 to 1st June 2010, as a PI. He has stated that one PI i.e. Dilip Patil of Oshiwara Police Station was investigating the Versova C.R i.e. C.R No. 302/2006. He has stated that Shri Patil was investigating the said C.R till 1st January 2008, till he was transferred from Oshiwara Police Station. He has further stated that in the absence of Shri Patil, PI Phadtare had carried out the investigation for about 3 months and that he had received the investigation of the said case on 1st January 2008. PW31- Dattatray Sankhe has stated that the entire investigation was carried out by PI Dilip Patil and that he had prepared a report "abated summary" of the said offence i.e. C.R No.302/2006, in view of the demise of Ramnarayan Gupta. He has further stated that the said report was signed by Sr. PI, K.T Sonone and that the ACP had called for the opinion of the DCP. He has further stated that when the

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investigation was handed over to him, a writ petition filed by PW1 was pending in the High Court and hence, he did not feel it proper to continue with the investigation, as the matter was pending before the High Court. He has further deposed in his evidence that he was present on all the dates of hearing of the writ petition in the High Court and accordingly, had made entries in the case diary and the station diary. He has further stated that although the State Government had directed the inquiry to be conducted by the District Magistrate, the report of the District Magistrate was rejected by the High Court and the High Court had directed the learned Chief Metropolitan Magistrate to hand over the inquiry to a Judicial Magistrate. He has stated that the said inquiry was handed over to the learned Magistrate of the Mobile Court, Shri Kulkarni and that vide letter dated 28th February 2008, the learned Magistrate had called for original papers from the police station. According to PW31, pursuant thereto, on 29th February 2008, he forwarded all the papers to the learned Magistrate and that the learned Magistrate forwarded the

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report to the High Court, with original case papers on 11th August 2008.

279.1 According to PW31, Police Officer ACP Dilip Suryawanshi, elder brother of **A9**, had directed him to record statements of the witnesses under Section 164 Cr.PC He has stated that ACP Suryawanshi was deputed for the said area from 1st January 2008 and that he is the brother of **A9**. According to PW31, as the matter was subjudice before the High Court and as the original papers were before the High Court, he thought that it would be illegal to proceed to record such statements and accordingly informed ACP Suryawanshi that he would not record such statements. PW31 has further stated that on 27th January 2009, ACP Dilip Suryawanshi wrote a letter to Sr. PI Oshiwara Police Station, in which, the shortcomings in the investigation and so also certain directions regarding the investigation were highlighted. He has stated that the said letter was forwarded to him by Senior PI, he (PW31) being the I.O. PW31 has handed

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over the letter (Exh. 242), which was accepted, subject to objection. He has identified the signature of ACP Dilip Suryawanshi. He has also identified the endorsement made on the said letter which is in the handwriting of Sr. PI K.T. Sonone. It was stated in the said letter, that the documents were now produced before the higher officials for their perusal. He has further stated that on 21st January 2008, the DCP of Zone-IX Shri Kaushik filed an affidavit before the High Court, stating therein that investigation is in progress in C.R No. 302/2006. He has further stated that as there was immense pressure from ACP Dilip Suryawanshi, he requested the learned Chief Metropolitan Magistrate to record the statements of two witnesses i.e. Anil Bheda and Shri Singh under Section 164 Cr.PC. The said witness has placed on record the certified copy of the said application which bears his signature. The certified copy is marked as Exh. 243. He has stated that he received a letter on 30th January 2009 issued by ACP Dilip Suryawanshi directing the Sr.PI, D.N. Nagar Police Station to comply with the order i.e. to record statements

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under Section 164 before the learned Metropolitan Magistrate Shri 'X'. The copy of the said application and order was also forwarded with the said letter. He has identified the said letter (Exh. 244) bearing the signature of ACP Suryawanshi. He has further stated that he immediately filed the copy of the order with the learned Metropolitan Magistrate Shri `X' and that he did not comply with the order which was passed on his application by the Chief Metropolitan Magistrate, but complied with the order of ACP Dilip Suryawanshi. He has stated that he recorded the statements of some witnesses under Section 161 as per the directions of Dilip Suryawanshi. He has further stated that again, he was pressurized into recording statements of other police witnesses under Section 164 Cr.PC PW31 has stated that as he was being harassed personally, he again preferred an application before the learned Chief Metropolitan Magistrate to record the statements of the police officers, on 12th March 2009. He has placed on record the said application which bears his signature. Certified copy of the application is marked as Exh. 245. He has

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stated that the said request application was forwarded to the learned Magistrate Shri 'T' and that the learned Magistrate orally refused to record the statements, as the matter was subjudice before the High Court. PW31 has stated that accordingly he gave the said information to Sr. PI Sonone, ACP Suryawanshi and DCP Kaushik. He has further stated that ACP Suryawanshi then started asking him to request another Magistrate, however, he did not feel it appropriate to make such a request. The said witness has further stated that as he was being personally harassed, he prepared a noting in this regard and requested the DCP to give necessary directions, if the statements of the witnesses are to be recorded under Section 164 Cr.PC He also has stated the harassment caused to him and accordingly forwarded the details thereof to DCP, Zone-IX through Sr.PI Oshiwara Police Station on 4th April 2009. PW31 has placed on record the said noting, which runs into 6 pages (3 sheets). The said witness has admitted the notings as being correct. The said notings are marked as Exh. 246. PW31 has also identified the signature of Sr. PI Sonone on

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the said noting. According to PW31, the DCP, Zone-IX returned the said letter (Exh. 246) alongwith a direction to elaborate and clarify, pursuant to which, on 28th April 2009, he forwarded his reply to DCP, Zone-IX, through Sr. PI Oshiwara Police Station. The said witness has identified his signature on the said reply as also the signature of Sr.PI Kiran Sonone and has accepted the contents of the reply as true and correct. The same is marked as Exh. 247 (Colly). He has stated that the said reply was forwarded to the DCP, Zone-9 through the Sr. PI Oshiwara Police Station. He has stated that he had received papers on 8th May 2009 from the DCP, Zone-9, on which day, he was holding charge of Sr. PI and hence, he signed the same in receipt of the said papers. (The same was signed after necessary entries were made in the Register). According to PW31, on 24th April 2009, ACP Dilip Suryawanshi issued a DO to Sr.PI-Kiran Sonone, which DO was forwarded by the Sr.PI to him. As per the said letter issued by ACP Dilip Suryawanshi, it was noted in the said letter that he (PW31) had not complied with the directions and

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instructions issued in the letter dated 29th January 2009 (Exh. 242) and further directions were given to record statements under Section 164 Cr.PC PW31 has identified the said DO issued by ACP Suryawanshi. i.e. the signature of ACP Suryawanshi and the endorsement of the forwarding letter by Sr. PI Sonone. The said DO is marked as Exh. 248 (page 2864). According to PW31, for the first time, he interacted with ACP Dilip Suryawanshi, after he took over the investigation of C.R No. 302/2006, on 11th August 2008. PW31 has stated in the applications which are at Exhs. 243 and 245 about likely threats to the witnesses and the complainant. He has stated that he had not received any complaints regarding such threats either to the witnesses or to the complainant.

279.2 In his cross-examination, the said witness has admitted that from the documents of investigation that were placed before him in C.R No. 302/2006, he formed an opinion that it was a case of genuine encounter and that he had read the

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statements in C.R No. 302/2006 of all the police officers who are accused in the present case and had formed the said opinion after reading the said statements. He has stated that after perusing the said statements and other evidence on the file of C.R No. 302/2006, he came to the conclusion that it was a genuine encounter. He has further in his cross stated that there was no evidence of any of the family members of the deceased contending that it was a fake encounter, in the file submitted to the High Court and that it was during the course of investigation, he received a letter dated 23rd June 2008 about the acceptance of the report of the District Magistrate by the Government of Maharashtra. He has also stated in his cross, that the Government had accepted the report on the basis of the documents which were submitted to the High Court. He has further stated in his cross-examination that after reading the investigation papers of C.R No. 302/2006, he did not find the involvement of **OA1**-Pradeep Sharma in the said case. He has further admitted that he did not know about the contents of the statements of Anil Bheda

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and Ramrajpal Singh recorded under Section 164 and whether the said witnesses were under pressure or not and that he had not pressurized the said witnesses to give any statement to the Metropolitan Magistrate.

279.3 He has further in his cross-examination, admitted that he was issued a memo by ACP Suryawanshi on 27th November 2008, since he was in civil dress in the Police Station, however, the witness voluntarily disclosed that he was in-charge as Sr. PI and that on that day after his duty, he had gone home, however, when he reached home, he received the message about bomb blast, pursuant to which, he returned to the Police Station. He has stated that since his cabin was closed and his uniform was inside the cabin and that whilst he was discussing with other officers, ACP Suryawanshi came and noticed the same and accordingly issued him a memo. He has admitted that the said explanation was not given to any other officer in writing nor any noting was made in the station diary. He has further admitted that he had

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not informed the High Court that ACP Suryawanshi was pressurising him to record statements of witnesses under Section 164 nor had he informed the Chief Public Prosecutor of the High Court in writing, about the same nor had he informed the learned Metropolitan Magistrate, when he preferred an application for recording statements of witnesses under Section 164, that he was pressurized by ACP Suryawanshi to do so, nor had he informed the CP about the same. The suggestion made to the witness that ACP Suryawanshi did not pressurise him to record the statements of witnesses under Section 164 has been denied by him. PW31 has admitted that ACP Suryawanshi had given direction in his official capacity.

279.4 It is pertinent to note that the documents i.e. Exhibits 242, 243 and 244 are a matter of record and the said correspondence was made and exchanged between the parties in the usual course of business and is official correspondence of the Police Station. There is nothing in the cross to disbelieve the

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applications/notings made by the said witness nor is there any suggestion made to this witness that the said applications/notings have been fabricated, in particular, Exh. 246, which is at page 2853 and the notings at pages 2854 to 2856, which disclose the pressure exerted by ACP Suryawanshi (brother of **A9**) to record the statements of witnesses under Section 164 Cr.PC The relevant paras of **Exh. – 246** reads thus:

> "10. सदरचे प्रकरण हे मा. उच्च न्यायालयात प्रलंबीत असतांना व सदर गुन्हयाची सर्व मुळ कागदपत्रे गेल्या एका वर्षा पासुन न्यायालयात जमा असतांना मा. स. पो.आ. दा. नौ. नगर श्री. सुर्यवंषी सा. हे वांरवार सर्व साक्षीदार यांचे जबाब कलम 164 फौ.द.प्र.स. अन्वये नोंदविण्या बाबत तोंडी आदेष करतात व एक प्रकारचा दबाव आणतात या संदर्भात आम्ही स्वतः बहूतांष न्यायाल्याचे तसेच मुख्य पोलीस अभियोक्ता, इतर पोलीस अभियोक्ता व सेवानिवृत्त अभियोक्ता यांचे मत जाणून घेतले आहे. त्यांनीही सदरचे प्रकरण मा. मुख्य न्यायमुर्ती उच्च न्यायालय, मुंबई यांचेकडे प्रलंबीत असतांना व गुन्हयाचे कागदपत्र मा. न्यायालयात जमा असतांना कलम 164 फौ.द.प्र.स. प्रमाणे जबाब नोंदविने नियमबाहय असल्याचे सांगितले.

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11. सदरची बाब सतत त्यांचे निदर्षनास आणून दिली असतांना सुध्दा मा. सहाय्यक पोलीस आयुक्त, दा. नौ. नगर विभाग श्री. सुर्यवंषी सा. हे मला तोंडी आदेष देवून माझेवर दबाव आणत आहेत."

English Translation of the above paragraphs Nos. 10 and 11, read thus :

"10. Despite this case pending before the Hon'ble High Court and despite all original documents pertaining to the said offence filed in the Hon'ble Court since last one year; Shri Suryavanshi, A.C.P., D.N. Nagar, frequently gives oral directions for getting recorded statements of all witnesses under Section 164 of the Code of Criminal Procedure and puts one kind of pressure. In this connection, I personally have sought opinion from various Courts as well as from the Chief Police Prosecutor, other Police Prosecutors and retired Prosecutors and they even have told that it is contrary to the rules to record statements under Section 164 of the Code of Criminal Procedure when the said case is pending before the Hon'ble The Chief Justice of the Hon'ble Bombay High Court, Mumbai and the documents pertaining to the said offence are filed in the Hon'ble Court.

11. Despite bringing this fact to his notice time and again, Shri Suryavanshi, Assistant Police Commissioner, D.N. Nagar Division is putting pressure on me by giving oral directions."

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279.5 The noting records that ACP Suryawanshi had given oral orders and was pressurizing PW31 to record the said statements and that there was pressure to record 164 statements of Anil Bheda, Jayesh Kesariya and Manohar Kulthe. It is further recorded in the noting that the then Chief Public Prosecutor of the Bombay High Court had during the course of discussion, disclosed that pending the writ petition filed by PW1, 164 statements should not be recorded, as it would amount to contempt of Court. The DCP, in his noting, whilst seeking further detailed explanation with respect to the pressure exerted on PW31, has noted that was it okay if written directions were given. In the noting which is at Exh. 247 (Colly.), PW31 has again reiterated the pressure exerted on him. The relevant para of the said exhibit reads thus:

> "24. मा. सहा पोलीस आयुक्त, दा. नौ. नगर मुंबई यांनी सदर गुन्हयातील वरील नमुद डोळस साक्षीदार 1. रामराजपाल सिंग 2. अनिल जेठालाल भेडा यांचे जबाब सी. आर. पी. सी. कलम 164 प्रमाणे नोंद करण्याकरीता दा. नौ. नगर पोलीस ठाण्याचे मार्फतीने त्यांचे पोलीस ठाण्याचा जावक क्र. 742/09

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दिनांक 27/1/2009 अन्वेष मा. मुख्य महानगर दंडाधिकारी, किल्ला कोर्ट, मुंबई यांना पत्र देवुन मा. न्यायालया कडून 10 वे न्यायालयाचे आदेष मिळवून घेवून सदर आदेषा सोबत त्यांचे कार्यालयाचे पत्र जावक क्र. 447/सपोआ/दानौवि/09 दिनांक 29/1/2009 हे जोडून सदर गुन्हयातील डोळस साक्षीदार यांचे सी. आर.पी.सी.कलम 164 प्रमाणे जबाब मा. महानगर दंडाधिकारी, 10वे न्यायालय, अंधेरी (पूर्व), यांचे न्यायालयातच नोंदवावे असे आदेषीत केल्याने सदरचे आदेषाच्या प्रती मा. महानगर दंडाधिकारी, 10 वे न्यायालय, अंधेरी (पूर्व), मुंबई यांचे न्यायालयास सादर करून दिनांक 7/2/2009 रोजी सदर डोळस साक्षीदार जबाब नोंदविण्यात आलेले आहेत."

English translation of the above para reads thus :

"24. To get recorded the statements under Section 164 of the Code of Criminal Procedure of the eye-witnesses by names (1) Ramrajpal Singh and (2) Anil Jethalal Bheda, to the said offence, the Assistant Commissioner of Police, D.N. Nagar Division, Mumbai, through the D.N. Nagar Police Station, under its letter bearing Outward No. 742/2009, dated 27.01.2009 submitted a letter to the Learned Chief Metropolitan Magistrate, Killa Court, Mumbai and obtained order to that effect in the name of the Learned 10th Court and by annexing a letter bearing Outward No. 447/A.C.P./D.N.D./09, dated 29.01.2009 of his Office to the said Order, gave directions to get recorded the statements under Section 164 of the Code of Criminal Procedure of the eye-witnesses to the said Offence, from the Learned Metropolitan

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Magistrate, 10th Court, Andheri (East) itself and therefore, by submitting copies of the said orders to the Learned Metropolitan Magistrate, 10th Court, Andheri (East), Mumbai, the statements of the said eye-witnesses have been got recorded on the date 07.02.2009."

279.6 He has stated that ACP Dilip Suryawanshi had directed him in writing vide letter dated 27th January 2009 to record the statements of the police officers and the witnesses under Section 164. He has stated that pursuant to the letter of the ACP, he had addressed a letter for recording the 164 statements of Aruna Bheda, Jayesh Kesariya and Manohar Kulpe, however, the learned Magistrate had refused to record the same, considering that the petition was pending in the High Court.

280 The aforesaid evidence of PW31 is duly corroborated by PW35-Kiran Sonone, PI attached to Oshiwara Police Station. The said witness i.e. PW35 has accepted the notings at Exh. 246 produced by PW31 as stated aforesaid and his signature thereon.

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PW35-Kiran Sonone :

281 PW35-Kiran Sonone has, in his examination, stated that he was working as a Sr. Inspector of Oshiwara Police Station between May 2007 to November 2009. He has stated that on 29th June 2011, PSI Chalke (PW107) came to his residence and gave details about C.R. No. 246/2011 (present C.R.) and showed him the notings dated 4th April 2009 and 28th April 2009 and made inquiries about the said notings. He has stated that after seeing the notings, he perused the papers of C.R. No. 302/2006, which was transferred from Versova Police Station to Oshiwara Police Station. He has further stated that the notings which were shown to him pertain to recording of the statements of witnesses under Section 164 Cr.P.C and that PI Sankhe (PW31) had placed the said notings before him, pursuant to which, he had made his notings thereon. The said witness has admitted the remarks on the said notings and his signature thereon. He has stated that PI Sankhe (PW31) would discuss about the case and also about

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recording of statements of witnesses under Section 164 Cr.P.C in C.R. No. 302/2006 with the then Chief Public Prosecutor (Bombay High Court) and the opinion of the Chief Public Prosecutor was, that it would not be appropriate to record the statements under Section 164 when the matter was subjudice before the High Court. PW35 has further stated that during that period, ACP Dilip Suryawanshi was ACP of D.N. Nagar Division and that he was insisting on recording of the statements under Section 164 Cr.P.C, however, PI Sankhe (PW31) was not keen on recording the statements. He has further deposed that ACP Suryawanshi was pressurising him (PI Sankhe) and therefore, he discussed the matter with him, pursuant to which, the notings were made. PW35 has identified the notings made by him at Exh. 246 i.e. the notings placed by PI Sankhe and his notings and remarks thereon. He has admitted the contents to be true and correct. He has further stated that the said notings were thereafter forwarded to DCP Zone-9 Shri Kaushik, who made certain remarks on the notings and sent them back for

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clarification to him, which in turn, he forwarded to PI Sankhe (PW31). The said witness has identified the signature of DCP Kaushik at Exh. 246. PW35 has further stated that during this period, he received one DO dated 24th April 2009 (Exh. 248) which he forwarded to PI Sankhe. He has identified the noting on the said DO and the signature of Dilip Suryawanshi, which is marked as `A' for identification. He has further stated that in Exh. 248, ACP Suryawanshi has made reference to another letter i.e. Exh. 242 and that the said letter was sent by ACP Suryawanshi. He has identified the noting made by him (PW35) and his signature and accordingly forwarded the same to PI Sankhe (PW31). He has further stated that he (PW35) replied to the said letter on the very next day i.e. on 28th January 2009, which bears his signature. PW35 has admitted the contents therein, being true and correct. Accordingly, the said reply was marked as Exh. 264.

281.1 On 28th January 2009, PI Sankhe forwarded another

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noting to him, which he forwarded to the DCP, Zone-9 (Exh. 247). PW35 has identified the remarks on the said noting and his signature thereon. He has also admitted the contents of the noting as being true and correct. The said witness has also identified the signature of ACP Dilip Suryawanshi on Exh. 242. He has stated that all the said correspondence was done in the normal course of business.

281.2 In his cross-examination, PW35 has admitted that before PI Sankhe (PW31) received the investigation papers in 2008, PIs Mohan Sankhe (PW39), Dilip Patil and PI Phadtare had already completed the investigation and had arrived at a conclusion, and hence, he did not feel it necessary to re-investigate, after the investigation came to Dattatray Sankhe i.e. PW31. He has stated that he was satisfied that the investigation and the conclusion arrived by the earlier investigating officers and hence, did not bother to re-investigate. He has further admitted that as per the investigation papers of C.R. No. 302/2006, it was

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a case of genuine encounter and not murder and that C.R. No. 302/2006, was not classified as `B' Summary. He also admitted that abated summary was proposed because of the death of Ramnarayan Gupta and that the said report of abated summary was placed before him by PI Patil; that he endorsed the same report and placed the same before ACP Awate. PW35, in his cross-examination, has further stated that in the inquiry which was conducted by the SLAO-4, the same material as available in C.R. No. 302/2006 was placed before the SLAO-4 and that the report of SLAO-4 recorded a finding that the death of Ramnarayan Gupta was caused in self-defence by the police. He has stated that the said report was accepted by the State Government i.e. Home Department (Special). He has further admitted that it is true that the name of Pradeep Sharma **(OA1)** did not appear in any of the investigation papers of C.R. No. 302/2006 and that the investigation papers did not disclose that the officers who had gone to accost the deceased, were part of the team of **OA1**, nor did the investigation papers disclose the

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presence of OA1 at Nana Nani Park at Versova.

282 It is pertinent to note that PW35-PI Sonone has duly corroborated the evidence of PW31-Dattatray Sankhe with respect to the notings made by him on the notings made by PW31. There is no cross-examination of the said witness that the notings were made subsequently or that they were fabricated, much less, had any reason to make the said notings.

283 Although the learned counsel for the appellants/accused made an endeavour to show that both PW31 and PW35, based on the investigation done in C.R No. 302/2006, revealed that the encounter was genuine, the said admission is with respect to what was placed before the said officers on the basis of the investigation conducted by the earlier officers in C.R No. 302/2006. The said officers i.e. PW31 and 35 came into picture i.e in connection with C.R No. 302/2006 belatedly, when almost the entire investigation was completed and when `abated

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summary' report was proposed. Although PW35 has admitted that the investigation papers did not disclose the presence of Pradeep Sharma **(OA1)** at Nana Nani Park, it is pertinent to note that the witness had deposed with respect to the same, based only on investigation papers, as collected by the investigating officers investigating C.R No. 302/2006. Although, a suggestion was made to PW35 that the brother of **A9** was not pressurising to record statements of witnesses under Section 164, the same has been denied by the said witness.

284 It is pertinent to note that Exh. 264 i.e letter dated 28th January 2009 by PW35 to ACP Suryawanshi sets out the investigation carried out. All the correspondence, in particular, the notings exchanged between PW1, PW35 and ACP Suryawanshi, are in the course of the official duty and there is nothing in the cross-examination to disbelieve the testimony of these witnesses.

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285 With respect to pressure tactics and intimidation exerted by some of the family members of the appellants/accused and an advocate, the prosecution has examined PW38-Dheeraj Mehta, in support of the same. The said witness is the witness who was first informed by one Nilesh, immediately soon after Ramnarayan Gupta and Anil Bheda were abducted from Sector 9A, Vashi. His evidence with respect to what was disclosed to him vis-a-vis abduction, has been considered by us, whilst dealing with the said circumstance. At present, we are concerned with what has been deposed to by PW38 with respect to how he was pressurised and intimidated as well as threatened.

286 **PW38-Dheeraj Mehta,** in his examination-in-chief, in para 6 has stated that one person by name Avi had come in August 2009 for getting gemstones (this is post the direction by the High Court to register an FIR- i.e. order dated 13th August 2009. He has stated that the said person made inquiries about the

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stone and collected his visiting card and left; that at about 20:30 hrs., he received a call from his wife stating that one person by name Avi had come to his house, pursuant to which, he asked his wife to handover the phone to Avi; that he spoke to him; that the said person introduced himself as a friend of Avi; that he asked the said person who Avi was, to which, he replied as the person who had come to the shop to purchase stone in the morning; that he asked the said person to ask Avi to call him, pursuant to which, after sometime, he received a call from a PCO; that he asked why he had called, to which he disclosed that he had called for gemstones; that he asked the said person how he had gone to his house and how he got his residential address, to which he disclosed that he had been to his shop and as the shop was closed, he had gone to his house. PW38 stated that the said person wanted one stone urgently, pursuant to which, PW38 called the said person to Hotel Shabri at Vashi. According to PW38, the said person came after 15-20 minutes; that he was accompanied by two other persons; the said person stated that they wanted to

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speak about the encounter of Lakhanbhaiya (Ramnarayan); he asked him who Lakhanbhaiya was; they stated that they wanted to speak about Pandeyji (Ramnarayan) and Anil Bheda, who were taken away from outside his shop; that the said person told him that the said case is going to restart; that he asked Avi who were the two persons with him, to which he disclosed that they were relatives of the police officers, who were in jail; that when he asked him what help was required, the said person disclosed that he should go to his village for some days, as he and Anil Bheda were witnesses in the said case and that since the police was likely to inquire with him, he should go to the Village. PW38 has further stated that he refused the same and told them that he could not go to the Village, as his business would be affected. According to PW38, he again received a call on the next next day from Avi who told him that if he could not go to the Village, he should keep his shop closed for 8-10 days, pursuant to which, he kept his shop closed for one week, as he did not want any hassles. PW38 has further stated that during the said period, he received

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phone calls from Avi, who told him that police would call him and that he should take time of 3 to 4 days.

286.1 PW38, in para 8 of his evidence has again deposed that he received a call from SIT on 26th August 2009 and that as per Avi's say, he took time of 2-3 days; that on the very same day, in the evening, he received call from Avi, who asked him to come to Sanman Hotel, outside Nerul Railway Station, to meet an advocate by the name Falguni Brahmabhatt. He has stated that Ms. Falguni was not his lawyer and that she had come there to discuss about the police inquiry relating to the encounter; that he was told that he should only disclose that Pandeyji and Bheda had come to his shop, had tea and left the shop; that he should not disclose about the fact that Pandeyji and Bheda were taken away from outside his shop and that he should state to the police that he did not know any details about the case. According to PW38, he was asked to call DCP Prasanna and take his appointment on the next day. PW38 has stated that on the next

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day, Avi arranged an Indica vehicle to go to the office of the DCP; that on 27th August 2009, he went to the Office of the DCP in the morning; that he reached the office in the vehicle of advocate Falguni; that he changed the vehicle at Andheri Seepz and then went to Powai Police Chowki, where Vinay Ghorpade (PW108) and Sunil Gaonkar (PW109) were present. He has stated that the said officers after making inquiries with him, took him to the DCP Office at Bandra, where his statement dated 27th September 2009 was recorded. He has stated that he was there with advocate Falguni. According to PW38, his statement was recorded under Section 164 Cr.P.C on 4th September 2009 at which time, advocate Falguni was with him (It is pertinent to note that in both the statements i.e statement dated 27th August 2009 recorded by SIT and the statement dated 4th September 2009 recorded under Section 164, PW38 has not made any disclosure with respect to the incident of abduction. PW38 has further deposed in para 9 that after the aforesaid statements were recorded, again his statement was recorded on 1st February 2010 at the DCP Office

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by SIT. He has stated that after recording of his first two statements i.e statements dated 27th August 2009 and 4th September 2009, he was in contact with Anil Bheda and that Anil Bheda had told him that he had given his statement and that he too should give his statement. He has stated that on 27th August 2009 and at the time of recording of his 164 statement on 4th September 2009, he had given the statement as told by Avi and advocate Falguni, as he was afraid at that time, since Avi had visited his house and that to protect his family, he had given the statement as per their say.

286.2 Pursuant thereto, PW38 was again called by SIT on 28th August 2010 for identification of one person by the name Avi, who was arrested by them. PW38 disclosed that he saw the said person and identified the same to be Avi. However, on the earlier occasion when Avi's photograph was shown to PW38, he did not identify him. PW38 has disclosed the mobile number of

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Avi as XXXXXX1059. PW38 also gave the two mobile numbers used by him.

286.3 The evidence of this witness i.e. PW38, that he was regularly in touch with **A4, A14**, Avi as well as Falguni is duly corroborated by the CDRs, which we will reproduce in detail, when we consider the said circumstance of CDRs. At this stage, it is pertinent to note, that advocate Falguni had appeared for Tanaji Desai (**A2**), Ratnakar Kamble (**A3**), Akhil Khan (**A6**) and Vinayak Shinde **(A7)** at the time of their remand as well as for Pradeep Sharma **(OA1)** in his bail application.

286.4 In his cross-examination, PW38 has stated that from 27th August 2009 till 1st February 2010, he did not make any grievance to anyone with respect to his statement dated 27th August 2009 being made under pressure nor did he file any application or complaint with respect to the same in the court nor did he take any advice from any advocate in this regard, nor did

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he write to DCP Prasanna (PW110) that his statement dated 27th August 2009 recorded by SIT was false and made under pressure. He has stated that he was alone when DCP Prasanna recorded his statement on 27th August 2009 and that he did not disclose to him that the actual facts were something different and that he was under pressure, stating otherwise. He has stated that after reading the contents as typed pursuant to his disclosure, he found the same to be true and correct, pursuant to which, DCP Prasanna signed the said statement. He has further admitted that he did not ask DCP Prasanna to allow him to write on the statement that he was stating so under pressure, nor did he ask him to cancel the contents of the statement, nor did he ask DCP Prasanna not to sign the statement and to score out the portions with which he was confronted in his cross-examination. He has further admitted in his cross-examination that he was alone with the learned Magistrate when his statement was recorded under Section 164 Cr.P.C on 4th September 2009 and that his statement was recorded by the learned Magistrate by way of questions and

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answers and that he did not inform the learned Magistrate that his statement dated 27th August 2009 was recorded under pressure and its contents were incorrect. In his cross-examination, he has stated that in 2006, his two mobile numbers were operational i.e XXXXXX4910 and XXXXXX9531. He has further stated that prior to his meeting on 26th August 2009 with advocate Falguni Brahmabhatt, he did not have any conversation with her on phone and that he called and spoke to her on 26th August 2009. He has also admitted that he spoke to her on the next day morning. According to PW38, he had been to the office of SIT on 27th August 2009 for recording his statement at 12:00 noon and that he had not informed DCP Prasanna (PW110) that he had spoken with advocate Falguni, prior to recording his statement. He has further admitted that he would talk to advocate Falguni daily about 2 to 3 times about the case. It is also pertinent to note that PW38 has admitted in his cross-examination that on 27th August 2009, when he went to meet DCP Prasanna, advocate Falguni was sitting outside and that he had informed DCP

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Prasanna that she was his advocate. He has further admitted that he spoke with advocate Falguni on 1st and 2nd September 2009 and that his statement was recorded by the Magistrate on 4th September 2009. When confronted, he has stated that he did not remember whether he spoke to advocate Falguni on 4th September 2009 at 13:10 hrs and 15:09 hrs. He has admitted that he had not informed the learned Magistrate that he was giving statement under pressure of Avi. PW38 has denied the suggestion that advocate Falguni was his advocate and hence, he was regularly consulting her. He has also denied the suggestion that he was consulting her, as the brother of the deceased was pressurising him to be an eye-witness in the said case. PW38 in his cross-examination stated that there was no pressure from the complainant (PW1) to act as a witness in this case nor had PW1 called him and asked him to sign the statement as per his say. He has further admitted that he had disclosed to SIT that PW1 used to call him on his mobile and had requested to help him and had assured him that no trouble would be caused to him, however,

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after refusing any help, he switched-off his mobile. The witness in his cross-examination has stated that he had not disclosed to SIT that he was told that he would only disclose that Pandeyji and Bheda had come to his shop, had tea and then left the shop. PW38 in para 26 of his cross-examination admitted that to maintain privacy of his family, he never took any customer to his house or gave his address and that the day when Avi came to his residence, he did not give his residential address nor was there any landline available in his house. He has further admitted that Avi did not disclose to him that he would send his friend to him or to his residence. He has further stated in his cross, that on the day Avi came to his office, as usual, he closed the shop at 20:00 to 20:30 hrs and went home. He has stated that he went to Shabri Hotel which is the nearest hotel to his shop at Vashi and had called Avi to Shabri hotel. He has further admitted that when he called Avi to Shabri hotel, he thought he had come to collect the stone, however, Avi had not disclose which stone he wanted. He has further in para 27 of his cross stated that the other two

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persons with Avi at Shabri Hotel were not known to him; that he did not ask their names nor had he asked Avi why he had brought the persons with him; and that before the day, he met Avi at Shabri hotel, he (PW38) knew about Lakhanbhaiya (Ramnarayan) from PW1. He has further admitted that he had left Vashi between 2006 to 2009, as he did not wish to be a witness in the case. PW38 has admitted that he did not witness anything on 11th November 2006 and hence, he did not want to be a witness, nor was he interested in meeting anyone in connection with the said case, as he had shifted his residence between 2006 to 2009 and as such, was taken aback when Avi disclosed that he wanted to talk about the Lakhanbhaiya case. He has stated that he declined to talk to Avi about the said case, as he did not wish to get involved in the same. He has further admitted that Avi did not disclose to him as to how the case was restarted and at whose behest and who the witnesses were, nor that Avi threatened him, however, has denied the suggestion that it was not true to say that there was no reason for him to get

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afraid. He has stated that as Avi was a stranger for him, he was worried.

286.5 Although suggestions have been put to the witness that he agreed to be a witness in the said case, as PW1 had pressurized him and threatened him with arrest, PW38 has denied the same. In para 31 of his cross-examination, PW38 has admitted that from 2006 to 2009, he was not in Mumbai. He has denied the suggestion that (i) on 26th August 2009 and 27th August 2009, Avi did not meet him; (ii) that he did not call Avi on 26th and 27th; (iii) that Avi did not provide any Indica car to him; (iv) that Avi introduced advocate Falguni to him; (v) that Avi did not visit him for purchase of stone; (vi) that he did not give any visiting card to Avi; (vii) that Avi is not Santosh Shettiyar; (viii) that he has named Avi on the say of SIT; (ix) that he did not meet any person by the name Avi at Sanman Hotel, Shabri Hotel or at Andheri Seepz; (x) that he knew advocate Falguni prior to 27th August 2009; (xi) that Avi did not provide an Indica car to him;

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(xii) that advocate Falguni never asked him not to disclose any fact about the incident; and (xiii) that he was disclosing the involvement of Avi and advocate Falguni on the say of SIT.

286.6 Omissions were also brought on record with respect to the disclosure made by PW38 in his subsequent statement made before SIT and his earlier statement i.e when he asked Avi who the two persons were, he disclosed that they were relatives of police officers, who were in jail, nor did he disclose before the Magistrate that he was told to go to village for some days. PW38 voluntarily deposed that he was not asked about the same and hence he did not disclose. He has also admitted that he did not disclose before the Magistrate in his statement under Section 164 dated 4th September 2009, that advocate Falguni was with him, when his earlier statement was recorded. PW38 in his evidence voluntarily stated that advocate Falguni was with him at that time. He has further admitted that he did not tell before the Magistrate while recording his second statement that after

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recording his first two statements, he was in contact with Anil Bheda on 27th, at the time of recording his statement under Section 164. He has stated that he had given them the said statements, as stated by Avi, as he was afraid that Avi had visited his house and to protect his family, he gave the said statement, as per their say.

287 The aforesaid evidence of PW38 with respect to presence of advocate Falguni is corroborated by PW107-Manoj Chalke, PW109-Sunil Gaonkar and PW110-K.M.M. Prasanna.

288 **PW107-Manoj Chalke**, in para 85 of his evidence has stated the names of the advocates who were present at the time of remand. He has stated the names of the advocates who appeared for the accused. As far as advocate Falguni Brhamabhatt is concerned, he has stated that advocate Falguni and advocate Shetty appeared for other accused persons.

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289 As far as **PW109-Sunil Gaonkar** is concerned, he has, in paras 54, 56 and 60 stated the names of the advocates representing the accused. He has stated that advocate Falguni Brahmabhatt represented accused Tanaji Desai **(A2)**, Ratnakar Kamble **(A3),** Akhil Khan **(A6)** and Vinayak Shinde **(A7)** and that on 22nd February 2010, he, API Vinay Ghorpade (PW108) and SIT's staff were present before the Sessions Court for attending Bail Application No. 150/2010 filed by Pradeep Sharma **(OA1)** through advocate Falguni Brahmabhatt and Shrikant Shivade.

290 The fact that Falguni Brahmabhatt was appearing for the accused, as deposed to by PW109 has gone unchallenged, inasmuch as, there is no cross-examination on the said aspect.

291 **PW110-K.M.M. Prasanna,** in para 59 stated that six accused were produced before the learned Magistrate, Railway

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Mobile Court, Andheri. He has stated that all accused were produced in veil, except Pradeep Sharma **(OA1)**. He has stated that advocate Shivade appeared for Pradeep Sharma **(OA1)** and advocate Falguni Brahmabhatt appeared for accused Akhil Khan **(A6)**, Ratnakar Kamble **(A3)** and Tanaji Desai **(A2)** and advocate Shetty appeared for the rest of the accused. PW110 has further deposed that advocate Falguni Brahmabhatt had submitted three applications before the Court, out of which, one was pertaining to allowing medicines and home food for the appellants/accused; the second was to allow the appellants/accused to meet their advocates while in police custody; and the third was regarding expressing concerns over the security of the appellants/accused.

292 The evidence as stated aforesaid clearly shows that advocate Falguni was appearing for the accused and that, she was also interacting with PW38-Dheeraj Mehta. As noted above, the CDRs of advocate Falguni Brahmabhatt corroborate the testimony of the aforesaid witnesses. It thus appears from the

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evidence as stated aforesaid that PW38 was indeed being pressurized to toe a particular line, which was consistent with C.R No. 302/2006. Thus, the statements given by PW38 dated 27th August 2009 recorded under Section 164 by the SIT and statement dated 4th September 2009 recorded by the learned Magistrate, would explain the circumstances in which the said statements were made i.e. PW38 has clearly stated in his evidence, why later, he gave the true and correct statements i.e. after he spoke to Anil Bheda and after Anil Bheda had revealed the truth to SIT.

293 According to the prosecution, the additional affidavit of Pradeep Suryawanshi (A9) would also reveal the manipulations done by the appellant (A9) to create false evidence. In this connection, the prosecution relied not only on the additional affidavit of A9 but also the annexure to the said additional affidavit i.e statement of API Gangadhar Sawant, fingerprint expert, CID. Learned counsel for the appellant (A9) has not

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denied filing of the additional affidavit during the course of the argument nor has he denied the annexures to the said additional affidavit.

294 It is pertinent to note that the said additional affidavit was filed by Pradeep Suryawanshi **(A9)** in the writ petition filed by PW1 i.e Writ Petition No. 2743/2006. To the said additional affidavit, he annexed the statement of Gangadhar Sawant, fingerprint expert, CID. It is pertinent to note that the fingerprint expert who examined the fingerprints on the revolver from which Ramnarayan allegedly fired on the day of the incident i.e. 11th November 2006, is Gangadhar Sawant and that the said fingerprint expert in his report, has stated, "no fingerprints found". It appears that subsequently, after almost three years of the registration of C.R No. 302/2006, when investigation was being conducted by the Oshiwara Police Station and when Pradeep Suryawanshi **(A9)** was PI of D.N. Nagar Police Station, Andheri, **A9** obtained a statement of the said witness i.e

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Gangadhar Sawant. The said statement is dated 27th October 2009. The statement of Gangadhar Sawant was annexed to the additional affidavit by A9 to show why fingerprints were not visible. Although A9 was PI of D.N. Nagar Police Station, Andheri and the investigation of C.R No. 302/2006 was being done by Oshiwara Police Station, despite the same, A9 obtained the said statement after three years, seeking to explain why fingerprints were not visible on 11th November 2006 on the weapon allegedly used by the deceased. The attempt appears to be clearly to create false evidence.

295 It is also pertinent to note that A9 recorded the statement of Ganesh Iyer (PW2) dated 14th March 2007 (161 statement) and took his signature on the said statement, although the IO in the said case at the relevant time, was PI Dilip Patil. We have also earlier noted that A9 was convicted for contempt of the Court because of the threats extended by him to the learned

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Magistrate, post her submitting a report to the High Court that it was not a genuine encounter, but was a fake encounter.

296 Thus, from the evidence on record, it is clearly evident that some of the appellants/accused were directly or indirectly trying to put pressure on witnesses to refrain from disclosing the truth. Most of the accused in this case, are police personnel, and as such, in cases such as these, it is difficult to find witnesses come forward and if they do disclose, all kinds of influence/pressure is exerted not to speak the truth. The evidence on record coupled with the CDRs, shows that the advocate for **OA1** and **A4** and others was present with PW38 at the time of recording of his statement.

297 According to the prosecution, all the aforesaid circumstances have been duly corroborated by CDRs of the accused. Hence, we now propose to deal with the last circumstance relied upon by the prosecution, i.e. CDR, which again clearly points to the complicity of the appellants/accused.

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vii. CALL DETAIL RECORDS (`CDR')

298 Learned counsel for the appellants/accused raised question on the admissibility of the SDR/CDR evidence led through the Nodal Officers and some even disputed using the mobile numbers, as alleged by the prosecution. We, in the facts have no hesitation in relying on the said CDR evidence. Learned counsel for the appellants/accused also submitted that in the absence of Section 65B Certificate, the evidence adduced cannot be relied upon.

299 Per contra, Dr. Chaudhry, learned counsel for the appellant in Criminal Appeal No.854/2013 and Mr. Chavan, learned Spl. P.P. submitted that first and foremost, no objection with regard to Section 65B Certificate was raised during trial, much less, when the Nodal Officers were examined and as such,, the accused are now estopped from raising the ground of Section 65B.

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a. Law vis-a-vis CDR

300 The Apex Court in ***Sundar @ Sundarrajan versus State by Inspector of Police***[21]**,** has in detail considered the admissibility of CDRs; and how evidence of CDR is to be considered i.e. the law as it then stood, at the time of trial. The relevant paragraphs are paras 31 and 32 of the said judgment, which read thus:

> *"31. One of the earliest decisions on the provision was of a two judge bench of this Court in* ***State (NCT of Delhi) v. Navjot Sandhu****-(2005) 11 SCC 600, where the Court held that Section 65B was only one of the provisions through which secondary evidence by way of electronic record could be admitted and that there was no bar on admitting evidence through other provisions. The Court noted that:*
>
> > *150. According to Section 63, "secondary evidence" means and includes, among other things, 'copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies'. Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence,*

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> *printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge.* ***Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.***
>
> (emphasis supplied)

32. The principle which was enunciated in Navjot Sandhu was overruled by a three judge bench of this Court in Anvar P.V. where it was held that:

> *22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record.* ***Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence***

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> ***pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied.*** *Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."*
>
> (emphasis supplied)

301 It is pertinent to note that the Apex Court judgement dated 4th August 2005 in **Navjot Sandhu** was subsequently overruled in **Anvar's case** on 18th September 2014. According to the learned Spl.P.P. since, the last witness was recorded in 2012, the law governing 65B certificates will have to be interpreted, as it then stood i.e. at the time of recording the evidence at the trial stage, i.e. in consonance with the ruling in Navjot Sandhu's case, which relaxed the need for a Section 65B Certificate, certificate for proving electronic records.

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302 The Apex Court in ***Sonu @ Amar v. State of Haryana***[22]**,** was called upon to consider whether the judgment in **Anvar (Supra)** should be retrospectively applied or whether it should find a prospective application. Accordingly, in para 40, the Apex Court held as under:

> *"40. This Court did not apply the principle of prospective overruling in Anvar case [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] . The dilemma is whether we should. This Court in K. Madhava Reddy v. State of A.P. [K. Madhava Reddy v. State of A.P., (2014) 6 SCC 537 : (2014) 2 SCC (L&S) 305] held that an earlier judgment would be prospective taking note of the ramifications of its retrospective operation. If the judgment in Anvar [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] is applied retrospectively, it would result in unscrambling past transactions and adversely affecting the administration of justice. As Anvar case [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] was decided by a three-Judge Bench, propriety demands that we refrain from declaring that the judgment would be prospective in operation. We leave it open to be decided in an appropriate case by a three-Judge Bench. In any event,* ***this question is not germane for adjudication of the present dispute*** *in view of the adjudication of the other issues against the accused."*
>
> *(emphasis supplied)*

22 (2017) 8 SCC 570.

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303 Since, the question was left open in **Sonu (Supra)**, the aforementioned legal labyrinth of the 65B certificate, was finally navigated in **Sundarrajan (supra)**, where the Apex Court held in para 44 as under:

> *"44. Therefore, we are inclined to agree with the ratio in Sonu by not allowing the objection which is raised at a belated stage that the CDRs are inadmissible in the absence of a Section 65B certificate, especially in cases, where the trial has been completed before 18 September 2014, i.e. before the pronouncement of the decision in Anvar P.V.. However, we are also mindful of the fact that the instant matter involves the death sentence having been awarded."*

304 To recapitulate the foregoing, it was canvassed in Sonu, that there are two categories of objections which can be raised regarding the admissibility of documents, the first category is, where the document is per se inadmissible i.e. inherently inadmissible; and, the second category is, where the objection is regarding the mode of proof, which is procedural. In the latter case, if the objection is raised at any stage subsequent to the marking of the document as an exhibit, the said objection regarding the mode of proof cannot be allowed. It was held, that

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the crucial test, is whether the parties tendering the evidence would have had the opportunity to cure the defect by resorting to such mode of proof as would be regular, if such an objection was raised at the time of marking such documents as exhibits.

305 In this connection, it would be apposite to place reliance on **Sonu (Supra)**, in particular, paragraph 32, of the said judgment:

> *"32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The*

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> ***mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies****. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in* ***Section 65-B(4)*** *cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof." (emphasis supplied)*

306 It is thus evident from the aforesaid judgments and in particular, the judgment of the Apex Court in the case of ***Sundar @ Sundarrajan (supra),*** that an objection that the CDR's are inadmissible in the absence of a 65B Certificate, if raised at a belated stage, will not be allowed in cases where the trial has been completed before 18th September 2014. It is pertinent to note that the last witness was recorded on 20 February 2012 and the judgment was delivered on 12th July 2013. Thus, in the present case, we hold that the CDRs can be looked into, the same having being exhibited through Nodal Officers without any objection.

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307 We now propose to consider the evidence adduced by the prosecution, in support of the said CDR.

b. Evidence of nodal officers

308 The prosecution in order to prove the CDR has relied on the following Nodal Officers; Mr. Changdeo Haribhau Godse, (PW54); Mr. Vikas Narayan Phulkar (PW97); Mr. Rakeshchandra Rambuz Prajapati (PW62); Mr. Yogesh Shreekrushna Rajapurkar (PW65), Mr. Shekhar Vinayak Palande (PW69), Mr. Divakar Mohan Rao (PW85) and Mr. Rajesh Sampatrao Gaikwad (PW89).

309 SIT had sent request letters and sought mobile numbers of the following persons:

Sr. No.	Name	Mobile Number	Registered Owner
1.	Pradeep Sharma (**OA1)**	XXXXXX2987	Hitesh Solanki **(A5)**
2.	Tanaji Desai **(A2)**	XXXXXX1323	Own name
3.	Ratnakar Kamble **(A3)**	XXXXXX3457	Own name

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4.	Shailendra Pandey @ Pinky **(A4)**	XXXXXX9023 XXXXXX6311 XXXXXX1117	Own name Osman Shaikh(PW88) Mehmood Shaikh(PW96)
5.	Hitesh Solanki **(A5)**	XXXXXX1156-Loop XXXXXX5068 XXXXXX5874 XXXXXX5805 XXXXXX8104 XXXXXX5118-Vodafone	Own name Own name Own name Own name Own name Shaikh Kaider
6.	Akhil Shirin Khan @ Bobby **(A6)**	XXXXXX8070	Own name
7.	Vinayak Shinde@ Veenu **(A7)**	XXXXXX0551	Avinash B. Shinde (Brother)
8.	Pradeep Suryawanshi @ Nana **(A9)**	XXXXXX6442	Own name
9.	Nitin Sartape **(A11)**	XXXXXX2052	Own name
10.	Devidas Sakpal **(A13)**	XXXXXX7293	Own name
11.	Janardan Bhanage **(A14)**	XXXXXX6791	Ashok Sawant
12.	Dilip Sitaram Palande **(A15)**	XXXXXX3538	Own name
13.	Prakash Kadam **(A16)**	XXXXXX5392	Own name
14.	Ganesh Harpude **(A17)**	XXXXXX8210	Own name

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15.	Anand Patade **(A18)**	XXXXXX2362	Mangesh Sawant
16.	Sandip Sardar **(A20)**	XXXXXX3395	Own name
17.	Arvind Sarvankar **(A22)**	XXXXXX6188	Own name
18.	Ramprasad Gupta (PW1)	XXXXXX6490 XXXXXX0012	Own name
19.	Ganesh Iyer (PW2)	XXXXXX5384 XXXXXX4804	Own name
20.	Shyamsunder Gupta (PW3)	XXXXXX6540 XXXXXX4123	Own name
21.	Ramnarayan Gupta (deceased)	XXXXXX8877	Anil Bheda
22.	Anil Bheda	XXXXXX3863 XXXXXX6351	Own name Own name
23.	Shankar @ Girish Dalsingh @ Nepali (PW57)	XXXXXX9998	Own name
24.	Dheeraj Mehta (PW38)	XXXXXX9531 XXXXXX4910	Own name
25.	Anant Patil (PW104)	XXXXXX3281	Own name
26.	Subhash Patel @ Lefty (Informer)	XXXXXX2771 XXXXXX5550 XXXXXX0768 XXXXXX7645	Naresh Chandurkar Chandan Singh Sairaj Ansari Radha Indulkar

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27.	Ramrajpal Singh	XXXXXX3799	Own name
28.	Bipin Bihari (PW78)	XXXXXX3333	Novex Communication Pvt. Ltd.
29.	Geetanjali Datar (PW68)	XXXXXX2638	Shrikrushna Datar
30.	Falguni Brahmabhatt	XXXXXX0500	Own name
31.	Mahesh Muley (PW6)	XXXXXX8646	Own name
32.	Amit Ashok Jambotkar (PW8)	XXXXXX8555	Own name
33.	Santosh Shetiyar	XXXXXX1059	Ajit Soman
34.	Harishankar Sharma	XXXXXX4570	Own name

PW54 - Changdeo Haribhau Godse:

310 PW54 - Changdeo Haribhau Godse, was working as an Alternate Nodal Officer in Vodafone India Limited (presently Vodafone ESSAR Limited). As a Nodal Officer he provided information relating to mobile phones to Law Enforcement

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Agency i.e. subscribers details, call data record, customer application form, payment details etc. He has stated that if the data is required by Law Enforcement Agency, a request is made to their I.T. Department to retrieve the data and if it is beyond the period of one year, the CDR is automatically stored in their main server and if there is a system failure, then the data is not lost since there is back up system provided for. He has further stated that the data includes incoming calls and outgoing calls as well as incoming and outgoing SMS and that there is no manual intervention or automatic intervention in recording of the said data. The said witness has in his evidence stated that pursuant to the letters addressed by SIT, he provided the following details:

Sr. No.	Request Letter for Mobile Number by SIT	Dated	Information Provided by the Nodal Officer	Dated
1.	**Exhibit. 398** Letter O. W. No. 70/ DCP/ Zone - IX/ 2009 Sub.: Provide Information regarding mobile Number - **XXXXXX3799** - Owner - Ramrajpal Singh	12.10. 2009	**Exhibit 399 (colly)** Period - 05.11.2006 to 30.11.2006	17.02. 2010

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2.	**Exhibit. 400** Letter O. W. No. 46/ DCP/ SIT/ 2009 **Sub.:** Provide Information regarding mobile Number along with tower location **XXXXXX 5384** - Owner - ***Mr. Ganesh R. Iyer*** **(PW2),** Exh. 148 **XXXXXX4804** - Owner	25.09. 2009	**Exhibit 401 (colly)** Period-10.11.2006-13.11.2006 Information requested by: Mr. K. M. Mallikarjuna Prasanna **(PW110)**	17.02. 2010
3.	**Exhibit. 402** Letter O. W. No. 231/ DCP/ SIT/ 2010 **Sub.:** Providing hard copies of information already sent through email Ref: Letter O. W. No. 171/ DCP/ SIT/ 2010 Dt. 03.03.2010 **XXXXXX3281** - Owned and used by ***Mr. Anant Tukaram Patil*** *(PW104)* **XXXXXX5118** - used by ***Hitesh Shantilal Solanki*** *(A5)* but registered in the name of ***Shaikh Kaider***	22.03. 2010	**Exhibit 403 (colly)** Period-10.11.2006-16.11.2006 **(PW104)** **Exhibit 404 (colly)** - Period-10.11.2006 to 16.11.2006 -**(A5)**	
4.	**Exhibit.405** Letter O. W. No. 81/ DCP/ SIT/ 2010 **Sub.:** Providing details of Cell ID and Tower Locations	11.06. 2010	**Exhibit 406**	06.12. 2010
5.	**Exhibit.407** Letter O. W. No. 509/ DCP/ SIT/ 2010 Sub.: Providing Information	23.08. 2010	**Exhibit 408 (colly)** Period - 09.11.2006 to 30.11.2006 -**(A6)** **Exhibit 409 (colly)** -	

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	regarding Communication details and subscriber details of mobile Number Ref: HC - Order - Dated 16.08.2010 in WP/2473/2006 in CR.no. 246/09 **XXXXXX1117** - registered in the name of ***Mehmud Shaikh*** (PW96) and used by ***Shailendra Pandey @ Pinky*** (A4) **XXXXXX8070** - ***Akhil Khan @ Bobby*** (A6) **XXXXXX0551** - registered in the name of ***Avinash Shinde*** and used by ***Vinayak Babasaheb Shinde @ Veenu*** (A7) **XXXXXX2771** - registered in the name of ***Ramesh Chandurkar*** *(PW12)* and used by *Subhash R. Patel @ Lefty* **XXXXXX511** - ***Hitesh Shantilal Solanki*** (A5) but registered in the name of **Shaikh Kaider**		Period-09.11.2006 to 30.11.2006- **(A7)** **Exhibit 410 (colly)** - Period - 09.11.2006 to 30.11.2006- **Lefty** **Exhibit 411 (colly)** - Period - 09.11.2006 to 30.11.2006-**(A5)**	
6.	**Exhibit. 412** Letter O. W. No. 532/ DCP/ SIT/ 2010 Sub.: Providing SDR of mobile Number - **XXXXXX5118 - *Hitesh***	02.09. 2010	**Exhibit 413 (colly)**	06.09. 2010

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	Shantilal Solanki (A5) but registered in the name of ***Shaikh Kaider***			
7.	**Exhibit. 414** Letter O. W. No. 528/ DCP/ SIT/ 2010 **Sub.:** Providing hard copies of CDR and SDR of mobile Number - **XXXXXX1117-XXXXXX6791** - ***Janardan Tukaram Bhanage*** **(A14)** in the name of **Ashok Sawant (*PW74)*** **XXXXXX*5118 – Hitesh Shantilal Solanki*** *(A5)* but registered in the name of ***Shaikh Kaider***	02.09.2010	**Exhibit 415 (colly)** **Exhibit 416 (colly)** - Period - 13.08.2009 to 05.09.2009- **XXXXXX1117** **Exhibit 417 (colly)** - Period - 13.08.2009 to 05.09.2009 **- (A14)**	
8.	**Exhibit. 418** Letter O. W. No. 535/ DCP/ SIT/ 2010 Sub.: Providing hard copies of CDR and SDR of mobile Number - **XXXXXX1059** - registered in the name of ***Ajit Soman*** and used by ***Santosh Shettiyar***	03.09.2010	**Exhibit 419 (colly)** - Period - 13.08.2009 to 05.09.2009 - **XXXXXX1059**	
9.	**Exhibit. 420** Letter O. W. No. 573/ DCP/ SIT/ 2010 **Sub.:** Providing details of tower location of concern cell ids	01.10.2010	**Exhibit 421 (colly)**	06.10.2010
10.	**Exhibit. 422** Letter O. W. No. 696/ DCP/	16.12.2010	**Exhibit 423**	

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	SIT/ 2010 Sub.: Providing details of Cell id and tower locations.			
11.	**Exhibit. 424** Letter O. W. No. 158/ DCP/ SIT/ 2011 **Sub.:** Providing details of Cell id and tower locations.	15.07. 2011	**Exhibit 425 (colly)**	
12.	Exhibit. 426 Letter O.W. No. 161/DCP/SIT/2011 **Sub.:** Providing details of Cell id and tower locations.	18.07. 2011	**Exhibit 427(colly)**	26.07. 2011
13.	**Exhibit. 428** Letter O. W. No. 171/SP/ SIT/2011 Sub.: Providing details of Cell id and tower locations.	02.08. 2011	**Exhibit 429 (colly)**	05.08. 2011
14.	**Exhibit. 430** Letter O. W. No. 192/SP/ SIT/ 2011 **Sub.:** Provide SDR of Mobile Numbers **XXXXXX2771** - registered in the name of ***Naresh Chandurkar*** (PW12) and used by ***Subhash R. Patel @ Lefty*** **XXXXXX8070** - ***Akhil Khan @ Bobby*** (A6)	09.09. 2011	**Exhibit 431 (colly)**	09.09. 2011
15.	**Exhibit. 432**	09.09.	**Exhibit. 433(colly)**	28.09.

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	Letter O. W. No. 189/SP/ SIT/ 2011 **Sub.:** Provide CDR & SDR of Mobile Numbers **XXXXXX0500** - ***Falguni Brahmabhatt***	2011	Period - 01.08.2009 to 31.01.2010 - Falguni Brahmabhatt	2011
16.	**Exhibit. 434 (colly)** Letter O.W. No. 252/ SP/ SIT/ 2011 Sub.:Provide certified hard copies of tower locations and coverage area of Cell ids **Ref.:** Letter O.W. No. 573/DCP/ SIT/ 2010 Dt. 01.10.2010	24.10. 2011	**Exhibit. 435 (colly)**	
17.	**Exhibit. 436** Letter O. W. No. 253/ SP/ SIT/ 2011 Sub.: Provide certified hard copies of tower locations and coverage area of Cell ids	24.10. 2011	**Exhibit. 437 (colly)**	10.11. 2011
18	**Exhibit. 438** Letter O. W. No. 255/ SP/ SIT/ 2011 Sub.:Provide certified hard copies of tower locations and coverage area of Cell ids Ref.: Letter O. W. No. 696/DCP/ SIT/ 2010 Dt. 16.12.2010	24.10. 2011	**Exhibit. 439**	10.11. 2011

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19	**Exhibit. 440** Letter O. W. No. 257/ SP/ SIT/ 2011 Sub.: Provide certified hard copies of tower locations and coverage area of Cell ids Ref.: Letter O. W. No. 171/DCP/ SIT/ 2011 Dt. 02.08.2011	24.10. 2011	**Exhibit. 441 (colly)**	10.11. 2011
20.	**Exhibit. 442** Letter O. W. No. 258/ SP/ SIT/ 2011 **Sub.:** Provide certified hard copies of tower locations and coverage area of Cell ids Ref.: Letter O. W. No. 161/DCP/ SIT/ 2011 Dt. 18.07.2011	24.10. 2011	**Exhibit. 443 (colly)**	10.11. 2011
21	**Exhibit. 444** Letter O. W. No. 160/ DCP/ SIT/ 2011 **Sub.:** Providing hard copy of SDR and CDR of Mobile Number **XXXXXX6351**-Anil Bheda	18.07. 2011	**Exhibit. 445 (colly)** Period-01.02.2011 to 18.07.2011 - **Anil Bheda**	
22	**Exhibit. 446** Letter O. W. No. 269/SP/SIT/2011 **Sub.:** Provide SDR of Mobile	31.10. 2011	**Exhibit. 447(colly)**	

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	number **XXXXXX5550** - registered in the name of ***Chandan Singh*** and used by *Subhash R. Patel @ Lefty* **XXXXXX0768** - registered in the name of ***Sairaj Ansari*** and used by ***Subhash R. Patel @ Lefty***			
23	**Exhibit. 448** Letter O. W. No. 225/ SP/ SIT/ 2011 **Sub.:** Provide SDR of Mobile number **XXXXXX7645** - registered in the name of ***Radha Indulkar*** and used by ***Subhash R. Patel @ Lefty***	29.09. 2011	**Exhibit. 449 (colly)**	
24	**Exhibit. 450** Letter O. W. No. 227/ SP/ SIT/ 2011 **Sub.:** Provide original subscriber's application forms of mobile user ***Radha Indulkar***	29.09. 2011	**Exhibit. 451 (colly)**	
25.	**Exhibit. 452** Letter O. W. No. 235/ SP/ SIT/ 2011 **Sub.:** Provide original	29.09. 2011	**Exhibit. 453(colly) - Akhil Shirin Khan -Naresh Chandurkar -Manoj Kambale**	

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	subscriber's application forms of mobile user ***Akhil Shirin Khan, Naresh Chandurkar,*** ***Manoj Kambale, Mehmood Shaikh, Ajit*** ***Soman, Ashok Sawant***		**-Mehmood Shaikh** **- Ajit Soman** **-Ashok Sawant**	
26.	**Exhibit. 454** Letter O. W. No. 240/DCP/ SIT/ 2010 **Sub.:** Providing hard copies of information already sent through email Ref.: Letter O. W. No. 128/ DCP/ SIT/ 2010 Dt. 09.02.2010 **XXXXXX0551** - registered in the name of ***Avinash Shinde*** and used by ***Vinayak*** ***Babasaheb Shinde @ Veenu*** (A7)	23.03. 2010	**Exhibit. 455(colly)** **Period** - 10.11.2006 to 16.11.2006-**(A7)**	
27.	**Exhibit. 456** Letter O. W. No. 12/ DCP/ SIT/ 2011 **Sub.:** Providing details of Cell ID and tower locations	29.01. 2011	**Exhibit. 457**	
28.	**Exhibit. 458** Letter O. W. No. 261/ DCP/ SIT/ 2010 Sub.: provide details of the Cell IDs and tower locations.	26.03. 2010	**Exhibit. 459 (Colly)**	
29.	**Exhibit. 460** Letter O. W. No. 149/ DCP/	20.02.	**Exhibit. 461 (Colly)**	11.03.

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	SIT/ 2010 Sub.: Provide details of the Cell IDs and tower locations.	2010		2010
30.	**Exhibit. 462** Letter O. W. No. 159/ DCP/ SIT/ 2010 Sub.: Provide details of the Cell IDs and tower locations.	01.03. 2010	**Exhibit. 463 (Colly)**	11.03. 2010
31			**Exhibit. 464** Details of Cell IDs and tower locations, (recorded under 161 statement of PW54 and corrected copy of Exh. 459)	
32			**Exhibit. 465 (Colly)** CDR details of Mobile Number - **XXXXXX0500 -** **Falguni Brahmabhatt**	

The said information supplied was marked as Exhibits as mentioned herein above. There was no objection with respect to the marking of the said documents/information provided by the said witness, raised by the accused.

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1. **PW97 – Vikas Narayan Phulkar**

311 Vikas Narayan Phulkar was examined as PW97 by the prosecution. The said witness was working as an Alternate Nodal Officer with the Vodafone Company at the relevant time. He too had provided requisite documents/information as sought for by the SIT. The said documents/information as sought for as under:

Sr. No.	Request Letter for Mobile Number by SIT	Dated	Information Provided by the Nodal Officer	Dated
1	**Exhibit. 422** Letter O. W. No. 696/ DCP/ SIT/ 2010 For providing details of Cell id and tower locations.	16.12.2010	**Exhibit 423**	
2.	**Exhibit. 432** Letter O. W. No. 189/ SP/ SIT/ 2011 For providing CDR & SDR of Mobile Numbers **XXXXXX0500** - ***Falguni Brahmabhatt***	09.09.2011	**Exhibit. 433 (colly)** **Period** - 01.08.2009 to 31.01.2010 - **Falguni Brahmabhatt**	
3	**Exhibit. 444** Letter O. W. No. 160/ DCP/ SIT/ 2011 For providing hard copies of SDR and CDR of Mobile Number **XXXXX6351**-Anil Bheda	18.07.2011	**Exhibit. 445 (colly) - Period** - 01.02.2011 to 18.07.2011 - Anil Bheda	

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4	**Exhibit. 446** Letter O. W. No. 269/ SP/ SIT/ 2011 For providing SDR of Mobile number **XXXXXX5550** - ***Chandan Singh*** **XXXXXX0768** - ***Sairaj Ansari***	31.10.2011	**Exhibit. 447 (colly)**	
5	**Exhibit. 448** Letter O. W. No. 225/ SP/ SIT/ 2011 For providing SDR of Mobile number **XXXXXX7645** - registered in the name of ***Radha Indulkar*** and used by ***Subhash R. Patel @ Lefty***	29.09.2011	**Exhibit 449 (colly)**	
6	**Exhibit. 452** Letter O. W. No. 235/ SP/ SIT/ 2011 To provide original subscriber's application forms of mobile user ***Akhil Shirin Khan, Naresh Chandurkar, Manoj Kambale, Mehmood Shaikh, Ajit Soman, Ashok Sawant***	29.09.2011	**Exhibit. 453 (colly)** **- Akhil Shirin Khan** **- Naresh Chandurkar** **- Manoj Kambale** **- Mehmood Shaikh** **- Ajit Soman** **-Ashok Sawant**	
7	**Exhibit. 414** Letter O. W. No. 528/ DCP/ SIT/ 2010 For providing hard copies of CDR and SDR of mobile user - ***XXXXXX1117-XXXXXX6791 - Janardan Tukaram Bhanage*** (A14) in the name of ***Ashok***	02.09.2010	**Exhibit 415 (colly)** **Exhibit 416 (colly)** - Period – 13.08.2009 to 05.09.2009- **XXXXXX1117** **Exhibit 417** - Period - 13.08.2009 to 05.09.2009 - **(A14)**	

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	Sawant (PW74) XXXXXX 5118 - *Hitesh Shantilal Solanki* (A5) but registered in the name of *Shaikh Kaider*			
8	**Exhibit. 420 (colly)** Letter O. W. No. 573/ DCP/ SIT/ 2010 For providing details of tower locations of concerned cell ids	01.10.2010	**Exhibit 421 (colly)**	06.10.2010
9	**Exhibit. 424** Letter O. W. No. 158/ DCP/ SIT/ 2011 For providing details of the mobile Cell ids.	15.07.2011	**Exhibit 425 (colly)**	
10	**Exhibit. 426** Letter O. W. No. 161/ DCP/ SIT/ 2011 For providing details of the mobile Cell ids.	18.07.2011	**Exhibit 427 (colly)**	26.07.2011
11	**Exhibit. 440** Letter O. W. No. 257/ SP/ SIT/ 2011 To get certified hard copies of tower locations and coverage area of Cell ids Ref.: Letter O. W. No. 171/DCP/ SIT/ 2011 Dt. 02.08.2011	24.10.2011	**Exhibit. 441 (colly)**	10.11.2011
12	**Exhibit. 442** Letter O. W. No. 258/ SP/ SIT/ 2011 To get certified hard copies of 'tower locations and coverage area of Cell ids Ref.: Letter O. W. No. 161/DCP/ SIT/ 2011 Dt. 18.07.2011	24.10.2011	**Exhibit. 443 (colly)**	

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The said information/certificate as provided has been duly exhibited through the said witness. Admittedly, there is no cross-examination with respect to any objection regarding exhibiting of documents/information supplied by the said witness.

312 Although, the said witness was cross-examined with respect to certification of electronic records, the said witness has stated that electronic records are certified only if Law Reinforcement Agency makes a request to that effect.

PW62 – Rakeshchandra Rambuz Prajapati

313 PW62–Rakeshchandra Rambuz Prajapati, was initially serving in BPL Mobile Communication Ltd. which was at the relevant time known as 'Loop Mobile India Limited' and since October 2008 was serving as a Nodal Officer. He has stated that information was furnished to the Security Agencies, when sought. He has stated that on-line CDR is maintained for one year and

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old records are kept in magnetic cassettes as a back-up. The said witness has supplied following information as sought for by the SIT.

Sr. No.	Request Letter for Mobile Number by SIT	Dated	Informa-tion Provided by the Nodal Officer	Dated
1	**Exhibit. 520** Letter O. W. No. 115/ DCP/ SIT/ 2009 Sub.: Provide Information regarding incoming and outgoing calls made from & received on cellular nos. Ref.: HC Order Dt. 10.09.2009 in connection with C.W.P 2473/2006 **XXXXXX1323** - Tanaji B. Desai (A2) **XXXXXX2052** - Nitin Sartape (All) **XXXXXX7293** - Devidas G. Sakpal (Al3) **XXXXXX3538** - Dilip S. Palande (Al5) **XXXXXX2362** - registered in the name of Mangesh Sawant and used by Anand Balaji Patade (A18) **XXXXXX3395** - Sandeep H. Sardar (A20) **XXXXXX6188** -Arvind A. Sarvankar (A22) **XXXXXX4570** - Harishankar Sharma	12.11.2009	**Exhibit. 521 (colly)**	30.11.2009
2	**Exhibit. 522**	21.12.2009	**Exhibit. 523**	06.01.2

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	Letter O. W. No. 161/ DCP/ SIT/ 2009 Sub.: Provide Details of Mobile No. **XXXXXX1323 -** Tanaji B. Desai (A2) **XXXXXX3457** - Ratnakar G. Kamble (A3) **XXXXXX7293** - Devidas G. Sakpal (A13)		**(colly)**	010
3	**Exhibit. 524** Letter O. W. No. 78/ DCP/ SIT/ 2010 **Exhibit. 525 (colly)** -Email Dt. 06.01.2010 Email O.W. No. 04/ DCP/ SIT/ 2010 **Exhibit. 527** -Email Dt. 06.01.2010 Email O.W. No. 05/ DCP/ SIT/ 2010 **Exhibit. 529 (colly)** - Email Dt.06.01.2010 Email O.W. No. 06/ DCP/ SIT/ 2010 **Sub.:** Providing certified hard copies of CDR & SDR for Letter 5 letter sent by SIT O. W. No. 115/ DCP/ SIT/ 2009 Dt. 12.11.2009 O. W. No. 161/ DCP/ SIT/ 2009 Dt. 21.12.2009 O. W. No. 04/ DCP/ SIT/ 2010 Dt. 06.01.2010 O. W. No. 05/ DCP/ SIT/ 2010 Dt. . 06.01.2010 0. W. No. 06/ DCP/ SIT/ 2009 Dt. 06.01.2010	26.01.2010	**Exhibit. 526 (colly)** **Exhibit. 528** **Exhibit. 530**	

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4	**Exhibit. 534** Letter O. W. No. 235/ DCP/ SIT/ 2010 Sub.: Providing hard copies of information already sent through email **Ref.:** Letter O.W. No. 138/ DCP/ SIT/ 2009 Dt. 27.11.2009 **XXXXXX2987** - used by **Pradeep R. Sharma** (A1) and registered in the name of **Hitesh Solanki** (A5)	22.03.2010	**Exhibit. 535 (colly)**	25.03.2010
5	**Exhibit. 536** Letter O. W. No. 79/ DCP/ SIT/ 2010 **Sub.:** Provide Tower locations and coverage area of cell ID	26.01.2010	**Exhibit. 537 (colly)** Reply to the emial dated 22.03.2010 sent by PW110 via. Email – O.W. No.72/DCP/SIT/2010	
6	**Exhibit. 538** Letter O.W. No. 228/DCP/ SIT/ 2010 Sub.: Provide Tower locations and coverage area of cell ID	22.03.2010	**Exhibit. 539 (colly)**	23.03.2010
7	**Exhibit. 540 (colly)** Email O.W. No. 230/ DCP/ SIT/ 2010 Sub.: Provide lower locations and coverage area of cell ID Email Copy of Exh.538	22.03.2010	**Exhibit. 539 (colly)**	23.03.2010
8	**Exhibit. 541 (colly)** Email - O.W.No. 72/DCP/S1T/2010 Email Copy of Exh.536	25.01.2010	**Exhibit. 537 (colly)**	27.01.2010

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9	**Exhibit. 542** Letter O. W. No. 508/ DCP/ SIT/ 2010 Sub.: information regarding communication details and subscriber details of Mobile Numbers **Ref.:** HC order dated 16.08.2010 in WP/ 2473/2006 in connection with Cr.no.246/2009 **XXXXXX1323 -** Tanaji B. Desai (A2) **XXXXXX3457** - Ratnakar G. Kamble @ Rattu (A3) **XXXXXX3395** - Sandeep Hemraj Sardar (A20) **XXXXXX3538** - **Dilip Sitaram Palande** (Al 5) **XXXXXX6188** -**Arvind Arjun Sarvankar** (A22) **XXXXXX2987** - used by **Pradeep R. Sharma** (A1) and registered in the name of **Hitesh Solanki** *(A5)* **XXXXXX1156** - **Hitesh Shantilal Solanki** (**A5**) **XXXXXX5068,** **XXXXXX5874,** **XXXXXX5805,** **XXXXXX8104**	23.08.2010	**Exhibit. 543 (colly)**	15.09.2010
10	**Exhibit. 544** Letter O. W. No. 555/ DCP/ SIT/ 2010 Sub.: Provide Information regarding communication details and subscriber details of mobile Numbers Ref: O.W.No. 508/ DCP/ SIT/	14.09.2010		

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	2010 dated 23.082010			
11	**Exhibit. 545** Letter O. W. No. 531/DCP/ SIT/ 2010 Sub.: providing CDR and SDR of Mobile user. For Details of Mobile No. **XXXXXX6311** - registered in the name of **Mr. Mohammad. Usman Iliyas Shaikh** (PW88) and used by **Shailendra Pandey**	02.09.2010	**Exhibit. 546 (colly)**	03.09.2010
12	**Exhibit. 547** Letter O. W. No. 591/ DCP/ SIT/ 2010 Sub.: Tower locations and coverage area of cell ID	13.10.2010	**Exhibit. 548 (colly)**	21.10.2010
13	**Exhibit. 549** Letter O. W. No. 615/ DCP/ SIT/ 2010 Sub.: Providing information regarding communication details of Mobile numbers For Mobile Numbers: **XXXXXX1323 - Tanaji B. Desai** (A2) **XXXXXX3457 - Ratnakar G. Kamble @ Rattu** (A3)	03.11.2010	**Exhibit. 550 (colly)**	14.12.2010
14	**Exhibit. 551** Letter O. W. No. 12/ DCP/ SIT/ 2011 **Sub.:** Providing details of Cell id and tower locations	29.01.2011	**Exhibit. 552**	02.02.2011
15	**Exhibit. 553**	31.01.2011	**Exhibit. 554**	10.02.2

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	Letter O. W. No. 16/ DCP/ SIT/ 2011 **Sub.:** Providing details of Cell id and tower locations		**(colly)**	011
16	**Exhibit. 555** Letter O. W. No. 24/ DCP/ SIT/ 2011 **Sub.:** Providing details of Cell id and Tower Locations Ref.: Nodal Officers letter LMIL/2011/3017 dated 02.02.2011	01.03.2011	**Exhibit. 556**	03.03.2011
17	**Exhibit. 557** Letter O. W. No. 171/SP/ SIT/2011 **Sub.:** Provide details of the mobile Cell ids.	02.08.2011	**Exhibit. 558 (colly)**	04.08.2011
18	**Exhibit. 559** Letter O. W. No. 190/ SP/ SIT/ 2011 **Sub.:** Provide SDR & CDR of Mobile number Ref.: O.W.No.2459/DCP/Z-9/R/2009 dated 29.08.2009 **XXXXXX6490- Mr. Ramprasad Vishwanath Gupta** (PW1) (Complainant), Exh. 113	09.09.2011	**Exhibit. 560 (colly)**	13.09.2011
19	**Exhibit. 561** Letter O. W. No. 250/SP/ SIT/ 2011 Sub.: To get certified hard copies of Tower Locations and coverage area of Cell Ids.	24.10.2011	**Exhibit. 562 (colly)**	04.11.2011

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	O.W.No. 79/DCP/SIT/2010 Dt. 26.01.2010 Nodal Officers letter dated 27.01.2010 LMIL/2010/1412			
20	**Exhibit. 563** Letter O. W. No. 251/SP/ SIT/ 2011 Sub.: To get certified hard copies of tower locations and coverage area of cell ids. **Ref.:** O.W. No. 171/DCP/SIT/2011 Dt. 02.08.2011 Nodal Officers letter dated 04.08.2011 LMIL/2010/25500	24.10.2011	**Exhibit. 564 (colly)**	04.11. 2011

All the document/information were marked as Exhibits.

314 As far as one discrepancy with respect to Exh.–528 is concerned, why the said information was supplied has been spelt out by the said witness and as such there is no discrepancy with respect to the same. The said witness has also stated that the certificate is furnished only when called for and in the present case only once it was sought and hence, the rest of the information furnished, without certificate. All such

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documents/information furnished by the said witness have been exhibited without any objection being raised with respect to the same, that it was without a Section 65B certificate. The said witness has also explained the discrepancies alleged by the learned counsel for the appellants-accused, between Exhibits 560 and 597.

PW65 - Yogesh Shrikrishna Rajapurkar

315 PW65 – Yogesh Shrikrishna Rajapurkar, was serving in Bharti Airtel Limited as an Assistant Nodal Officer, at the relevant time. He has set out how data is retrieved and how information is supplied to Law and Enforcement Agency and how data beyond one year is preserved by I.T. and how the data is retrieved from the master computer. The said witness has furnished information/document pertaining to the following persons:

No.	Request Letter for Mobile Number by SIT	Dated	Information Provided by the Nodal	Dated

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			Officer	
1	**Exhibit. 570** Letter O. W. No. 227/DCP/ SIT/ 2010 **Sub.:** Providing Tower locations and coverage area of cell ID	22.03. 2010	**Exhibit. 571 (colly)**	25.03. 2010
2	**Exhibit. 572** Letter O. W. No. 81/DCP/ SIT/ 2010 Sub.: Providing details of cell ID and tower locations	11.06. 2010	**Exhibit. 573 (colly.)**	
3	**Exhibit. 574** Letter O. W. No. 596/DCP/ SIT/ 2010 **Sub.:** Providing details of tower locations of concern cell ID's	19.10. 2010	**Exhibit. 575 (colly.)**	26.10.20 10
4	**Exhibit. 576** Letter O. W. No. 396/DCP/ SIT/ 2010 **Sub.:** Providing S.D.R. of the mobile nos. **XXXXXX**4123 **(Mr. Shyamsunder Vishwanath Gupta** (PW3), Exh. 157) on 11.11.2006 & its date of activation	19.06. 2010	**Exhibit. 577**	29.06. 2010
5	**Exhibit. 578** Letter O. W. No. 228/DCP/ SIT/ 2010 Sub.: Providing hard copies of information already sent through email Ref.: O.W. No. 83/ DCP/ SIT/ 2010 Dt. 28.01.2010 - as regards to SDR, Date of activation, CDR with cell ID and Tower location	22.03. 2010	**Exhibit. 579 (colly.)**	
6	**Exhibit. 580** Letter O. W. No. 507/DCP/ SIT/ 2010 Sub.: providing information regarding communication details & subscriber details of mobile number.	23.08. 2010	**Exhibit. 581(colly.**	17.09. 2010
7	**Exhibit. 582** Letter O. W. No. 260/DCP/ SIT/ 2010 **Sub.:** Providing hard copies of information already sent through email. **XXXXXX0098** - registered in the name of Medha Sawant and used by DCP Sawant	26.03. 2010	**Exhibit. 583 (colly.))**	

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	(Not examined) **XXXXXX3333 - Bipin Bihari** in the name of Novex Communications Pvt. Ltd. **XXXXXX5437- Manoj Wayale** **XXXXXX7367 - Vishwanath Shetty** PW75 **XXXXXX9023 - Shailendra Pandey** (**A4**) **XXXXXX9096 - Arun S. Kaushik** **XXXXXX7777 - Mohammad Sait**			
8	**Exhibit. 584** Letter O. W. No. 527/DCP/ SIT/ 2010 Sub.: Providing CDR and SDR of mobile number **XXXXXX9023 (Shailendra D Pandey - (A4)** along with cell ID & Tower location	02.09. 2010	**Exhibit. 585 (colly.)**	

PW69 - Shekhar Vinayak Palande

316 PW69 - Shekhar Vinayak Palande, was serving as a Nodal Officer in Tata Tele Services, Maharashtra Limited, at the relevant time. He too has stated how the data is stored and how the data is made available to Law and Enforcement Agencies. The said witness has supplied information as sought for by the SIT of the following persons:

Sr.No.	**Request Letter for Mobile Number by SIT**	Dated	**Information Provided by the Nodal Officer**	Dated
1	**Exhibit. 606** Letter O. W. No. 529/ DCP/ SIT/ 2010	**02.09. 2010**	**Exhibit. 607 (colly)**	**03.09. 2010**

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	Sub.; Providing hard copies of CDR and SDR of mobile user - **XXXXXX4910 (Mr. Dheeraj Mehta (PW38),** Exh.271			

The documents/information furnished by this witness have been exhibited without any objection i.e. there was no Certificate under Section 65B of the Evidence Act.

316.1 In his cross-examination the said witness has stated that a certificate is issued, when it is required by the Law and Enforcement Agencies. The said witness has explained that the blanks are to the extent of SMS only.

PW85 – Divakar Mohan Rao

317 PW85 – Divakar Mohan Rao was working in Reliance Communication Limited as a Legal Officer during the period March 2004 to July 2008. He has stated that in the month of

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2008 he was called by the Railway Mobile Court, Andheri, Mumbai, pursuant to the summons (Exh. – 650). He has stated that he was asked to produce call details of Mobile No. XXXXXX3863 (Anil Bheda); XXXXXX8877 (Ramnarayan Gupta) for the month of November 2006 and Mobile Number XXXXXX9531 (PW38) for the period 11th November 2006 to 13th November 2006. He has stated that he could produce details of only two numbers i.e. XXXXXX3863 (Anil Bheda); XXXXXX8877 (Ramnarayan Gupta). He has stated that he submitted his affidavit alongwith call data record of these two mobile numbers. He has identified his affidavit which bears his signature and that its contents were true and correct. The affidavit was marked as Exh. – 651 and CDR as Exh. – 652 (colly). He has stated that as far as XXXXXX9531 (PW38 – Dheeraj Mehta) is concerned, he could not furnish his CDR. He has further stated that he also furnished information of Ramprasad Gupta (PW1) of his mobile XXXXXX0012 for the period of November 2006. He has stated that the information

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supplied was during the period 11th November 2006 to 13th November 2006 and that the said CDR were certified by him. He has further stated that their company preserves data for a period of one year after which the data is deleted; that High Court had directed to preserve hard copies and therefore the said data was preserved by way of hard copies of XXXXXX3863 and XXXXXX8877; that this Court had issued the said order in the year 2007 and it was within the period of one year that he took out the print-outs.

317.1 There is nothing in the cross-examination of the said witness to disbelieve his testimony.

Sr. No.	**Request Letter for Mobile Number by SIT**	Dated	**Information Provided by the Nodal Officer**	Dated
1	**Exhibit. 650** Summons served by Railway Mobile Court, Andheri in 176(1) (a) of Cr.PC inquiry asking to produce call detail records of mobile numbers **XXXXXX3863**(Anil Bheda) **XXXXXX 8877**(Ramnarayan)		**Exhibit. 652** Produced before Railway Mobile Court., Andheri in 176(1) (a) of Cr.PC inquiry pursuant to summons (Exh. 650) **Sub.:** CDR produced	

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	XXXXXX 9531		**XXXXXX 3863** – Anil Bheda (2006) **XXXXXX 8877** - registered in the name of Anil Bheda and used by Ramnarayan (Deseased)	

PW89 – Rajesh Sampatrao Gaikwad

318 PW89 - Rajesh Sampatrao Gaikwad was serving in Reliance Communication Limited, Mumbai, as a Nodal Officer in November 2007. He has stated that in his capacity as a Nodal Officer, he provided information to Law Enforcement Agencies in respect of CDR, SDR, Locations and Customers Application Forms. He has further stated that the record of incoming and outgoing calls as well as SMS is automatically served in the server of his office at Navi Mumbai and that there cannot be manual and technical interference in the data stored on the server and that there is also a backup system in their office and if there is any technical failure in the server, to overcome it there is a backup server and that the data is not lost under these

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circumstances. The said witness has supplied documents/information pertaining to the following persons:

Sr. No.	Request Letter for Mobile Number by SIT	Dated	Information Provided by the Nodal Officer	Dated
1	**Exhibit. 676** Letter O. W. No. 23/ DCP/ SIT/ 2011 Sub.: Provide SDR of mobile number **XXXXXX9998** for the month of November 2006 **(Mr. Shankar @ Girish Dal Singh** (PW57)	01.03. 2011	**Exhibit. 677**	09.03.20 11
2	**Exhibit. 678** Letter O. W. No. 26/ DCP/ SIT/ 2011 **Sub.:** Provide details of Cell ID and tower location	03.03. 2011	**Exhibit. 679**	09.03.20 11
3	**Exhibit. 680** Letter 0. W. No. 191/ SP/ SIT/ 2011 **Sub.:** Provide SDR of mobile number as on 11 November 2006 **XXXXXX 9531** - **Dheeraj Mehta** (PW38) **XXXXXX 8877** - registered in the name of **Anil Bheda** and used by **Ramnarayan** (Deseased) **XXXXXX 0012 - Adv. Ramprasad Gupta** (PWl) **XXXXXX 3863** - **Anil Bheda** (2006)	09.09. 2011	**Exhibit. 681**	10.09.20 11
4	**Exhibit. 682** Letter O. W. No. 695/ DCP/ SIT/ 2010 **Sub.:** Provide CDR reports as per directions of the Hon'ble High Court, as on 11 & 12 November, 2006. November, 2006	16.12. 2010	**Exhibit. 683 (colly.)**	24.12.20 10

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	9324378877 - registered in the name of Anil Bheda and used by **Ramnarayan** (Deseased) **XXXXXX3863** - **Anil Bheda** (2006)			
	Exhibit. 684 Letter 0. W. No. 225/ DCP/ SIT/ 2010 **Sub.:** Furnish tower locations and coverage area area ID's and BTS as on 11.11.2006	20.03.2010	**Exhibit. 685**	29.03.2010

The documents furnished by the said witness has been duly exhibited and no objection has been taken at the time of exhibiting of the said documents, with respect to want of certification under Section 65B.

319 From the evidence on record of the Nodal Officers and other prosecution witnesses, we find that the prosecution has duly established that the appellants were using the following mobile numbers. Infact, some of the accused have not disputed using the mobile numbers as alleged by the prosecution.

320 The following mobile numbers were used by the appellants/ accused:

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- **OA1** was using mobile No. XXXXXX2987. The said number stood in **A5's** name;

- **A2** was using mobile No. XXXXXX1323. The said number stood in **A2's** name;

- **A3** was using mobile No. XXXXXX3457. The said number stood in **A3's** name;

- **A4** was using mobile No. XXXXXX9023. The said number stood in **A4's** name; **A4** was also using mobile No. XXXXXX1117. The said number stood in the name of **PW96-Mehamood Shaikh;**

- **A5** was using mobile Nos. XXXXXX1156, XXXXXX5068, XXXXXX5874, XXXXXX5805 and XXXXXX8104 and the said numbers stood in **A5's** name; **A5** was also using mobile No. XXXXXX5118 and the said number stood in the name of **Shaikh Kaider**;

- **A6** was using mobile No. XXXXXX8070. The said number stood in **A6's** name;

- **A7** was using mobile No. XXXXXX0551. The said number stood in **Avinash Shinde's** name;

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- **A9** was using mobile No. XXXXXX6442. The said number stood in **A9's** name;

- **A11** was using mobile No. XXXXXX2052. The said number stood in **A11's** name;

- **A13** was using mobile No. XXXXXX7293. The said number stood in **A13's** name;

- **A15** was using mobile No. XXXXXX3538. The said number stood in **A15's** name;

- **A17** was using mobile No. XXXXXX8210. The said number stood in **A17's** name;

- **A18** was using mobile No. XXXXXX2362. The said number stood in **Mangesh Yashwant Sawant's** name;

- **A20** was using mobile No. XXXXXX3395. The said number stood in **A20's** name;

- **A22** was using mobile No. XXXXXX6188. The said number stood in **A22's** name. **(A22's** appeal stands abated in view of his demise, during the pendency of his appeal.)

321 If we peruse the CDR furnished by the aforesaid Nodal Officers, which have been duly exhibited by the aforesaid

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Nodal Officers, it would be evident that the locations of the accused were as under:

Locations of the Accused on 10th November 2006:

I. Between 16:45 to 20:10 hours: A4 (Mobile XXXXXX9023 standing in his name **A4's** name) was outside Anil Bheda's house (Sector 29), keeping a watch. Thereafter **A2, A3, A6 and A7** also reached near the house of Anil Bheda.

(i) CDR of **A4** (Exh. – 581) Airtel Cell ID locations (Exh. 571) would show that **A4** at around **16:45:06** was next to Abbot Hotel, Opposite Navratna Hotel, Vashi. There is a call by **A4** from XXXXXX9023 (Mobile No. stands in **A4's name)** to 9221248858;

(ii) CDR of **A2** (Exh. – 543) Loop Cell ID locations would show that **A2** around **19:34:07** was near Corsica, Vashi, Sector 29, Vashi Interior. From the CDR it appears that **A2** received a call on XXXXXX1323 from XXXXXX0502;

(iii) CDR of **A3** (Exh. – 543) Loop Cell ID locations would show that **A3** at **19:32:26** was at Shubham, Kopar Khairane. There is a call by **A3** from XXXXXX3457 to XXXXXX8252.;

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(iv) CDR of **A6** (Exh. – 408) Vodafone Cell ID locations shows that **A6** at **19:32:02** was at Sector 12, E Near Balaji Garden, Kopar Khairane. There is call on **A6's** number i.e. XXXXXX8070 by **A4;**

(v) CDR of **A7** (Exh. – 408) Vodafone Cell ID locations would show that **A7** at **19:37:23** was at Sector 29, Vashi, Navi Mumbai.

Locations of the Accused on 11th November 2006:

I. 00:21 hours: While at Mira Bhayandar, **A4** called Subhash Patel @ Lefty (Informer).

(i) CDR of **A4** (Exh. – 581) Airtel Cell ID locations (Exh. 571) would show that **A4** at **12:21:49** was at Mira Bhayendar Road. There is a call made by **A4** from XXXXXX9023 to Subhash Patel @ Lefty;

II. 05:25 or 05:22 hours: While at Mira Bhayandar, **A4** called **A7,** who was at Kalwa, Thane

(i) CDR of **A4** (Exh. – 581) Airtel Cell ID locations (Exh. 571) would show that **A4** at **05:25** was at Jayshree Sadan Ekta, Opp. Sarvoday Complex Near Golden Nest, Mira Bhayander Road. There is a call made by **A4** from XXXXXX9023 to **A7**;

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(ii) CDR of **A7** (Exh. – 408) Vodafone Cell ID locations shows that **A7** at **5:22:02** was at that time between **5:22 to 5:25** at Manisha Nagar, Opp. National Hotel, Kalwa, Thane;

III. 06:31 to 2:27 hours: A4 and A/7 alongwith **A8, A10, A12** and **A21** reached near house of Anil Bheda. During this time, Subhash Lefty (Informer) was also nearby.

(i) CDR of **A4** (Exh. – 581) Airtel Cell ID locations (Exh. 571) would show that A4 at **06:31** was at Kopar Khairane, Navi Mumbai. There is a call made by **A4** to **A7** at **6:31**;

(ii) CDR of **A7** (Exh. – 408) Vodafone Cell ID locations shows that **A7** at **10:09** was at Plot No.9/10, Sector 19-A, Vashi, Navi Mumbai;

(iii) CDR of **Subhash Lefty** (Exh. – 410) Vodafone Cell ID locations shows that **Subhash Lefty** at **07:07** was at Sector 12, Near Balaji Garden, Kopar Khairane, Navi Mumbai. There is a call by A4 to Subhash Lefty.

IV. 09:04 hours: Deceased called his wife (Subhalakshmi) from the house of Anil Bheda. Number of Ramnarayan's wife XXXXXX5138.

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(i) CDR of **Ramnarayan (**Exh. – 683) and Cell ID locations (Exh. 685) is duly corroborated by the evidence of PW1 – Ramnarayan, who had deposed the number of wife of Lakhan in his examination-in-chief. The said evidence has gone unchallenged.

V. 10:29 hours: Ramnarayan called PW38 – Dheeraj from Anil Bheda's house.

(i) CDR of **Ramnarayan (**Exh. – 683) and Cell ID locations (Exh. 685) is duly corroborated by the evidence of PW1 – Ramnarayan, reflects the call made by Ramnarayan (deceased) to PW38 at **10:29** from Agradeep, Sector 14, Vashi, Agra Nalanda, Thurbhe.**;**

VI. 12:15 hours: Ramnarayan and Anil Bheda went to PW38 – Dheeraj's shop as per the evidence of PW40. Even as per the evidence of PW38, Ramnarayan and Anil Bheda had reached his shop at around **12:15 p.m.**

VII. 12:27 hours: A4 called **A7.** The said call started at Sector 29, Vashi and the said call continued for about 553 seconds (Exh. – 581).

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(i) CDR of **A4 (**Exh. – 581) and Airtel Cell ID locations (Exh. 571) shows that **A4** at **12:27** was at Office No.110, 1st Floor, Plot No.14-B, Sector 19, Vashi, Navi Mumbai. There is a call by **A4** to **A7** at that time and thereafter at Plot No.30, Sector 2, Vashi, Navi Mumbai. The said CDR of **A4** is duly corroborated by CDR of **A7** (Exh. – 408) and Vodafone Cell ID locations (Exhibits 421 & 406).

VIII. 12:31 – 12:33 hours: After reaching PW38's shop, Ramnarayan was waiting outside PW– 38's shop and called to different persons from Sector – 9A while he was standing on road.

(i) CDR of **Ramnarayan (**Exh. – 683) and Cell ID locations (Exh. 685) would show that Ramnarayan at **12:31** was at Anand Niketan CHSL, Plot No.46, Sector 9A, Vashi, Navi Mumbai. There is a call made by Ramnarayan to XXXXXX7194. The second call was made by Ramanarayan to XXXXXX8777 at **12:33,** when he was at Anand Niketan CHSL, Plot No.46, Sector 9A, Vashi, Navi Mumbai;

(ii) CDR of **Ramnarayan (**Exh. – 683) and Cell ID locations (Exh. 685) corroborates the same. It is thus evident that till **12:35** Ramnarayan was at Sector 9A, Vashi, Navi Mumbai.

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IX. 12:39 hours: After abduction from Sector 9A, there is call by **A7** to **OA1** and by **Subhash @ Lefty** to **A4.** There are CDR records to support the same.

(i) CDR of **A7** shows a call made by him at **12:39** from F-1, Building, Sector 9, Vashi, Kopar Khairane Road, Vashi. Vodafone Cell ID locations (Exh. – 421) would reveal the same.

(ii) Similarly, CDR of **OA1** (Exh. – 543) and his Loop Cell ID locations (Exh. – 548) shows that **OA1** at **12:39** was at Esic Nagar (D.N. Nagar, YMCA Area, The Club Area).

(iii) CDR of Lefty (Exh. – 453) and Vodafone Cell ID locations (Exh. – 421) would show that Subhash Patel @ Lefty called **A4** at **12:39** when he was Opposite Model Co-op. Bank, Sector 9, Plot No. 46, Vashi and CDR of **A4** (Exh. 581) and Airtel Cell ID locations (Exh. – 571) at **12:36** was Next to Abbot Hotel, Opp. Navratna Hotel, Vashi.

X. 12:40 hours: Nilesh (who saw the abduction) informed PW38 that his friend and his friend's friend had been taken away by 5 - 6 persons in a qualis vehicle. The same has been deposed to by PW38.

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XI. 13:00 hours: PW57 - Shankar @ Girish Dalsingh called PW38 inquiring about Ramnarayan and Anil Bheda; that PW38 informed PW57 about abduction. The same has been deposed to by PW38 and is duly corroborated by PW57, PW1 and PW3.

XII After **13:00 hrs** PW3 received repeated calls from different persons including PW57 who informed him about abduction. The same has been deposed to by PW3 and PW57.

XIII 13:14 - 13:20 - **A4** and **A7** are alleged to have gone to Bhandup Complex from Vashi and **A2, A3 and A6** are stated to have come to Bhandup Complex after the abduction. The CDR of the said accused would reveal as under:

(i) CDR of **A4** (Exh. 581) and Airtel Cell ID locations (Exh. 571) of **A4** shows that at **13:17** he had made a call from Dargah Crossroad, Sonapur, Bhandup on a landline number XXXXXX7777;

(ii) CDR of **A2** (Exh. 521) and Loop Cell ID locations (Exh. 537) shows that **A2** at **13:14** was at Kukreja Complex, Bhandup. There is a call by **A2** to **A7** at the said time;

(iii) CDR of **A7** (Exh. 408) and Vodafone Cell ID locations (Exh. 421) shows that **A7** at **13:14** was at Plot No. 370, Shivaji

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Chowk, Mulund Colony. There is a call by **A2** to **A7** on the said time and

(iii) CDR of **A3** (Exh. 521) and Loop Cell ID locations (Exh. 548) shows that **A3** at **13:40** was near MIDC, Andheri (East). The same is evident from a call received by **A3** **from XXXXX1859.**

XIV. 13:57 or 14:00 hours: PW1 had received a call from PW3, who informed him about the abduction. This has come as per evidence of **PW1**, specifically at para 4.

(i) CDR of **PW3** (Exh. – 579) Airtel Cell ID locations (Exh. 571) would show that **PW3** at around **14:00** was at S.I.E.S College, P.V Chidambaram Marg, Sion (E), Mumbai. There is a call made by **PW3** from XXXXXX6540 to **PW1** from XXXXXX6490.

(ii) CDR of **PW1** (Exh. – 560) Loop Cell ID locations (Exh. 564) would show that **PW1** at around **13:57** was at Plot No. 14 & 56, Swastik Park, Opp. Swastik Chambers, CST Road, Chembur, Mumbai-400071. This is apparent from the call made by **PW3** from XXXXXX6540 to **PW1** from XXXXXX6490.

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XV. About 14:00 – 14:15 hours: PW1 had reached the shop of **PW3** and was discussing the said incident of abduction with him. At that time, **PW3** received a call and **PW1** took his phone and talked with the caller, who introduced himself as Dhiraj and stated his mobile number as XXXXXX9531. This has come as per the evidence of **PW1** (Exh. 113) and as per the evidence of **PW3** (Exh. 157).

XVI. About 14:30 to 15:00 hours: PW38 went to the house of **PW40**, and informed her about the abduction. They had decided on waiting till **17:00** hrs before lodging a complaint and to lodge a complaint of Anil Bheda only. This is apparent from the evidence of **PW38.**

XVII. About 15:00 hours: PW1 spoke to **PW38** at about 15:00 hours. Thereafter, **PW1** spoke to **PW40**, made enquiries and took the address of Aruna Bheda's house as well as the address of the shop of **PW38.** This has come as per the oral evidence of **PW1** and **PW2.** The CDR of **PW1(**Exh. 652**),** makes it apparent that at around 15:01;63, a call was made by **PW1** from XXXXXX0012 to **PW38** from XXXXXX9531.

XVIII. Between 15:00 - 16:00: PW1 and **PW2** called some police officials, gave them information of abduction and requested them to make inquiries about the same and revert back,

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but did not get any information. This has come as per the oral evidence of **PW1** and **PW2.** (There are call detail records to support the same)

XIX. About 16:08: PW1 & PW2 sent Telegrams to C.P. Mumbai, Navi Mumbai and Thane from Matunga Telegraph Office. This has been made apparent from the Original Booking Form of Telegram to CP, Thane (Exh. 114), Original Booking Form of Telegram to CP, Navi Mumbai(Exh. 115), Original Booking Form of Telegram to CP, Mumbai(Exh. 116), and from the receipts (Exh. 119). (The location of PW1 and PW2 is at these places,

XX. About 16:44: PW1 and **PW2** sent faxes to C.P. Navi Mumbai and Thane. Original Handwritten Fax Message(Exh. 120) makes the same apparent.

XXI. About 17:45: PW1 was told by someone on phone that the deceased and Anil Bheda were taken away by API Prakash Bhandari of Belapur Crime Branch. This has come as per the oral evidence of **PW1**. (same is corroborated by their CDR).

XXII. About 18:28: PW1 and **PW2** sent Telegrams to C.M. and Dy.C.M, Maharashtra State from Dadar Telegraph Office, apparently as per oral evidence of **PW1** and **PW2.** Original Booking Form of Telegram to CP, Navi Mumbai (Exh. 117),

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Original Booking Form of Telegram to CP, Mumbai (Exh. 118), and Receipts make it apparent that the aforesaid telegrams were sent by PW1 and PW2 to C.M. and Dy. C.M. Maharashtra State from Dadar Telegraph office. (The locations evident from CDRs of PW1 and PW2 support the same.)

XXIII. About 18:40: PW40, Aruna Bheda lodged a missing Complaint No. 51 at Vashi P.S.

(i) Statement of Aruna Bheda regarding missing complaint of Anil Bheda at Vashi P.S. (Exh. 306) makes it evident that PW40 had lodged a missing complaint report at about 18:40 at the Vashi P.S.

(ii) The same is shown in the Missing Complaint Register No. 51/06.

XXIV. About 20:00: PW1 and **PW2** reached Belapur Crime Branch office to make inquiry about the deceased and Anil Bheda but did not get any information.

(i) CDR of **PW1** (Exh. – 560) Loop Cell ID locations (Exh. 564) would show that **PW1** at around **20:27** was at Prabhat Centre Annex, Sector Al, Plot No 7, CBD, Navi Mumbai-400614.This is apparent from the call made by **PW1** from XXXXXX6490 to 9869109878.

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XXV. Between 20:10 and 20:13: Alleged encounter took place at Nana Nani Park, 7 Bunglows, Andheri (W), Mumbai as X the FIR/302/2006 and Claim of Encounter Team.

XXVI. About 20:30: PW3 informed **PW1** that there is breaking news on all news channels that Ramnarayan was shot dead in an encounter. At that time PW1 and PW2 were at Belapur C.B.D.

(i) CDR of **PW3 (used by PW1)** (Exh. – 579) Airtel Cell ID locations (Exh. 571) would show that **PW1**(who was using the mobile phone of PW3) at around **20:33** was near Plot no. 53, Parsik Hill, C.B.D., Navi Mumbai.This is apparent from the call made by **PW1** (using the mobile of **PW3** to **PW1.**

XXVII. About 22:15: PW1 and **PW2** had reached Versova PS along with Adv. Vijay Desai, Adv. Kudrat Shaikh and driver Raja.

(i) CDR of **PW1** (Exh. – 560) Loop Cell ID locations (Exh. 548) would show that **PW1** at **22:20** was near Juhu Galli Junction, Vile Parle(W), Mumbai. This is apparent from the call made by **PW1** to XXXXXX2586.

XXVIII. About 22:30: PW1 and **PW2** along with Adv. Vijay Desai, Adv. Kudrat Shaikh and driver Raja reached Nana Nani

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Park. The same is made apparent by the oral evidence of **PW2** (Exh. 148).

(i) CDR of **PW3 (used by PW1)** (Exh. – 579) Airtel Cell ID locations (Exh. 572) would show that **PW1**(who was using the mobile phone of PW3) at around 22:33 was present around Juhu, Versova Link Road, Andheri (W), Mumbai.This is apparent from the call made by **PW1**(using the mobile of **PW3)** to XXXXXX8837.

(ii) CDR of **PW2** (Exh. – 401) Vodafone Cell ID locations (Exh. 406) would show that **PW2** at 22:40 was present near J.P. Road, Near Garden 7 Bungalows, Andheri West, Mumbai.This is apparent from the call made by **PW2** to XXXXXX9150.

XXIX. About 22:44: PW1 took a video recording of the spot with a Mobile Camera. This Video Clipping shows that one newspaper was kept at one place and one stone was kept on the newspaper. It also shows electric pole numbers.

(i) CDR of **PW3 (used by PW1)** (Exh.–579) Airtel Cell ID locations (Exh. 571) would show that **PW1** at 22:49 was present around Navbharat Nagar, 7-Bunglow, Andheri, Mumbai. This is apparent from the call made by **Girish Nepali (PW57)** to **PW1.**

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XXX. About 13:19: Al had called **PW104 (A.T. Patil)** to come to D.N. Nagar Police Station to convince/talk to Anil Bheda however, PW104 had turned hostile.

(i) CDR of **PW104** (Exh. – 403) Loop Cell ID locations (Exh. 548) would show that **PW104** at 13:19 was present around Esic Nagar, YMCA Area, The Club Area, Mumbai. This is evident from the call made by **OA1** to **PW104** on his number XXXXXX3281.

XXXI. At 15:16: PW104 reached D.N. Nagar Police Station.

(i) CDR of **PW104** (Exh. – 403) Vodafone Cell ID locations (Exh. 421) would show that **PW104** at 15:16 was present around D.N. Nagar, Andheri (W), Mumbai. This is evident from the call made by **PW104** from XXXXXX3281 to a local number XXXXXX0151.

XXXII. About 16:49: Anil Bheda was taken to Vashi Police Station to withdraw the missing complaint lodged by **A/2** and **A/3**.

(i) CDR of **A2** (Exh. – 523) Loop Cell ID locations (Exh. 548) would show that **A2** at 16:49 was found to be around Big Splash, Vashi, Sector 17, Mumbai. This is evident from the call made by **A2** from XXXXXX1323 to **A4** on his number.

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XXXIII. Between 22.05 and 22:51: Anil Bheda, Aruna Bheda (PW40) and their son, Parth were taken to Bhatwadi by **A2** and **A3.**

(i) CDR of **A2** (Exh. – 523) Loop Cell ID location (Exh. 539) would show that **A2** at **22:05** was present around Tilak Nagar Railway Quarters, Tilaknagar, Mumbai. This is evident from the call made by **A2** from XXXXXX1323 to **A4** on his number.

(ii) CDR of **A2** (Exh. – 523) Loop Cell ID location (Exh. 539) would show that **A2** at **22:51** was found near Alpana Apts., Ghatkopar, L.B.S. Marg, Barve Nagar, Mumbai. This is evident from the call made by **A2** from XXXXXX1323 to XXXXXX3337.

322 Thus, the CDR of the accused clearly corroborates the circumstances on record and the prosecution case, that the accused were at the place, before and when the abduction took place i.e. of Ramnaryan and Anil Bheda, and from where they were brought to D.N. Nagar Police Station via Bhandup. Some of the appellants/accused i.e. police personnel who were present from before i.e. on 10th November 2006, were **A7, A2 and A3**

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alongwith others and on 11th November 2006, **A7** alongwith others, abducted Ramnarayan and Anil Bheda and **A2** and **A3** joined the abductors at Bhandup. All three were outside their Commissionerate areas i.e. they were in Navi Mumbai on 10th November 2006 and **A7** on 11th November 2006 and have offered no explanation for the same. There are exchange of several calls *interse* between the accused. As far as **A2** and **A3** are concerned, their location of 10th November 2006 at the time of recce was Vashi, Navi Mumbai and on the day of abduction, they were at Bhandup. The mobile numbers of **A2** and **A3** are registered in their own names. The said accused have not offered any explanation as to why they were outside their Commissionerate area under Section 313. It is pertinent to note that Ramnarayan was staying with Anil Bheda, as is evident from the evidence of PW1. The same has been admitted to, by PW 1 in his cross-examination. As far as **A7** is concerned, the mobile used by him was registered in his brother's name-Avinash Shinde. Although, **A7** disputed using the said mobile, Exh. 688 clinches

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the prosecution case that **A7** was using the said mobile. The prosecution in support of its case, has examined PW90-Sanjay Apage to prove that **A7** was using mobile No. XXXXXX0551.

323 PW90-Sanjay Apage was examined by the prosecution to prove the entry i.e. Exh. 687A and 688A. PW 90 who was attached to Versova Police Station at the relevant time as a Police Constable. He has stated that in October 2006, he was working as a Section Karkun and that he was the only Section Karkun; that his work as a Section Karkun was to update personal information of the Ammaldars and that the said information is updated in a book kept in the police station; and that the said information is entered in the book on the basis of the information given by the Ammaldar concerned when he resumes duty in the police station.

323.1 When PW90 was confronted with the book of the Versova Police Station, he has identified the first entry as being in his handwriting, except the figure 69703 (Nothing turns on this

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number). He has stated that as per the said entry, **A2** joined duty on 18th October 2006; that he was transferred from Local Arms-I to Crime Branch and then to Versova Police Station; that his transfer was as per Police Circular dated 24th August 2006; that his PC number was 31241; that **A2's** address was A/Block No. 77, Worli Police Camp, Sir Pochkhanwala Marg, Mumbai-25 and his mobile number was XXXXXX1323. PW90 has stated that the said information was given by **A2** and that the contents written by him in the book were true and correct. Accordingly, entry was marked as Exh. 687 and the xerox true copy of the said entry was marked as Exh. 687A.

323.2 PW90 has further deposed that another entry on the same page is with respect to **A7**, a resident of Flat No.2, Gold Sumit Housing Society, Kalwa Naka, Kalwa. Thane and his Mobile No. was XXXXXX0551 i.e. as disclosed by **A7**. PW90 has further deposed that there is another entry on the same page with respect to **A7** i.e. **A7** joining duty at Versova Police Station

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on 18th October 2006; that he was transferred from LA, III Narcotics Crime Branch to Versova Police Station; that his transfer was as per police Circular dated 24th August 2006. He has stated that the total entry is in his handwriting, except the words, "Transfer Andheri Police Station". He has further stated that he made the entry correctly as per the say of **A7**. The said entry is marked as Exh. 688 and the xerox true copy of the said entry was taken on record and marked as Exh. 688A. The said witness has identified both **A2** and **A7**.

324 Nothing material has been brought in the cross-examination of the said witness, so as to disbelieve his testimony with respect to the entries made by him. The said Exhibits 687-A and 688-A show that the said witness i.e. PW90 has recorded in his writing the designation of the police, their names, address, their date of birth, the date of joining service, their caste, their education, date of reporting and the village address, from where they were transferred, as per the say of **A2** and **A7.** Except for

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the entries made with respect to mobile numbers, there is no cross on the other columns i.e. other details, which were authored by PW90. It appears that the said entries have been made by PW90 in the usual course of his official duty and there is no reason to disbelieve his testimony. Thus, the evidence of PW90 clearly discloses that **A2** was using mobile No. XXXXXX1323 and **A7** was using mobile No. XXXXXX0551. It is pertinent to note that **A7** has not brought anything on record that he was using any other number. Not even a suggestion.

325 Much ado has been made about discrepancy in the Sectors i.e. Sector 9 and Sector 9A, however, having perused the evidence, we do not find any merit in the said submission, inasmuch as, Sector 9 and Sector 9A are adjacent to each other, as is evident from the evidence of PW38. It may be noted that PW38 has admitted in his cross-examination, that the distance between his shop and the road was about 10 feet and that he had seen Nilesh standing outside the shop, on the road.

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326 Thus, from a bare perusal of the aforesaid evidence that has come on record, we may note that the locations as established by the CDRs of the Appellants/ Accused conclusively points to the complicity of the accused persons vis-à-vis abduction of Anil Bheda and Ramnarayan on 11th November 2006 and murder/custodial death of Ramnarayan, on the same day.

327 The *inter se* communication between the appellants/accused, as established by the CDR evidence that has come on record, points to criminal conspiracy to eliminate Ramnarayan. We now proceed to deal with the next circumstance relied upon by the prosecution, which is criminal conspiracy.

viii. CRIMINAL CONSPIRACY

328 Learned counsel for the appellants/accused submitted that the prosecution has failed to prove criminal conspiracy i.e. there was a conspiracy between all the accused to eliminate

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Ramnarayan and that in achieving the same, they abducted Ramnarayan and Anil Bheda and confined Anil Bheda, so that he would not spill the beans.

329 Whereas, Mr. Chavan, learned Spl.P.P and Dr. Chaudhry submitted that conspiracy can clearly be inferred from the circumstances on record, as direct evidence is seldom available. It is submitted that the circumstances adduced by the prosecution will clearly reveal the existence of a criminal conspiracy.

330 The law with regard to how 'criminal conspiracy' is to be proved, is well settled.

331 The Apex Court in ***State of Kerala v. P. Sugathan and Ors.22, has in paras 12 and 13 observed as under :***

> *"12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and*

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its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.) [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

13. In Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609 : 1988 SCC (Cri) 711 : AIR 1988 SC 1883] it was noticed that Sections 120-A and 120-B IPC have brought the

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law of conspiracy in India in line with English law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Penal Code, 1860."

332 Similarly, in ***Yogesh v. State of Maharashtra***[23], the Apex Court in para 25 has summarized the core principles of law of conspiracy in the following words :

25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding

23 AIR 2008 SC 2991

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circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement."

333 More recently, in ***State (NCT of Delhi) v. Navjot Sandhu***[24], the Apex Court after making an exhaustive reference to several decisions on the point, including ***State v. Nalini-(1999) 5 SCC 253 ,*** observed in para 97, as under:

"97. Mostly, conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused (per Wadhwa, J. in Nalini case [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] at p. 516). The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible" (Tanviben Pankajkumar case [Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] , SCC p. 185, para 45). G.N. Ray, J. in Tanviben Pankajkumar [Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7

24 (2005) 11 SCC 600

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SCC 156 : 1997 SCC (Cri) 1004] observed that this Court should not allow suspicion to take the place of legal proof."

334 Conspiracies are always shrouded in secrecy and as such would have to be inferred from the circumstances on record, inasmuch as, direct evidence, is seldom available. It is not necessary to prove conspiracy by express agreement. The law with respect to criminal conspiracy is well settled. The conduct of the accused, there participation at different stages, to achieve the ultimate object, is relevant. The most important ingredient of the offence of criminal conspiracy is the agreement between two/more persons to do an illegal act i.e. they have come together to pursue the illegal/unlawful act. The meeting of minds, in the facts, can clearly be inferred from the acts of the appellants/accused to achieve their ultimate goal, which was to kill Ramnarayan. In the facts, physical manifestation of agreement has been established. A conspiracy is a continuing offence, which continues to subsist till it is executed, rescinded or

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frustrated, by choice of necessity. In the present case, the conspiracy continued till it was finally executed.

335 The circumstances in the present case, when taken together on their face value, would clearly indicate meeting of minds between the conspirator for the intended object of committing an illegal act. It is clearly evident from the evidence on record that all means adopted and illegal acts done by the appellants/accused were clearly done in furtherance of the object of the conspiracy hatched, which is to kill Ramnarayan and the same is evident from the time when police personnel were deputed to D.N. Nagar, after which, a watch was kept on Ramnarayan on his movements from 10th November 2006 till 11th November 2006 when Ramnarayan and witness Anil Bheda were abducted after which Ramnarayan was killed in a fake encounter. Thereafter, witness Anil Bheda was detained for about one month by the appellants/accused, so as to prevent him from spilling the beans, he being the prime witness to the abduction.

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Formation of a squad under **OA1**, albeit being illegal and coming together of police personnel, some from different police stations, to work under **OA1** squad, is also one of the factors which will have to be borne in mind to show the intent/conspiracy hatched by the appellants/accused. All the circumstances adduced by the prosecution clearly show that there was an agreement between the parties for doing an illegal act, and that each played a part in achieving that illegal object.

336 From the circumstances as adduced by the prosecution on record, it is clearly evident that the goal/object of all the appellants/accused was that of 'elimination of Ramnarayan' and to achieve this goal/object, a squad was formed under **OA1,** that all accused participated in one way or the other, either by providing logistics, keeping a watch on the movements of Ramnarayan, in his abduction and then in killing him, and by showing the killing as an encounter and then by confining Anil Bheda, for almost a month, so that he does not spill the beans.

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Anil Bheda, was a prime witness to his and Ramnarayan's abduction. Anil Bheda had in the TIP identified the persons who had abducted him and Ramnarayan. Anil Bheda's 161 and 164 statements had also been recorded and so was a running panchnama done as disclosed by him from where he and Ramnarayan were abducted i.e. from Vashi to Bhandup to D.N. Nagar Police Station to the places where he was confined. It is pertinent to note, that few days prior to his deposition Anil Bheda was abducted and killed i.e. his burnt body was identified only on the basis of DNA. All the evidence adduced by the prosecution would clearly reveal that the ultimate goal was to kill Ramnarayan. The CDR also supports the evidence adduced by the prosecution, as dealt in detail, by us herein-above. The circumstances on record, when taken together on their face value, clearly indicates the meeting of minds between the conspirators for the intended object of committing an illegal act. The inferences can be deduced from the acts of the parties, done in pursuance of the purpose in common between the conspirators.

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The prosecution has successfully proved all the circumstances relied upon by them by cogent and legal evidence, and beyond reasonable doubt. Thus, the prosecution from all the aforesaid circumstances, has duly proved that the appellants had entered into a criminal conspiracy, and the same can clearly be inferred from the overwhelming evidence/circumstances led by the prosecution.

D. Lacunae in 313

337 All the learned counsel for the appellants/accused submitted that the evidence pertaining to CDRs, SDRs and tower locations has not been specifically put to any of the accused persons, thereby, offering no opportunity to explain the incriminating circumstances revealed from the CDRs, SDRs and tower locations. They further submitted that only a general question has been put with respect to the Nodal Officers, to the accused persons and the same does not offer any opportunity to

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them to provide a proper explanation, which amounts to a serious irregularity, and thus, the same would have to be excluded from consideration.

338 Learned counsel for all the appellants/accused vehemently submitted that serious prejudice has been caused to the appellants/accused, inasmuch as, a common and composite question with respect to CDRs was asked, resulting in serious prejudice to the appellants. It is submitted that thus, the circumstance of 'CDR' relied upon by the prosecution cannot be considered and as such would have to be excluded from consideration.

339 Per Contra, Mr. Chavan, learned Spl.PP submitted that the appellants/accused have failed to show that on account of the said composite question on CDRs, failure of justice had occasioned. He submitted that no objection/submission was advanced by the appellants' counsel in the trial Court with respect

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to the same. According to Mr. Chavan, though this Court had asked the learned counsel for the appellants and Mr. Dilip Palande, who appeared in-person, during the course of their arguments, that the said lacunae, if any, could be rectified at the appellate stage, all the learned counsel for the appellants and Mr. Dilip Palande **(A15)** in unison refused the same, saying that if the exercise is done at this stage, serious prejudice would be caused to them. He submitted that in view of the said stand, the appellants/accused now cannot cry that 'prejudice' has been caused to them, because of a composite question on CDRs.

340 Before we proceed to decide the said objection of the appellants with respect to alleged prejudice being caused to them because of the composite Questioning on 'CDRs', it would be apposite to consider the law on Section 313.

341 The Apex Court in ***Raj Kumar @ Suman v. State (NCT of Delhi) 24 has underlined the prevailing law concerning Section 313 of the Cr.***PC, specifically in para 17, as herein-under:

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"17. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused

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under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

342 The Apex Court in its landmark ruling in the case of ***Shivaji Sahabrao Bobade v. State of Maharashtra***[25], has in paragraph 16, held as under:

"16.… It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would

25 (1973) 2 SCC 793

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not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, CrPC, the omission has not been shown to have caused prejudice to the accused……"

343 Similarly, in ***Gian Chand and Ors. v. State of Haryana***[26], the Apex Court held that non-compliance of the provisions of Section 313 Cr.PC was taken for the first time before the Supreme Court. However, considering there was no material shown by the accused persons as to what prejudice has been caused to the accused persons, the court held that the trial was not vitiated for non-compliance of the provisions of Section 313 of Cr.PC

344 Infact, a three-Judge Bench of the Apex Court in ***Wasim Khan v. State Of Uttar Pradesh***[27] and ***Bhoor Singh v. State of Punjab***[28] held that every error or omission in compliance with

26 AIR 2013 SC 3395
27 AIR 1956 SC 400
28 AIR 1974 SC 1256

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the provisions of section 342 of the old Cr.PC does not necessarily vitiate trial. The accused must show that some prejudice has been caused or was likely to have been caused to him.

345 In ***Paramjeet Singh v. State of Uttarakhand***[29], after considering several cases on the issue, the Apex Court in para 30, held as under:

> *"30. Thus, it is evident from the above that the provisions of Section 313 CrPC make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court."*

29 AIR 2011 SC 200

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346 Infact, in ***State of Punjab v. Naib Din***[30]**,** in particular, in paras 11 and 12, the Apex Court has observed as under:

> *"11. Added to the above, learned Single Judge observed that the contents of the said affidavit were not put to the accused during the examination under Section 313 of the Code. Learned Single Judge, on that score also, overlooked the formal nature of the evidence. The substantive evidence relating to the sample is the result of the chemical examination. There is no grievance for the accused that the trial court did not put that aspect to the accused when he was questioned under Section 313 of the Code. If so it was too pedantic an insistence that every item of evidence, even of a formal nature, should also form part of the questions under Section 313 of the Code.*
>
> *12.* That apart, the respondent failed to show that there was any failure of justice on account of the omission to put a question concerning such formal evidence when he was examined under Section 313 of the Code. ***No objection was raised in the trial court on the ground of such omission. No ground was taken up in the appellate court on such ground. If any appellate court or revisional court comes across that the trial court had not put any question to an accused even if it is of a vital nature, such omission alone should not result in setting aside the conviction and sentence as an inevitable consequence. Effort should be made to undo or correct the lapse. If it is not possible to correct it by any means the court should then consider the impact of the lapse on the overall aspect of the case. After keeping that particular item of evidence aside, if the remaining evidence***

30 (2001) SCC OnLine SC 1163

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> ***is sufficient to bring home the guilt of the accused, the lapse does not matter much, and can be sidelined justifiably. But if the lapse is so vital as would affect the entire case, the appellate or revisional court can endeavour to see whether it could be rectified."***
>
> *(emphasis supplied)*

347 Thus, the judgments of the Apex Court would show an omission under Section 313 does not necessarily vitiate the trial, unless the accused is successful in showing that the omission has resulted in serious prejudice, resulting in failure of justice.

348 At the outset, we may note that learned counsel appearing for all the appellants, during the course of their submissions alleged that serious prejudice has been caused because of the composite Questioning on CDRs, in particular, Question No.318, and hence, we asked the learned counsel for the appellants to tell us, as to which Questions had caused prejudice to the appellants, so that the said questions could be put to the appellants separately under Section 313, even at the appellate stage. None could tell us how prejudice had

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occasioned. Learned Spl.PP as well as Dr. Chaudhry had no objection for this Court to put questions to the appellants/accused, which according to the accused, had caused prejudice to them. However, all the counsel for the appellants as well as Mr. Palande, appearing in-person refused the said offer, stating that if Questions were put to them under Section 313 now, at this stage, their case would stand seriously prejudiced. Thus, despite giving an opportunity to all the appellants to show how failure of justice had occasioned, due to the composite questioning and despite giving them an opportunity of putting questions to them, all the appellants/accused failed to take up the said offer. Thus, in this light of the matter, the appellants now cannot cry prejudice, much less, serious prejudice to them, resulting in failure of justice.

349 We may also note, that not a single appellant raised the ground of prejudice under Section 313 or even argued the same, before the trial Court, and as such, there was no occasion

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for the trial Court to consider the same. Even at the appellate stage, only **A2, A4** and **A7** have in their Appeal Memos raised the ground of prejudice under Section 313, rest of the appellants/accused argued the said ground, for the first time during the course of their arguments, when the aforesaid appeals were heard in 2023, after 13 years. Infact, we asked both, the prosecution as well as the defence counsel to suggest the Questions, however, learned counsel for the appellants including Mr. Palande refused the suggestion and hence Questions were not prepared. Thus, an opportunity was given to all the accused, to show what was the prejudice caused, so that the questions could be asked to them, at the appellate stage, however, they refused.

350 Having regard to the law with respect to 313, no ground is made out by the appellants/accused to entertain their submission that prejudice has been caused to them, with respect to the composite questions on CDRs.

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E. Sanction under Section 197 Cr.PC – Whether necessary ?

351 Some of the appellants/accused i.e. **A3, A7, A9, A15** and **A16** urged that since it was a genuine encounter, it was incumbent for the prosecution to obtain sanction under Section 197 Cr.PC, since the acts were done in course of the discharge of their official duty.

352 Whereas, according to Mr. Chavan, learned Spl. PP, the question of seeking sanction under Section 197 did not arise, since the encounter was not a genuine one, but was a fake encounter. He submitted that the law as to when sanction is required, is well settled and that it covers only acts done in the course of one's official duty. According to Mr. Chavan, a fake encounter i.e. a murder, abduction, wrongful confinement, can never be said to be an act done in the course of one's duty, warranting sanction under Section 197 Cr.PC.

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353 The law with respect to when sanction under Section 197 of the Cr.PC is necessary, is no longer *res integra*. The Apex Court in the case of ***Devinder Singh and Ors. v. The State of Punjab through CBI***[31], (it was a case pertaining to a fake encounter) summarized the principles emerging from various decisions, in para 39 of its judgment, as under:

> *"39. The principles emerging from the aforesaid decisions are summarised hereunder:*
>
> *"**39.1.** Protection of sanction is an assurance to an **honest and** sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*
>
> ***39.2.** Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.*
>
> ***39.3.** Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197*

31 (2016) 12 SCC 87

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CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. *In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.*

39.5. *In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.*

39.6. *Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.*

39.7. *Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.*

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> ***39.8.*** *Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.*
>
> ***39.9.*** *In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."*

354 It is pertinent to note that the scope of protection granted under Section 197 of the Cr.PC was dealt with in ***P. K. Pradhan v. State of Sikkim***[32]***.*** The Apex Court whilst considering the said question, held in paras 14 and 15 as under:

> *" 14. In the case of K. Satwant Singh v. State of Punjab [AIR 1960 SC 266 : 1960 Cri LJ 410 : (1960) 2 SCR 89] a Constitution Bench of this Court observed that some offences cannot by their very nature be regarded as*

32 (2001) 6 SCC 704

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having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of bribe, an offence punishable under Section 161 of the Penal Code, 1860 is one of them and offence of cheating and abetment thereof is another. Likewise, another Constitution Bench in the case of Om Parkash Gupta v. State of U.P. [AIR 1957 SC 458 : 1957 SCR 423 : 1957 Cri LJ 575] observed that a public servant committing criminal breach of trust does not normally act in his public capacity, as such no sanction is required for such an act.

"15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where

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it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

355 In ***Omprakash and Ors. v. State of Jharkhand and Anr.***[33], the Supreme Court after referring to certain decisions pertaining to Police excesses, explained the scope of protection under Section 197 of the Cr.PC in paras 32, 34 and 42 as under:

"32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh [AIR 1960 SC 266 : 1960 Cri LJ 410 : (1960) 2 SCR 89]). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is

33 (2012) 12 SCC 72

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reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew [(2004) 8 SCC 40 : 2004 SCC (Cri) 2104]). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.

….

"34. In Matajog Dobey [AIR 1956 SC 44 : 1956 Cri LJ 140 : (1955) 2 SCR 925] the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The Constitution Bench observed that no question of sanction can arise under Section 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of above quoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a

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pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh [AIR 1939 FC 43 : (1939) 1 FCR 159] and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh [AIR 1939 FC 43 : (1939) 1 FCR 159] because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that: (Matajog Dobey case [AIR 1956 SC 44 : 1956 Cri LJ 140 : (1955) 2 SCR 925] , AIR p. 49, para 20)

> *""20. … the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceedings."*
> *It is pertinent to note that the Constitution Bench has further observed that a careful perusal of the later parts of the judgment however show that the learned Judges did not intend to lay down any such proposition. The Constitution Bench quoted the said later parts of the judgment as under: (Matajog Dobey case [AIR 1956 SC 44 : 1956 Cri LJ 140 : (1955) 2 SCR 925] , AIR pp. 49-50, para 20)*
>
> > *"20. … Sulaiman, J. refers to the prosecution case as disclosed by the complaint or the 'police report' and he winds up the discussion in these words: (Hori Ram Singh case [AIR 1939 FC 43 : (1939) 1 FCR 159] , AIR p. 52 : FCR p. 179)*

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'… Of course, if the case as put forward fails, or the defence establishes that the act purported to be done [is] in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground.'

The other learned Judge also states: (Hori Ram Singh case [AIR 1939 FC 43 : (1939) 1 FCR 159] , AIR p. 55 : FCR p. 185)

'… At this stage, we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty.'

It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction.

Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to

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be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

"42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception."

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356 In ***D. Devaraja v. Owais Sabeer Hussain***[34], the Supreme Court has observed in para 70 as under:

> *"70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law."*

357 Similarly, ***Satyavir Singh Rathi, Assistant Commissioner of Police & Ors v. State through CBI***[35], was a case pertaining to a fake encounter where the deceased was mistakenly identified as a hardcore criminal and was shot down without any provocation. The version of the police was that the police had been attacked first, pursuant to which, they had retaliated, was found to be false. It is in this circumstance, where the Apex Court held that it could not, by any stretch of imagination, be claimed by anybody that a case of murder would come within the

34 (2020) 7 SCC 695
35 (2011) 6 SCC 1

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expression "colour of duty". Accordingly, the Apex Court dismissed the appeals of the concerned policemen against conviction under Section 302, which was duly confirmed by the High Court.

358 Similarly, in ***Virupaxappa Veerappa Kadampur v. State of Mysore***[36], the Apex Court in para 9 has observed as under:

> *"9. The expression "under colour of something" or "under colour of duty", or "under colour of office", is not infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections for a charity. Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words "under colour" in Section 161(1) to include this sense. It is helpful to remember in this connection that the words "colour of office" has been stated in many law lexicons to have the meaning just*

36 AIR 1963 SC 849

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indicated above. Thus in Wharton's Law Lexicon, 14th Edn., we find at p. 214 the following:

> *"Colour of office"*
>
> *"When an act is unjustly dons by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."*

In Stroud's Judicial Dictionary, 3rd Edn., we find the following at p. 521.

> *Colour:"'Colour of office' is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the falsehood, and the thing is grounded upon vice, and the Office is as a shadow to it. But 'by reason of the office' and 'by virtue of the office' are taken always in the best part."*

359 What can be culled out from the aforesaid decisions is that protection is afforded to honest and sincere officers, who perform their duty honestly and to the best of their ability, to further public duty. Protection is also afforded to public servants, even if, they exceed their duty provided there is a reasonable connection between the act and the official duty and that merely because a public servant exceeded in his duty, would not be a ground to deprive him of the said protection under Section 197.

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Thus, only when the the offence committed by a public servant is directly and reasonably connected with the official duty, sanction is warranted. The protection, however, is not afforded where the crime is committed by the authority and camouflaged as an act committed in the course of an official duty. Protection cannot be sought under Section 197, when the act is not concerned / related to the official duty and is pretended to be done under the 'colour of official duty'. It can be no part of an official duty of a public servant to commit an offence.

360 Thus, from the aforesaid decisions, it would be apparent, that it is the duty of the Court to see whether there is a reasonable nexus between the incident and the acts committed by the accused (police) in discharge of their official duty. If the offence is directly and reasonably connected with the official duty, sanction is necessary and if not a part of the official duty, sanction is not warranted.

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361 Having recorded the findings as stated aforesaid, we are clearly of the opinion, that the acts committed, by no stretch of imagination, can be said to be acts committed by the police appellants/accused in the course of their official duty, thus warranting protection under Section 197 Cr.PC. It is no part of official duty to commit an offence. The police officers who are protectors of law, have grossly misused and abused their position by abducting and killing Ramnarayan in a fake encounter and by giving it a colour of a genuine encounter and also by abducting Anil Bheda and in wrongfully confining him for almost a month.

362 Considering the findings recorded by us, the question of seeking sanction before prosecuting the police appellants/accused, would not arise and as such, the said submission deserves to be rejected, outright. The facts as revealed aforesaid, clearly show that the acts of the police appellants/accused were clearly an act of murder, a cold blooded murder and as such, by no stretch of imagination, can it be said

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to be an act committed in the course of their official duty, warranting protection under Section 197 Cr.PC.

F. Absence of Motive – Whether fatal?

363 Learned counsel for the appellants/accused vehemently submitted that the prosecution had miserably failed to prove motive *qua* any of the appellants, as to why they would want to kill Ramnarayan, much less, abduct Ramnarayan and Anil Bheda, and confine Anil Bheda. They submitted that in the absence of motive, the prosecution case, which is based on circumstantial evidence, would fail and as such, the appellants be acquitted of all the offences for which they have been convicted.

364 Per contra, Mr. Chavan, learned Spl. P.P vehemently submitted that no doubt, prosecution has not been able to prove motive, since the witnesses sought to be examined to prove the same, turned hostile, however, that by itself, will not throw the

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prosecution case out of the window, more particularly, when the prosecution has established and proved every other circumstance by cogent, legal and admissible evidence. Mr. Chavan submitted that in a case based on circumstantial evidence, failure to prove motive, is not always fatal, provided all other circumstances are proved by the prosecution, the chain of which is complete and which unerringly points to the guilt of the accused and excludes any hypothesis consistent with the innocence of the accused.

365 In order to consider, whether absence of motive is fatal in a case of circumstantial evidence, it would be apposite to consider the law relating to the same.

366 In ***Vivek Kalra v. State of Rajasthan36, in Para 6, the Apex Court has clarified whether there is any need to establish motive in cases of circumstantial evidence, where otherwise, the case has been proved beyond reasonable doubt.*** The said para 6 reads thus:

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> *"6. We have considered the submissions of the learned counsel for the parties and we agree with the learned counsel for the appellant that from the evidence of PW 11 one could not hold that the appellant had committed the murder of the deceased to take revenge on his uncle (PW 11), who had not given him Rs 80,000 kept in the fixed deposit.* ***We are, however, of the opinion that where prosecution relies on circumstantial evidence only, motive is a relevant fact and can be taken into consideration under Section 8 of the Evidence Act, 1872 but where the chain of other circumstances establishes beyond reasonable doubt that it is the accused and the accused alone who has committed the offence, and this is one such case, the Court cannot hold that in the absence of motive of the accused being established by the prosecution, the accused cannot be held guilty of the offence. In Ujjagar Singh v. State of Punjab [(2007) 13 SCC 90 : (2009) 1 SCC (Cri) 272] this Court observed: (SCC p. 99, para 17)***
>
> > ***"17. … It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy."***
> >
> > *(emphasis supplied)*

367 Similarly, the Apex Court in ***Ganeshlal v. State of Maharashtra***[37]**,** in para 9 has observed as under :

37 (1992) 3 SCC 106

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"9. It is next contended that the parents, sister, maternal uncle and uncle's daughter, A-1, A-3 to A-6 having been acquitted the appellant cannot be convicted under Section 302 I.P.C. The question therefore, is whether it is the appellant alone who has committed the offence or parents, sister and two others also are participis criminis. It is true as contended for the appellant that the evidence on record is not sufficient to arrive at an immediate motive to commit the crime and the case depends on circumstantial evidence. But in circumstantial evidence also when the facts are clear it is immaterial that no motive has been proved. Men do not act wholly without motive. Failure to discover the motive of the offence does not signify the non-existence of the crime. The failure to discover motive by appropriate clinching evidence may be a weakness in the proof of the prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never an indispensable factor for conviction. ***In Atley v. State of U.P. [AIR 1955 SC 807, 810 : 1955 Cri LJ 1653] , this Court held that where there is clear evidence that the person has committed the offence, it is immaterial where no motive for commission of the crime has been shown. Therefore, even in the case of circumstantial evidence, absence of motive which may be one of the strongest links to connect the chain would not necessarily become fatal provided the other circumstances would complete the chain and connect the accused with the commission of the offence, leaving no room for reasonable doubt, even from the proved circumstances.*** *Therefore, the evidence of PW 4 and PW 5 partly with regard to the motive may not be sufficient to bring home the strong immediate motive. But the evidence of PW 5, Vanmala, that on the fateful day, she went to her sister's house situated at a distance of 40 to 50 ft. from her house and that she*

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extended invitation to Kanchana and Kanchana's mother-in-law to attend the "Teej" ceremony in her house was not disputed in the cross-examination. It was around 10 to 10.15 a.m. It is not necessary to dilate the conversation for refusal to attend the ceremony but suffice to state that the appellant was present at that time. When Vanmala came down from the first floor, she heard exchange of words and somebody being beaten. After extending invitation to some people when she returned home, her maid servant, PW 9, after some time came and told her that her sister died. From her evidence in this behalf, there is no contradiction, but there is an omission of hearing exchange of words and somebody being beaten, in her statement recorded under Section 161 CrPC. Giving allowance to omit this part of the evidence i.e. exchange of words and hearing the beating of somebody, the fact remains that at 10.30 a.m. Kanchana died. It is established from evidence of Vanmala, PW 5 that she saw her sister Kanchana alive at about 10 to 10.15 a.m. in the company of her husband, in-laws, sister-in-law in the house and within a few minutes thereafter she was reported dead while in the house solely occupied by the accused-appellant and his family members."

(emphasis supplied)

368 The Supreme Court in the case of ***Sanaullah Khan v. State of Bihar***[38] has, in para 18, held as under :

"18.....Where other circumstances lead to the only hypothesis that the accused has committed the offence, the Court cannot acquit the accused of the offence merely

38 (2013) 3 SCC 52

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because the motive for committing the offence has not been established in the case."

369 In the case of ***Praful Sudhakar Parab v. State of Maharashtra***[39], the Apex Court in paras 25 and 26, has held as under:

"25. One of the submissions which has been raised by the learned Amicus Curiae is that the prosecution failed to prove any motive. It is contended that the evidence which was led including the recovery of bunch of keys from guardroom was with a view to point out that he wanted to commit theft of the cash lying in the office but no evidence was led by the prosecution to prove that how much cash was there in the pay office.

26. Motive for committing a crime is something which is hidden in the mind of the accused and it has been held by this Court that it is an impossible task for the prosecution to prove what precisely have impelled the murderer to kill a particular person. This Court in Ravinder Kumar v. State of Punjab [Ravinder Kumar v. State of Punjab, (2001) 7 SCC 690 : 2001 SCC (Cri) 1384] , has laid down following in para 18: (SCC pp. 697-98)

"*18.* … It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that prosecution in many cases could point to is the possible mental element which could have been the

39 (2016) 12 SCC 783

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> cause for the murder. In this connection we deem it useful to refer to the observations of this Court in *State of H.P.* v. *Jeet Singh* [*State of H.P.* v. *Jeet Singh*, (1999) 4 SCC 370 : 1999 SCC (Cri) 539] : (SCC p. 380, para 33)
>
> > *'33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.'"*

370 In ***Paramjeet Singh (supra),*** the Apex Court held that if motive is proved, that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. Para 54 of the said judgment reads thus:

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> *"54. So far as the issue of motive is concerned, the case is squarely covered by the judgment of this Court in Suresh Chandra Bahri [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] . Therefore, it does not require any further elaborate discussion. More so, if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. (Vide State of Gujarat v. Anirudhsing [(1997) 6 SCC 514 : 1997 SCC (Cri) 946]."*

371 In ***Suresh Chandra Bahri v. State of Bihar***[40], the Apex Court held in para 21 as under:

> *"21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. …"*

40 1995 Supp (1) SCC 80

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372 Thus, what can be culled out from the aforesaid judgments is, that failure to prove motive by itself, in a case of circumstantial evidence will not throw out the prosecution case or corrode the credibility of the prosecution case, more particularly, when there are other circumstances brought on record, by the prosecution, which are clinching and which would complete the chain and connect the accused with the commission of the offence, leaving absolutely no room for any reasonable doubt/suspicion, even from the proved circumstances. Thus, failure to prove motive is not always fatal. Sometimes, motive for committing a crime is hidden in the mind of the accused and it would well be an onerous task for the prosecution to precisely prove, what impelled the murderer to kill a particular person. However, in the present case, although the prosecution has failed to prove motive, there is overwhelming evidence adduced by the prosecution to prove the other circumstances on record by leading cogent, legal and admissible evidence, which circumstances clearly form a chain, pointing to the clear

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complicity of the accused, thereby, excluding any hypothesis which is consistent with their innocence. Thus, we hold that in the facts, failure of the prosecution to prove `motive' is far more fatal to the prosecution, and failure to do so, can by no means absolve the accused against whom the prosecution has successfully proved all the other circumstances.

G. Section 106 shift of burden of proof – It's applicability

373 Mr. Chavan, learned Spl. PP submitted that once the prosecution has proved abduction of Ramnarayan and Anil Bheda on 11th November 2006 at around 12:30 hrs from Sector 9, Vashi, by cogent, reliable and admissible evidence, i.e. oral and documentary evidence, the onus would shift on the accused to explain what happened to Ramnarayan and how Ramnarayan reached Nana Nani Park. Mr. Chavan submitted that it is not the case of accused that in the intervening period i.e. between abduction and the death of Ramnarayan, Ramnarayan escaped

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from their custody and was thereafter found at Nana Nani Park, pursuant to which the encounter took place. Mr. Chavan submitted that the accused have miserably failed to discharge the said burden cast on them under Section 106 of the Evidence Act.

374 Per Contra, learned counsel for the appellants/accused submitted that the question of shifting of burden under Section 106 would arise, only if the prosecution had proved its case, beyond all reasonable doubt, which it had not.

375 As noted herein-above, we have come to the conclusion that the prosecution has conclusively proved by cogent, reliable and admissible evidence, the abduction of Ramnarayan and witness Anil Bheda on 11th November 2006 at around 12:30 hrs from Sector 9, Vashi and the custodial death of Ramnarayan. Under these circumstances, the onus would lie on the appellant-accused to explain what happened to Ramnarayan

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and how he reached Nana Nani Park on the very same day at around 20:10 hrs. It is not the case of the appellants that post the abduction and before Ramnarayan was shot at Nana Nani Park, Ramnarayan escaped from the clutches/custody of the appellants and was thereafter found at the Nana Nani Park, after which Ramnarayan was shot in a genuine encounter and as narrated in the FIR i.e. C.R. No. 302/2006, lodged by **A9.**

376 The Apex Court in ***Prithipal Singh & Ors. v. State of Punjab & Anr.40, has observed that it is very difficult to get evidence against the policemen responsible for custodial death and therefore, when it comes to such matters, law requires for adoption of a realistic approach rather than a narrow technical approach considering that torture and custodial death have always been condemend by the courts and the same stern view is also consistent with that of the Constitution and the Protection of Human Rights Act, 1993.'*** The same can also be reflected in the recommendation of **113th Report of the Law Commission of India**,

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where an amendment to the Evidence Act, 1872 was suggested in order to provide that in case of custodial injuries, if there is evidence, the court may presume that the injury was caused by the police having the custody of that person during that period. And the onus to prove contrary is on the police authorities.

377 In ***Gauri Shanker Sharma v. State Of U.P40, this Court held in paras 15 and 17 as under :***

> *"15. … it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate as in this case….."*
>
> *17. … The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority to brutally assault them while in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behaviour. There can be no room for leniency. We, therefore, do not think we would be justified in reducing the punishment imposed by the trial court."*

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378 Similarly, in ***Munshi Singh Gautam v. State of M.P.40, the Apex Court held that peculiar type of cases must be looked at from a prism different from that used for ordinary criminal cases for the reason that in a case where the person is alleged to have died in police custody, it is difficult to get any kind of evidence.*** The Apex Court observed in paras 6 and 7 as under:

> *"6. Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues ….*
>
> *7. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice-delivery system suspect and vulnerable. In the ultimate analysis society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the courts as well,*

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because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them in the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilised society governed by the rule of law and poses a serious threat to an orderly civilised society. ***Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in "khaki" to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice-delivery system would be shaken and civilisation itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with."***

(emphasis supplied)

379 The Apex court has observed in ***Sucha Singh v. State of Punjab***[41], in paras 15 and 19 to 21 as under:

41 (2001) 4 SCC 375

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"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.

.....

19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.

20. We have seriously bestowed our consideration on the arguments addressed by the learned Senior Counsel. We only reiterate the legal principle adumbrated in State of W.B. v. Mir Mohd. Omar [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516] that when more persons than one have abducted the victim, who is later murdered, it is within the legal province of the court to justifiably draw a presumption depending on the factual situation, that all the abductors are responsible for the murder. Section 34 IPC could be invoked for the aid to that end, unless any particular abductor satisfies the court with his explanation as to what else he did with the victim subsequently, i.e., whether he left his associates en route

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or whether he dissuaded others from doing the extreme act etc. etc.

21. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others.We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others."

380 In ***Chaman & Anr. v. State of Uttarakhand***[42]**,** the Apex Court observed that cases of abduction being a criminal

42 (2016) 12 SCC 76

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offence per se, carries a higher degree of culpability as compared to last seen evidence. In paras 27 to 30, of the said judgment, it is observed as under:

> *"27. Significantly, the proved abduction of the deceased from his house by the appellants is per se a criminal offence and carries with it a much higher degree of sinister culpability compared to any phenomenon of "last seen together", simpliciter. Further the deceased being in the custody of the appellants after his abduction on 12-6-1996, it was within their special knowledge as to how he had been dealt with by them thereafter before his dead body was found in a decomposed state in a nearby jungle. No explanation is forthcoming in any form in this regard from the appellants.*
>
> ***28.*** *This Court in Mir Mohammad Omar [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] in a somewhat similar fact situation, where the deceased was abducted by the accused persons and thereafter his mangled body was found, held that the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as if it admits of no process of intelligent reasoning. It was enunciated that the doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule qua the purport of presumption of fact as a rule in the law of evidence. It was observed thus: (SCC p. 392, para 33)*

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"33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct, etc. in relation to the facts of the case."

29. Adverting to the facts, this Court in Mir Mohammad Omar [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] ruled that as the prosecution had succeeded in establishing that the deceased had been abducted by the accused, they alone knew what happened to him until he was with them and if he was found murdered in a short time, after the abduction, the permitted reasoning process would enable the Court to draw the presumption that the accused had murdered him. It was held that such inference can be disrupted, if the accused would tell the Court what else had happened to the deceased at least until he was in their custody. Referring to Section 106 of the Evidence Act, it was propounded that the said section was not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but would apply to cases where prosecution had succeeded in proving facts from which a

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reasonable inference could be drawn regarding the existence of certain other facts, unless the accused, by virtue of his special knowledge regarding such facts, succeed to offer any explanation, to drive the court to draw a different inference.

30. The following observations by this Court in the context of above legal provision in Shambhu Nath Mehra v. State of Ajmer [Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404 : 1956 Cri LJ 794] were adverted to with approval: (AIR p. 406, para 11)

> *"11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.*
>
> *The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge." (Mir Mohammad Omar case [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] , SCC p. 393, para 38).*

381 The Apex Court in ***State of M.P. v. Shyamsunder Trivedii & Ors.***[43]**,** observed in para 17 of the said judgment, as under :

43 (1995) 4 SCC 262

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"17. From our independent analysis of the materials on the record, we are satisfied that Respondents 1 and 3 to 5 were definitely present at the police station and were directly or indirectly involved in the torture of Nathu Banjara and his subsequent death while in the police custody as also in making attempts to screen the offence to enable the guilty to escape punishment. The trial court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a "could not care less" attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods which are still being used at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity.

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> *Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day."*

382 Keeping in mind the aforesaid, we now advert to the prosecution case, as spelt out herein-above and the evidence that has come on record and discussed under each of the circumstances. We find that the prosecution has proved abduction of Ramnarayan and Anil Bheda, by the appellants-accused by leading cogent, admissible and legal evidence.

383 The appellants have not whispered even a word with respect to what happened to Ramnarayan (deceased), after his abduction from Vashi. Ofcourse, it is the case of the some of the

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appellants/accused, that Ramnarayan was shot in a genuine encounter. Infact, once the prosecution has successfully proved abduction, the burden would shift on the accused under Section 106 of the Evidence Act, to show what happened to Ramnarayan. This burden has not been discharged by the accused. Infact, we may observe, that in the facts, the prosecution has been able to successfully demolish the case of the accused that it was a genuine encounter. The same is done by leading evidence, both oral and documentary. The evidence on record clearly reveals that A9 had lodged a false FIR i.e. C.R. No.302/2006, to cover up a fake encounter, when infact Ramnarayan had died in police custody. The prosecution having proved abduction, as well as murder of Ramnarayan, it was incumbent on the appellants–accused under Section 106 to offer some explanation. Thus, this is an additional circumstance, in the chain of circumstances already proved by the prosecution. It is well settled that Section 106 of the Evidence Act does not relieve the prosecution of its initial burden to prove the guilt of the accused beyond reasonable

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doubt, which the prosecution, in this case, has done. However, the accused have not been able to discharge the burden cast on them i.e. what happened to Ramnarayan after his abduction i.e. facts within the special knowledge of the accused or how Ramnarayan died. The accused having failed to offer any explanation, it is not possible for the Court to draw a different inference.

H. Conclusion

384 It is well settled, how evidence is to be appreciated in custodial death cases, since direct ocular evidence vis-a-vis the complicity of the police personnel is rarely available. Although, in the present case, direct evidence was available i.e. of Anil Bheda's evidence, since he too was abducted with Ramnarayan, however, Anil Bheda, was abducted and killed a few days before his evidence could be recorded and hence, the prosecution has relied on circumstantial evidence, as detailed herein-above.

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385 In ***Munshi Singh Gautam (supra),*** the Apex Court in a custodial death case has in para 7 observed as under; *"The Courts must deal with such cases in a realistic manner and with sensitivity which they deserve, otherwise the common man may gradually lose faith in the efficacy of judiciary itself."* It was also observed that exaggerated adherence to and insistence upon the establishment of proof beyond reasonable doubt by the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, often results in miscarriage of justice.

386 Similarly, the Apex Court in ***Prithipal Singh & Ors. (supra)*** has observed that, it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third degree methods, since they are in charge of police station records, which they do not find difficult to manipulate and hence law requires for adoption of a realistic approach rather than a narrow technical approach in cases of custodial crimes.

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387 We have perused the entire evidence, oral and documentary, adduced by the prosecution, in support of its case and find that the prosecution has proved each of the circumstance relied upon by them, beyond reasonable doubt as against all the police personnel and one another accused. The evidence led by the prosecution, both oral and documentary is cogent, reliable and legally admissible. We have whilst dealing with each of the circumstances relied upon by the prosecution, under the headings; Formation of Squad; Abduction; Encounter/Custodial Death/Murder; Ballistic Evidence/Forensic Evidence; Wrongful Confinement of Anil Bheda; Pressure tactics/manipulation by accused persons to cover up C.R. No. 302/2006; CDRs; and Criminal Conspiracy, have recorded our findings/observations in each of the said circumstance, in great detail keeping in mind the evidence led and hence will be referring to each of the said circumstances very briefly.

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388 It is pertinent to note that the investigation in the present case started after almost three years in 2009, after the Division Bench of this Court directed constitution of a SIT and registration of an FIR as against the accused. Accordingly, an FIR came to be registered at the behest of PW1-complainant (brother of the deceased), only because of his sheer tenacity, grit and determination to expose the persons responsible for the murder of his brother and to get justice. It is also pertinent to note that after SIT took over the investigation of the said case and started recording the statements of witnesses, some of the witnesses were threatened and intimidated, so that they do not depose against the accused or spill the beans. Some were even asked to leave the city or to depose falsely.

389 Anil Bheda was a prime/star witness for the prosecution i.e. with respect to his and Ramnarayan's abduction i.e. how they were taken from Vashi to Bhandup, from Bhandup

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to D.N. Nagar and how he was confined thereafter for a month. Anil Bheda's statement was recorded by SIT under Section 161 on 3rd September 2009 as well as before the learned Magistrate on 30th December 2009, disclosing the complicity of the accused. Anil Bheda had also identified the accused who abducted him i.e. **A2, A3, A4, A6, A7, A8, A10** and **A12** in the three, TIPs conducted. However, before his evidence could be recorded, i.e. after charge was framed on 8th March 2011 in the case, and before his evidence was recorded i.e. his evidence was to be recorded on 16th March 2011, Anil Bheda was abducted and killed on 13th March 2011. Anil Bheda's body was found in a burnt condition and could only be identified because of the DNA. We are informed that the investigation of the said case is still pending with the State CID since 2011. It appears that no steps have been taken by the State CID to conclude the investigation in the said case and trace the perpetrators i.e. persons responsible for Anil Bheda's death.

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390 The prosecution, despite several odds, has done remarkable investigation in the said case. The SIT constituted under PW110-K.M.M. Prasanna and the other team members i.e. PW107-Manoj Chalke, PW108-Vinay Ghorpade and PW109-Sunil Gaonkar have taken sincere efforts to collect evidence in the form of station diaries, CDRs, etc. and have recorded the statements of witnesses, under 161 as well as before the Magistrate under 164 Cr.PC Because of the efforts of SIT i.e. K.M.M. Prasanna and his team of officers, who diligently and meticulously collected voluminous record, despite all odds faced by them, including the prime witness–Anil Bheda being killed, just three days before he could depose, the prosecution could succeed in bringing home the guilt of the appellants/accused, who are police personnel and one, a private person. It was a mammoth task. The efforts taken by the members of the SIT are indeed commendable, in particular, having regard to the fact, that some of the accused were decorated police officers.

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391 The prosecution has been able to establish that a squad was formed and that it existed under **OA1**, albeit illegal, through the evidence of witnesses, that some police personnel i.e. **A15, A2, A3 and A7,** were deputed to D.N. Nagar Police Station from different police stations, under **OA1** and **A13** and **A16** were assisting **OA1.** The prosecution has not only brought oral evidence of PW20, PW25, PW32, PW43, PW45, PW55, PW72, PW79, PW82 and PW87 on record to prove that a squad existed, but has also supported the said oral evidence by documentary evidence, in the form of station diary entries/documents. Thus, there was a squad, which existed under **OA1**, has been duly proved by the prosecution. We have in detail, dealt with the evidence adduced by the prosecution vis-a-vis squad, whilst dealing with the said circumstance i.e. 'Formation of Squad' and have recorded our finding. We, having regard to the overwhelming evidence on record, find that the finding recorded by the trial Judge, that the prosecution had failed to prove the existence of a squad, is perverse, inasmuch as, the learned Judge

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had relied only on the evidence of PW78-Bipin Bihari, Addl. CP. West Region, without considering the overwhelming evidence of other witnesses that had come on record vis-a-vis existence of a squad under **OA1,** the station diary entries and ofcourse, no cross of some of the witnesses on the same. We have observed that PW78-Bipin Bihari, Addl. CP, West Region, for obvious reasons, had denied sending any person on deputation or that a squad existed. Obviously, PW78, the Addl. CP would have been in the dock. Thus, the prosecution has successfully proved the existence of a squad under **OA1.**

392 It is also pertinent to note, that the evidence of PW87-Ajendrasingh Thakur, clearly shows that some of the team members of the squad were also involved in the encounter which took place at Kala-Ghoda, in which **OA1** and **A9** were members. In the said encounter which took place at Kala-Ghoda, the police personnel involved were **OA1**, **A2**, **A3**, **A7**, **A9**, **A15**, **A16**, **A18**, and **A22.** Learned Spl. PP also submitted that whilst on parole in

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the present case (Lakkhanbhaiya case), A7 committed another offence i.e. was involved in the Antilia Case (Mansukh Hiren Murder) in which OA1 is also an accused alongwith others.

393 The prosecution has also by cogent and legally admissible evidence, proved abduction of Anil Bheda and Ramnarayan on 11th November 2006 at around 12:35 hrs. We have, while considering the evidence of abduction, having regard to the principle in Section 6 of *res gestae held the disclosures made by Nilesh to PW38-Dheeraj Mehta and by Anil Bheda to PW40-Aruna Bheda as admissible, for reasons set out therein.* We have found that the said disclosure made by Nilesh to PW38 was immediate, spontaneous, contemporaneous, having regard to the fact that within, 3 to 4 minutes, Nilesh disclosed to PW38 that his friend and friend's friend were abducted in a Qualis by 5 to 6 persons in civil dress. The said news was immediately communicated by PW38 to PW57-Girish Nepali and thereafter, calls were exchanged between PW38, PW57, PW3 and PW1.

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The evidence of the said witnesses is duly corroborated by the CDRs, and is a testimony of the prompt responses to each other. The evidence of each of these witnesses is duly corroborated by each other and also by the evidence of PW40-Aruna Bheda. The evidence of the said witnesses is again duly corroborated by the telegrams and faxes sent by PW1 and PW2 in the name of Aruna Bheda to various authorities soon thereafter i.e between the period 14:00 hrs to 18:28 hrs. The details of the faxes and telegrams sent, have been dealt with by us in detail, whilst discussing the circumstance of **'abduction'**. One of the fax sent to the CP, Thane, reads thus :

> *"RESPECTED SIR,*
>
> *THIS IS TO BRING TO YOUR KIND NOTICE THAT MY HUSBAND ANIL BHEDA AND HIS FRIEND RAMNARAYAN VISHWANATH GUPTA HAS BEEN PICKED UP BY PLAIN CLOTHES POLICEMAN FROM SECTOR 9, VASHI, NAVI MUMBAI, THAT THE SAID POLICEMAN WERE IN A SILVER COLOUR QUALIS CAR.*

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I SUSPECT THAT THEY WILL KILL THEM IN A FAKE ENCOUNTER.

PLEASE SAVE THEIR LIFE."

FROM
ARUNA ANIL BHEDA
SECTOR 29, VASHI,
DIAMOND APARTMENT
NAVI MUMBAI."

The sending of faxes/telegrams is also corroborated by the various authorities, who either sent the faxes/telegrams or who received the said faxes and telegrams. The faxes and telegrams were also sent to the Chief Minister and Deputy Chief Minister on the very same day, prior to the alleged encounter by the police. All the faxes and telegrams were sent, soon after receiving the information and prior to the alleged encounter of Ramnarayan by the police. It is also pertinent to note that prior to 11th November 2006, watch was being kept by some of the appellants on the house of Anil Bheda, where Ramnarayan would visit/stay. The same is again duly corroborated by the CDRs of the appellants/accused, most of whom are police personnel i.e. A2,

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A3 and **A7**. It is pertinent to note, that the police personnel who were party to the abduction, were deputed to D.N. Nagar Police Station, Mumbai, a different Commissionerate, whereas, their call records show their presence in a different Commissionerate area i.e. Navi Mumbai. It is also pertinent to note, that neither of their residences are in Navi Mumbai. **A2** lived at Mira Road (East), Thane; **A3** at Bandra (West), Mumbai and **A7** at Kalwa, Thane. No explanation whatsoever has been offered by any of the appellant/accused to even remotely suggest how and why they were present in Navi Mumbai, as reflected from the CDRs. That **A2, A3** and **A7** were using the mobile numbers as alleged by the prosecution, has also been duly proved by the prosecution, through the witnesses examined in this behalf.

394 Thus, the evidence on record shows that Ramnarayan and Anil Bheda were abducted on 11th November 2006 at around 12:35 hrs. in a Qualis by some of the appellants/accused, who were tracking the whereabouts of Ramnarayan from the previous day. Both, Anil Bheda and Ramnarayan, according to the

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prosecution, were taken to Bhandup and thereafter to D.N. Nagar Police Station. It is pertinent to note that neither Anil Bheda's nor Ramnarayan's mobiles were active, post 12:30 hrs., i.e. Ramnarayan's last call, as per the CDR is 12:33 hrs on 11th November 2006.

395 Once the prosecution has succeeded in showing that Ramnarayan and Anil Bheda were abducted, the onus would then shift on the appellants/accused to show what happened to Ramnarayan thereafter. It is not the prosecution case that Ramnarayan escaped and as such, was again apprehended at Nana Nani Park and was shot in a genuine encounter. Even though the burden would be on the appellants/accused under Section 106 of the Evidence Act, to show what happened to Ramnarayan, we may observe here, that the prosecution has also proved the circumstance of custodial death/murder of Ramnarayan by leading cogent evidence, both, oral as well as documentary. We have dealt with in great detail how the encounter of Ramnarayan was a fake

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encounter, whilst dealing with the said circumstance of murder/custodial death of Ramnarayan. The evidence on record shows that the encounter as alleged by the police was not a genuine encounter, in which 12 persons are stated to have participated, but a fake encounter, which was attempted to be given a colour of a genuine encounter. There is overwhelming evidence to show that the encounter was a fake encounter i.e. registration of a false FIR (C.R. No.302/2006); that the spot panchnama was not recorded at the spot; no meeting was held in A9's cabin; creation of false station diary entries and documents; planting of a revolver and railway tickets on the deceased; the ballistic expert's report; non-finding of the fingerprints on the weapon allegedly used by Ramnarayan; finding of only one foot diameter blood, considering the number of wounds sustained by Ramnarayan i.e. one on his forehead, one on his right finger and two on his chest; the distance of firing and so on. We have in great detail dealt with the same, whilst considering the circumstance of 'Encounter/Custodial Death/Murder'.

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396 The evidence on record also shows how **A9** and some of the appellants/accused manipulated the records to show that it was a genuine encounter. The evidence clearly reveals that the spot panchnama was not prepared at the spot, but was prepared at Versova Police Station. The testimony of PW73 would clearly reveal the same. PW73's testimony has not been shattered, despite a gruelling cross. It is also evident from the evidence on record that though **A9** has alleged that he had informed the superior officers and had sought permission to conduct the operation, all the witnesses have deposed, to the contrary i.e. they were not informed about the operation. It also appears that false station diaries were created to cover up the fake encounter and false evidence was created by planting railway tickets and weapon on the person of Ramnarayan.

397 The prosecution has also proved by cogent, legal and admissible evidence the ballistic expert's report, through PW86-Gautam Ghadge. The said ballistic expert's evidence and report

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clearly shows that **A9, A15, OA1** and **A2** had fired at the deceased. That the firing was from a close distance of around 2 meters has also been established by PW86-Gautam Ghadge and PW29-Dr Gajanan Chavan. The learned trial Court Judge has also accepted and relied on the said evidence, however, despite recording the said finding, has acquitted **OA1**, after observing that except this, there is no other evidence *qua* him.

398 The evidence of wrongful confinement of Anil Bheda has also been proved by the prosecution i.e. Anil Bheda was wrongful confined at Bhatwadi, Ghatkopar, thereafter at Kolhapur in a hotel for 3 to 4 days, and thereafter, at Mid-town Hotel at Andheri (West), Mumbai. The evidence vis-a-vis wrongful confinement of Anil Bheda is overwhelming and clearly shows the complicity of the appellants/accused in confining Anil Bheda at the aforesaid places. The same has been deposed to by PW40, inasmuch as, PW40-wife of Anil Bheda was asked to call on two numbers i.e. of **A2** and **A3**. The fact that the said calls

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were made, is also duly supported by the CDRs of **A2** and **A3.** PW40, has identified **A2, A3** (confinement at Bhatwadi) and **A5** (confinement at Kolhapur) There is evidence of other witnesses, which clearly reveals that Anil Bheda was confined by the appellants/accused i.e. **A2, A3, A5 and A13.** Anil Bheda was confined from 11th November 2006 to around 12th December 2006, at different places. The purpose of confining Anil Bheda was far too obvious, that Anil Bheda does not spill the beans and reveal the truth.

399 All the aforesaid evidence of the witnesses i.e. on abduction, murder and wrongful confinement is duly corroborated by the CDRs. The prosecution has examined as many as seven Nodal Officers, i.e. PW54, PW62, PW65, PW69, PW85, PW89 and PW97, of various companies to prove the information supplied by them, at the behest of SIT. No question was asked with respect to requirement of Section 65B Certificate to all the Nodal Officers and as such, the prosecution has been

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able to prove the CDRs of the appellants/accused i.e. the spots at which they were present at the time of abduction i.e. at Navi Mumbai to Bhandup to D.N. Nagar Police Station and from D.N. Nagar Police Station to Nana Nani Park. Some of the mobile numbers stood in the names of the appellants/accused, some in the name of others. Most of the appellants/accused have denied using the numbers, however, prosecution has, through the evidence of the witnesses proved that the numbers were being used by the appellants/accused. Infact, **A5** had six numbers i.e. XXXXXX1156, XXXXXX5068, XXXXXX5874, XXXXXX5805, XXXXXX8104 and XXXXXX2987, registered in his name, out of which XXXXXX2987 was used by **OA1**, and XXXXXX5118 though registered in the name of Shaikh Kaider, was used by **A5**. It is pertinent to note that at the time when **A5** was in Kolhapur with Anil Bheda, his wife (PW40) and son, **OA1's** location is shown at D.N. Nagar Police Station (mobile No.XXXXXX2987). Although, PW68-Geetanjali Datar, Court Sheristedar has turned hostile, her evidence to the extent that she

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supports the prosecution, has been relied upon. PW68 has in her evidence stated that she was using mobile bearing No.XXXXXX2638, which stood in the name of her husband; that she knew **OA1** as an officer as he had some cases under the Narcotics Act in different Courts, including in her Court i.e. Court Room No.48; that there was DF matter in her Court, in which one accused was arrested and brought before the Court, pursuant to which the case was reopened; that **OA1** was the Investigating Officer in the said case; that once **OA1** had come to Court No.48, after which constables would attend the said case; that a Constable told her that if a certified copy of judgment was required, she should call **OA1** on his phone and that the constable gave her the phone number of **OA1**. She has further deposed that the case was tried in October, November 2006; that in the month of November 2006, **OA1's** number was given to her. She has stated that when she called on the said number on 11th November 2006 and 15th November 2006, she heard only "Hello" and then the phone got disconnected, pursuant to which she received a call

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on her phone; that she disclosed that the judgment was ready and the copy of the judgment would be received. PW68's evidence shows that the mobile number which she called on, was that of **OA1** (which stood in **A5's** name) (Exhibit 543). PW68's evidence does not show, she knew **A5** or had called **A5.** It is pertinent to note that on 15th November 2006, **A5** was at Kolhapur with Anil Bheda, PW40 and their son, whereas, the said number was operational in Mumbai and there are a number of calls from J.B. Nagar (**OA1's** residence) and D.N. Nagar Police Station. On 15th November 2006, at 21:24 hrs., **OA1** spoke to PW68 for 62 seconds. The evidence on record also shows exchange of several calls between PW78-Bipin Bihari, Addl. CP. West Region, Mumbai, and the mobile number standing in **A5's** name, but used by **OA1.** PW78 has categorically stated that he did not know **A5.**

400 The accused, in order to cover up the fake encounter, used pressurizing tactics on witnesses, manipulated records and the said evidence has also been brought on record by the

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prosecution. The evidence on record shows how **A9** threatened the learned Magistrate to submit a report under Section 167 Cr.P.C, that the encounter was not a fake encounter, pursuant to which, he was convicted by the High Court in a Suo Motu Contempt Petition for three months. The SLP against the said order was also dismissed by the Apex Court. The evidence brought on record also shows that **A9's** brother, who was an ACP at the relevant time, attempted to interfere in the investigation by pressurizing police officers to record 164 statements of witnesses, despite the matter being subjudice before the High Court (Writ Petition filed by PW1); and the evidence, that pressurizing tactics were employed to send PW38 out of Mumbai, so that, he does not depose before SIT. The said incident was soon after SIT was constituted by the High Court. Evidence on record also shows that one advocate who was appearing for some of the appellants/accused was present alongwith **A5**, when PW38 visited the office of SIT, pursuant to which, he gave his earlier statement before SIT as well as before the learned Magistrate. The

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additional affidavit of **A9** reveals that the statement of the fingerprint expert was recorded nearly three years after the incident, more particularly, when **A9** was posted at D.N. Nagar Police Station, Andheri and was, in no way, connected with C.R. No. 302/2006. The said statement is annexed by **A9** to his affidavit filed by him in the writ petition. It is pertinent to note that **A9** has filed an affidavit stating how the encounter took place, as according to him, it was a genuine encounter done in the course of his official duty. The fact that it was a genuine encounter has also been accepted by three accused i.e. **A2**, **A9** and **A15.** Similarly, **A11, A13, A16, A18** and **A19** accept the genuineness of the C.R. i.e. C.R. No.302/2006, as evident from their answers to the Q.No.155, put to them under Section 313 Cr.PC. As far as **A17** is concerned, he has pleaded ignorance of C.R. No.302/2006 and stated that he was there at the spot, post the incident, only to help. The evidence on record also shows that the spot panchnama was prepared at the police station itself and not at the spot where the alleged encounter took place.

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401 The prosecution has also proved the movement of weapons used by the accused who fired at Ramnarayan. Ofcourse, **A9** and **A15** do not dispute firing at Ramnarayan, but according to them, it was a genuine encounter. The fact, that Ramnarayan was fired at by **OA1**, **A2, A9** and **A15's** weapons, is duly supported by ballistic expert's evidence and report. No doubt, PW86-Gautam Ghadge, Ballistic Expert, was examined at length, his evidence has not been shattered despite a gruelling cross. Infact, PW86's evidence shows that he is an expert witness and that he had conducted all the tests as required to support his finding i.e. Ramnarayan was fired at by **OA1, A2, A9 and A15.**

402 From the evidence on record, it can be clearly inferred that each of the accused played some role or the other in achieving their illegal object i.e. to kill Ramnarayan. We have also dealt with this circumstance whilst dealing with the circumstance of 'Criminal Conspiracy'. We, keeping in mind the circumstances on record adduced by the prosecution, find that

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when the same are taken together, would indicate the meeting of the minds between the accused for the intended object of committing an illegal act i.e. the murder of Ramnarayan and that all the means adopted and illegal acts done were in furtherance of the conspiracy hatched.

403 We may also note that the prosecution has not placed much reliance on the circumstance of motive, inasmuch as, the witnesses vis-a-vis, motive have turned hostile. Be that as it may, although the circumstance of motive has not been proved by the prosecution, in the facts of the present case, there being overwhelming evidence in the form of other circumstances as narrated aforesaid, failure to prove motive pales into insignificance and in the facts, will not in anyway impact the prosecution case.

404 We find that the prosecution through oral and documentary evidence has proved each and every circumstance

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relied upon by them by cogent, legal and admissible evidence and each of the said circumstance so proved by the prosecution, forms a chain, which is so complete and which unerringly points to the guilt of the appellants/accused and excludes any hypothesis consistent with the innocence of the appellants/accused, who are police personnel and one private person. The appellants/accused who participated in the encounter are all police officers/personnel, whose duty was to protect the people and to uphold law and order. In the facts, far from upholding the rule of law, the police accused have clearly acted to the contrary. These very officers / police personnel grossly misused their positions / power and murdered Ramnarayan in cold-blood, and gave it a colour of a genuine encounter. We find all the appellants/accused, who are police, and A5, a private person to be complicit in the crime. As noted, 12 police personnel participated in the alleged encounter, as per C.R. No. 302/2006. Almost all the police accused had not raised any objection to their names being disclosed in the said C.R, during the trial. We have in detail, set

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out the stand of each of the police accused in para 32 herein-above. However, in the present appeals, some of the accused have denied their presence, for the first time. We have, in detail, set out the stand of each of these accused i.e. police in para 32 herein-above.

405 Death in police custody must be curbed with a heavy hand and must be viewed seriously. There can be no room for leniency as the persons involved i.e. the police, are the arm of the State, whose duty is to protect the citizens and not to take law into their hands and commit gruesome offences against them. The protectors/guardians of law cannot be permitted to act as criminals in uniform. If this is permitted, it would lead to anarchy.

406 No doubt, Ramnarayan had several cases i.e. around 10 cases registered against him, however, that by itself, would not give the appellants/accused i.e. the police and the other persons,

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license to kill. Instead of upholding the rule of law, the police have misused their positions and uniform, and have killed Ramnarayan in cold blood. It is pertinent to note that the last case registered as against Ramnarayan was in the year 1998 and that not a single case was registered as against Ramnarayan either with D.N. Nagar Police Station, Versova Police Station or Oshiwara Police Station.

407 Non-explanation or failure to discharge the burden under Section 106 of the Evidence Act, as to what happened to Ramnarayan, since Ramnarayan was in the custody of the police after his abduction, has also not been explained by the appellants/accused. This, in our view, will constitute an additional circumstance in the chain of circumstances already proved by the prosecution. The fact, as to what happened to Ramnarayan after his abduction by the accused persons, was well within their special knowledge and therefore they could have

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offered some explanation. We are afraid, none have not offered any explanation.

408 As far as **A5**–Hitesh Solanki @ Dhabbu, a private person is concerned, the prosecution has proved his complicity in the crime. The role of **A5** has been proved by the prosecution in taking Anil Bheda and Aruna Bheda to Kolhapur. PW40–Aruna Bheda has herself identified **A5,** as the person who accompanied her and Anil Bheda to Kolhapur. PW40 has also deposed how **A5** gave her a prepared affidavit (Exh. 335) to submit it before the Metropolitan Magistrate during the inquiry. The prosecution has also examined witnesses who have identified **A5,** as the person who was present at Mid-town Hotel, where Anil Bheda was confined. There are calls between 26th November 2006 to 30th November 2006, on one of **A5's** mobile No. i.e. XXXXXX5118 from the PCO, of PW40's father i.e. call made by PW40 to speak to Anil Bheda. We have in detail, discussed the

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evidence whilst dealing with the circumstance of confinement of Anil Bheda and the witnesses who have spoken about the presence of **A5** at Mid-town Hotel, Andheri. Some of the witnesses have also deposed with respect to **A5** sitting outside **OA1's** office and screening persons visiting **OA1**. PW38 has also disclosed **A5's** presence with Advocate Brahmabhatt, a lawyer of the accused, when he had gone to SIT for recording his statement for the first time, so that he toes their line. The evidence on record also shows **OA1** was using mobile No. XXXXXX2987, registered in **A5's** name. Thus, the circumstances on record, *qua* **A5**, clearly points to his complicity in the commission of the crime.

409 The trial Court has accepted the evidence led by prosecution, vis-a-vis abduction; murder/custodial death; the ballistic expert's evidence; and wrongful confinement of Anil Bheda as against all the appellants/accused. However, we after carefully perusing the evidence, find that the prosecution has

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proved its case beyond reasonable doubt as against the appellants, who are police personnel i.e. **A2, A3, A7, A9, A11, A13, A15, A16, A17, A18, A19, A20** and one private person i.e. **A5.**

410 As far as abduction is concerned, at the cost of repetition, we hold that the prosecution has proved beyond reasonable doubt, that Ramnarayan and Anil Bheda were abducted by 5-6 persons, in a Qualis. Although the prosecution has proved that Ramnarayan and Anil Bheda were abducted in a 'Qualis', the only question is, whether the Qualis, was the one as alleged by the prosecution. To that extent, we are afraid, we are unable to record a finding on the same for the following reasons:

411 It is the prosecution case, that **A10** had organised the Qualis, in which Ramnarayan and Anil Bheda were abducted. It is pertinent to note, that Anil Bheda had in the TIP identified **A10** amongst other accused as his abductor, however, in view of Anil Bheda's death for want of substantive evidence, we turn to the

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other evidence placed on record by the prosecution. The prosecution has relied on the evidence of PW14–Parmanand Desai, PW16-Sujit Mhatre and PW48–Sandesh Chavan, to show that the Qualis which was used in the commission of the offence was taken by **A10** from PW16-Sujit Mhatre. In connection with the same, the prosecution examined PW14–Parmanand Desai, to show that **A10**, who was working as a sweeper in the Mumbai Municipal Corporation had taken half-day leave on 9th November 2006; on 10th November 2006, a weekly-off and on 11th November 2006, a casual leave. PW16–Sujit Mhatre was also examined to show that a Qualis was taken from him on hire by **A10** for his personal use in November 2006. Similarly, the prosecution examined PW9–Sundar Tendulkar, who had purchased the vehicle from PW16-Sujit Mhatre and PW10-Mrugesh Negandhi, who later purchased the said vehicle from PW9–Sundar Tendulkar.

412 Admittedly, none of the witnesses examined to prove

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abduction have spelt out the Qualis vehicle number. All that they categorically state is that it was a Qualis vehicle. No doubt prosecution has examined witnesses to show that **A10** who was working in the Municipal Corporation was on leave on 11th November 2006 and that he had taken a Qualis No. MH 04 AY 8472 on hire, from PW16 that day, that by itself, is not sufficient to point to the complicity of **A10** in the crime i.e. the very Qualis vehicle taken by **A10** on hire, was used in the abduction.

413 Although the prosecution has proved by legal, cogent and admissible evidence that Ramnarayan and Anil Bheda were picked up in a Qualis vehicle by 5-6 persons, the prosecution has not proved that this was the very vehicle used in the abduction, which was taken by **A10** from PW16-Sujit Mhatre. Admittedly, no number of the vehicle has come in the evidence and as such, we do no deem it safe to place implicit reliance on the evidence that has come on record with respect to the complicity of **A10** vis-a-vis hiring of the vehicle from PW16–Sujit Mhatre, in

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November 2006. Similarly, merely because **A10** was on ½ day leave on 9th November 2006, leave on 10th November 2006 and weekly-off on 11th November 2006, by itself cannot be incriminating. Considering the aforesaid evidence, we do not find the said evidence sufficient to convict **A10,** and as such give him benefit of doubt.

414 As far as **A8, A12** and **A21** (private persons) are concerned, we are afraid that the evidence adduced by the prosecution as far as the said appellants are concerned, has also not been proved beyond reasonable doubt, *qua* the said accused. The conviction of the said accused appears to be essentially based on the progress report submitted by PW110–K.M.M. Prasanna. Admittedly, the CDR's of **A8, A12** and **A21** were not collected, due to passage of time.

415 It is pertinent to note that although it is the prosecution case that **A8, A12** and **A21** alongwith **A4** and **A10**

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(all private persons) were also part of the team of abductors alongwith **A7** (police personnel) at Vashi, the evidence *qua* them i.e. the private persons, has not been proved beyond reasonable doubt. Although the prosecution has brought on record the CDRs of **A4**, the CDRs of **A8, A12** and **A21** were not collected, as their CDRs were not available after 3 years. It is also pertinent to note that although **A4, A5, A6, A8, A10** and **A12** (private persons) alongwith **A2, A3, A7, A13** and **A16** (police personnel), were identified by Anil Bheda in the TIP I.e. the persons who abducted and confined them, however, in view of the demise of Anil Bheda, for want of substantive evidence with respect to the same, we are unable to consider the said evidence of identification. As far as **A4** is concerned, the only evidence *qua* **A4** is his CDR, which by itself, is not sufficient. Suspicion, however strong, cannot take the place of legal proof.

416 Considering the aforesaid, the conviction of **A4, A8, A12** and **A21** (all private persons), cannot be sustained.

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417 As far as **A6**–Akhil Shirin Khan @ Bobby, a private person is concerned, the prosecution submitted that **A6** was one of the trusted member of the illegal squad working with **OA1**; that **A6** was involved in the abduction; that **A6** was at Vashi on 10th November 2006 and on 11th November 2006; that **A6** alongwith others took the custody of Ramnaryan and Anil Bheda at Bhandup Complex; that **A6** was in regular contact with the accused persons, before, during and after abduction; that **A6** was present at the D.N. Nagar Police Station, when deceased and Anil Bheda were brought; and that the mobile sim card stood in the name of **A6**. In short, the evidence against **A6** is essentially based on the CDRs of **A6**. It is again pertinent to note that **A6** was identified by Anil Bheda, however, in view of Anil Bheda's murder before his evidence could be recorded, for want of substantive evidence, we do not find it proper to place reliance only on **A6's** CDR for convicting **A6,** and as such **A6's,** conviction only on this evidence cannot be sustained.

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418 Accordingly, for the reasons aforesaid, the following order is passed :

ORDER

(1) The judgment and order of conviction and sentence passed by the trial Court is upheld, as against the following appellants:

i) **Nitin Gorakhnath Sartape (A11)**, appellant in Criminal Appeal No.707 of 2019;

ii) **Sandip s/o Hemraj Sardar (A20)**, appellant in Criminal Appeal No.86 of 2021;

iii) **Tanaji Bhausaheb Desai (A2)**, appellant in Criminal Appeal No.104 of 2021;

iv) **Pradeep Pandurang Suryawanshi (A9),** appellant in Criminal Appeal No. 151/2021;

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iv) **Hitesh Shantilal Solanki @ Dhabbu (A5)**, appellant No.1 in Criminal Appeal No.943/2013;

vi) **Ratnakar Gautam Kamble @ Rattu (A3)**, appellant No.1 in Criminal Appeal No.1038/2013;

vii) **Vinayak Balasaheb Shinde @ Veenu, (A7)**, appellant in Criminal Appeal No.1080 of 2019/Respondent No.3 in CRA/182/2023;

viii) **Devidas Gangaram Hari Sakpal (A13)**, appellant in Criminal Appeal No.1177 of 2019;

ix) **Anand Balaji Patade (A18)**, appellant in Criminal Appeal No.1239 of 2019;

x) **Dilip Sitaram Palande (A15),** appellant in Criminal Appeal No.1242/2018;

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xi) **Pandurang Ganpat Kokam (A19)**, appellant in Criminal Appeal No.1488 of 2018;

xii) **Ganesh Ankush Harpude (A17)**, appellant in Criminal Appeal No.1490 of 2018;

xiii) **Prakash Ganpat Kadam (A16)**, appellant in Criminal Appeal No.1493 of 2018.

Accordingly, the aforesaid appeals stand dismissed *qua* the said appellants.

(2) As far as **Janardan Tukaram Bhanage (A14)**, appellant No.3 in Criminal Appeal No.943 of 2013 and **Arvind Arjun Sarvankar (A22)**, appellant No.3 in Criminal Appeal No.1038 of 2013 are concerned, the appeals *qua* the said appellants, do not survive in view of their demise and as such, stand abated.

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(3) As far as **Manoj Mohan Raj @ Mannu (A8), Sunil Ramesh Solanki (A10), Mohamed Shaikh Mohd. Taka Moiddin Shaikh (A12) and Suresh Manjunath Shetty (A21),** all appellants in Criminal Appeal No.942/2013 as well as **Akhil Shirin Khan @ Bobby (A6)**, appellant No.2 in Criminal Appeal No.943/2013, and Shailendra Dhoopnarayan Pandey **(A4)** in Criminal Appeal No.944/2013 are concerned, the judgment and order of conviction and sentence passed by the trial Court *qua* the said appellants/accused stands quashed and set-aside and they are acquitted of all the offences with which they are charged. The said appellants/accused be released forthwith, if not required in any other case.

419 Before parting, we may observe that Anil Bheda, a prime and a star witness in the said case, a witness to abduction, i.e. of Ramnarayan and his own, from Sector 9A, Vashi, to

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Bhandup Complex and then to D.N. Nagar Police Station and of his own confinement, was abducted and murdered on 13th March 2011, in the most gruesome manner, within 3 - 4 days, after charge was to be framed in the case i.e. on 8th March 2011 before his deposition scheduled on 16th March 2011. Anil Bheda's dead body was found burnt and only on the basis of DNA, his dead body was identified.

420 We may note that the case i.e. Anil Bheda's abduction and murder is being investigated by the State CID. Learned Spl. PP placed on record the report of the State CID. It appears from the said report that there is absolutely no progress in the said case. It is a matter of shame, that more than a decade has lapsed, but there is no progress in the case. It is extremely unfortunate, that a prime eye-witness in this case, Anil Bheda, lost his life before his evidence could be recorded and till date, the perpetrators of Anil Bheda, have not been booked and are obviously looming large. It is travesty of justice, for the family,

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who have lost a near and dear one. The police whose duty it is, to uphold the law, and to find the perpetrators of the crime, have hardly taken any pains to trace the perpetrators. It is important for police to investigate and to take the case to its logical end, lest people loose faith in the system. We hope and expect that the State CID will continue with its investigation and take the same to its logical end.

V. APPEAL AGAINST ACQUITTAL

421 We have dealt with the circumstances relied upon by the prosecution i.e. Formation of Squad; Abduction; Encounter/Custodial Death/Murder; Ballistic Evidence/Forensic Evidence; CDRs which also pertain to the present respondent/**OA1** and have recorded our findings/observations in the said appeals against conviction preferred by the appellants/accused therein. Since the evidence is overlapping,

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we do not wish to again reproduce/repeat the said evidence in detail in the present appeals.

A. Criminal Appeal No.854/2013 and Criminal Appeal No.350/2015 preferred by the complainant– Ramprasad Vishwanath Gupta and the State of Maharashtra respectively, against the acquittal of Pradeep Sharma (OA1):

Submissions of Dr. Yug Chaudhry for the Appellant– Ramprasad Vishwanath Gupta:

422 Dr. Yug Chaudhry appearing for the appellant i.e. Ramprasad Gupta-the brother of the deceased, submitted that the aforesaid appeal has been filed as against the acquittal of the respondent **(OA1)** in the said case. He submitted that the findings recorded by the learned Judge whilst acquitting the respondent **(OA1),** at the highest, are perverse. He submitted that the observations made by the learned Judge that there is no direct or circumstantial evidence against the respondent **(OA1)** or

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that none of the witnesses have attributed any role to **OA1**, or that there is no iota of evidence against **OA1** for killing the deceased, are not borne out from the evidence on record. He submitted that infact all the circumstances adduced by the prosecution militates against these findings. He submitted that the prosecution has duly proved (from the evidence on record) that the weapon from which the bullet was fired was the service revolver of the respondent **(OA1)**. In support of his submission, Dr. Chaudhry relied on the ballistic report to show that the empty shell allegedly fired by **A22** from his weapon, was infact fired from the respondent's **(OA1)** service revolver. He submitted that the learned Judge accepted that the bullet was fired from **OA1's** weapon, however, has observed that ballistic evidence was a weak type of evidence and as such, has not relied on the same for convicting the respondent **(OA1)**. He further submitted that the learned Judge has also erred in acquitting **OA1** despite there being ample evidence on record to show that **OA1** was heading the squad and that the accused i.e. police personnel and

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private persons were members of his squad. In support of the said submission, Dr. Chaudhry relied on the evidence of PW20–Sanjivan Shinge, PW25–Dhiraj Koli, PW32 – Sumant Bhosale, PW43–Madan More, PW45–Naresh Phalke, PW55–Milind More, PW63–Arun Awate, PW72-Manohar Desai, PW79-Prataprao Kharate, PW82–Samir Faniband and PW87-Ajendrasingh Thakur, to show that there was a squad in existence and that the respondent **(OA1)** was heading the said squad. He submitted that the learned Judge despite there being overwhelming evidence of the aforesaid witnesses, has chosen to rely only on the evidence of PW78-Bipin Bihari, Addl. CP, who had deposed in his cross, that he had not formed any squad under **OA1**. He submitted that the evidence of PW78 would show that formation of squad was illegal and as such, the question of PW78-Bipin Bihari, admitting having formed any such squad would have put PW78-Bipin Bihari, in the dock.

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422.1 Dr.Chaudhry further submitted that the evidence of PW40–Aruna Bheda and the disclosure made by Anil Bheda to her on 12th November 2006 would be admissible in law under Section 6 of the Evidence Act with respect to the disclosure made by Anil Bheda i.e. his and Ramnarayan's abduction by the police and they having been produced before the respondent **(OA1)** at D.N. Nagar Police Station.

422.2 Dr. Chaudhry further submitted that the evidence pertaining to CDR would show that the respondent **(OA1)** was using the mobile number of **A5**, although, **OA1** has denied the same, for obvious reasons. He submitted that **A5's** phone was being used by **OA1** and that the CDR would show exchange of several calls between the appellants/accused and **OA1.** He submitted that it is pertinent to note, that **OA1's** location during the calls is at D.N. Nagar Police Station and at early hours of the morning and late night, at his residence i.e. at Andheri (East),

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whereas, the residence of **A5** was at Santacruz. He submitted that the CDR also shows that **OA1** was present at the spot i.e. at Nana Nani Park at the time of the alleged encounter i.e. at 20:17 hrs; and that the ballistic expert's report i.e. that out of three bullets found in deceased's body, one bullet was fired from **OA1's** weapon.

422.3 According to Dr. Chaudhry, the prosecution has duly proved from the evidence on record that the deceased and Anil Bheda were abducted together; that they were in the custody of the police and that Ramnarayan was shot on the very same day, after which, Anil Bheda was again detained and wrongly confined by the other accused, as revealed from the evidence. He submitted that the CDRs will also show that **A7** called **OA1** at 12:39 hrs, soon after the abduction, and the location of **A7** was at Vashi, Sector 9, whereas that of **OA1,** at D.N. Nagar Police Station. He further submitted that **A5** was a private person and had no reason to be at D.N. Nagar Police

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Station. He submitted that infact, the evidence on record shows that **A5** would sit outside the office of **OA1** and would filter the people coming to the office of **OA1**. He submitted that the evidence on record would also show that PW78–Bipin Bihari did not know **A5** but there were several calls exchanged between PW78-Bipin Bihari and **OA1** (on the mobile registered in A5's name but used by **OA1**) on the day of the incident i.e. 11th November 2006 and on 12th November 2006. According to Dr. Chaudhry, the CDR also shows that when **A5** was at Kolhapur, **OA1** was at D.N. Nagar Police Station.

422.4 Dr. Yug Chaudhry submitted that the learned Judge despite observing that the ballistic report shows that **OA1** had fired at the deceased, held that the said ballistic report was a weak piece of evidence and as such could not be relied upon. He submitted that the said finding is perverse. He submitted that the said observation that the ballistic evidence is a weak type of evidence, is contrary to law, more particularly, when there was

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ample evidence to show that not only did the ballistic report show that **OA1** fired at Ramnarayan from his revolver, but also that there was other material and cogent evidence to corroborate the said evidence. He, thus, submitted that though the said finding of the ballistic expert recorded by the learned Judge, shows the complicity of **OA1,** the learned Judge acquitted him of all the offences.

422.5 Dr. Chaudhry further submitted that **OA1** has not disputed his signature with respect to return of weapon to Dharavi Police Station nor has he seriously disputed the issuance of a gun and handing over of the same. He submitted that the ballistic expert's evidence i.e. PW86–Gautam Ghadge was unimpeachable, credible and was not shattered, despite a grueling cross-examination. He submitted that PW86's analysis shows that he had several years of experience in the ballistic field and that there was nothing to doubt his report, which clearly reveals the firing of a bullet on the deceased from **OA1's** revolver (the said

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bullet was found embedded in the deceased's body). He submitted that it is pertinent to note that although **A22** is alleged to have fired the bullet, the ballistic report does not support the same and instead, the bullet fired by **A22** is attributed to **OA1's** revolver and is stated to have been fired from **OA1's** revolver. He submitted that the presence of **OA1** at the spot, coupled with the ballistic report and other evidence, clearly points to his complicity in the alleged crime.

422.6 Dr. Chaudhry submitted that the movement of the weapon has been duly proved by the prosecution from its seizure till the ballistic report.

422.7 Dr. Chaudhry relied on several judgments, with respect to the scrutiny to be undertaken in an appeal against acquittal; the importance of ballistic evidence in a case of murder by firearm; law on *res gestae*; that lacunae in 313 was remediable; that lack of proof of motive in a case of circumstantial evidence is

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not always fatal; that part evidence of a hostile witness to the extent that it supports the prosecution case can be used; that when there is no suggestion or cross-examination on a point, the evidence has to be accepted; and judgments on appreciation of evidence in custodial death cases.

Submission of Mr. Chavan, Spl. P.P. in Criminal Appeal No. 350/2015 on behalf of the appellant–State (State Appeal preferred against the acquittal of Pradeep Sharma (OA1) :

423 As far as the State Appeal against acquittal filed by the State of Maharashtra is concerned, i.e. Criminal Appeal No.350/2015, Mr. Chavan adopted the submissions advanced by Dr. Chaudhry. He submitted that the material on record conclusively points to the guilt of **OA1** i.e. of his involvement in the abduction and killing of the deceased and thereafter, in keeping Anil Bheda in wrongful confinement. Mr. Chavan, learned Spl.PP relied on part evidence of PW68–Geetanjali

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Datar, Court Sheristedar (hostile) to show that she had called **OA1** on the number which stood in the name of **A5**. He submitted that on 15th November 2006, when the 3rd call was made by PW68–Geetanjali Datar, to **OA1, OA1** was at D.N. Nagar Police Station, whereas **A5** was at Kolhapur. Mr Chavan also relied on the evidence of PW78–Bipin Bihari. He submitted that the said witness has admitted that there were to and fro calls between him and another mobile number i.e. standing in the name of **A5** and used by **OA1**. It is submitted that although, the said witness i.e. PW78 has stated that he did not know **A5**, PW78 does not state that this number was used by **OA1,** for obvious reasons. Learned Spl.P.P has relied on the calls exchanged between PW78–Bipin Bihari, Addl.CP and **OA1** on 10th November 2006. He submitted that if the phone calls were received by PW78–Bipin Bihari's RTPC (Radio Talkie Police Constable), as stated by PW78, there would not be such long conversations. Mr. Chavan also relied on 9 calls exchanged between PW78–Bipin Bihari and **OA1** on 11th November 2006.

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He submitted that the calls on 11th November 2006 show that **OA1** was most of the time at D.N. Nagar Police Station and at Nana Nani Park, at the time of the encounter i.e. 20:17:51. Reliance was also placed on the CDRs of 10th, 12th and 13th November 2006 exchanged between **PW78** and **OA1.**

423.1 Mr. Chavan also relied on the part evidence of PW104–Anant Patil, who turned hostile. He submitted that the evidence of PW104 – Anant Patil would show that he knew who Anil Bheda was, as also **OA1**. He submitted that although the said witness has denied his 161 and 164 statements, in his examination-in-chief, the said witness has accepted that his 164 statement was correctly recorded by the Magistrate.

423.2 Mr. Chavan submitted that it is the prosecution case, that PW104 mediated on behalf of Anil Bheda with **OA1**, as a result of which, Anil Bheda's life was saved and that the same is evident from the CDR, which shows calls exchanged between this

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witness and **OA1**. He submitted that the timings and the location of **OA1** and PW104 at D.N. Nagar Police Station at 15:15 hrs are relevant. He submitted that the evidence on record would show that Aruna Bheda reached Vashi Police Station, at around 17:00 hrs, after which Aruna Bheda withdrew her complaint and at which time, Anil Bheda disclosed to Aruna Bheda that his life was saved because of PW104–Anant Patil, as he had mediated. He submitted that post the withdrawal of the complaint, there is another call by PW104 to **OA1** at 18:01 hrs (when **OA1**'s location is at D.N. Nagar Police Station).

Thus, it is evident from the evidence of PW78 and the evidence of the other witnesses i.e. PW104, PW68 and the CDRs of other co-accused that **OA1** was using mobile no. XXXXXX2987 standing in the name of **A5.**

423.3 Mr. Chavan also relied on the evidence of PW108 – Vinay Ghorpade, who heard the conversation exchanged between

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Anil Bheda and an unknown caller on 12th March 2011, with respect to threats extended to him. The said witness has reproduced the conversation heard by him, which was recorded. The said CD is produced as Article 67. He submitted that the said evidence of PW108–Vinay Ghorpade, is duly corroborated by PW109-Sunil Gaonkar, with respect to the conversation heard by them on the loudspeaker of Anil Bheda's phone i.e. the conversation between Anil Bheda and the unknown person, in which the unknown person told Anil Bheda to leave the city for 15-20 days. PW108 has reproduced the conversation heard by him and PW109 and has stated that Anil Bheda was given the mobile number of Advocate Sultan by the unknown caller and was asked to meet him. Mr. Chavan submitted that it is pertinent to note that Advocate Sultan was appearing for **OA1**.

423.4 Mr. Chavan submitted that the charge in the said case was framed on **8th March 2011** and Anil Bheda was summoned to depose in the said case on **16th March 2011** and that prior to

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recording of his evidence, Anil Bheda was done to death, in the most gruesome manner on **13th March 2011**. He submitted that the body of Anil Bheda was found burnt, as a result of which he could not be identified and that Anil Bheda was identified only on the basis of the DNA Report.

423.5 Mr. Chavan, learned Spl. PP submits that the circumstances on record, clearly point to the complicity of **OA1** in the crime. According to Mr. Chavan, the findings recorded by the trial Court were perverse, unsustainable and contrary to the evidence on record and as such, the judgment and order, to the extent that it acquits **OA1** from all the offences be quashed and set aside.

Submissions of Mr. Ponda, learned Senior Counsel for the Respondent-Pradeep Sharma (OA1) in Criminal Appeal No.854/2013 and Criminal Appeal No.350/2015:

424 Mr. Ponda, learned senior counsel for the respondent-

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Pradeep Sharma (OA1) opposed the appeal filed by the State as well as by the complainant. He submitted that the scope of interference in an appeal against acquittal is well settled by the Apex Court and as such, bearing in mind the scope and the findings recorded by the trial Judge, no interference was warranted in the judgment and order acquitting the respondent of all the offences with which he was charged. Mr. Ponda submitted that as far as evidence of abduction is concerned, not a single witness had witnessed the actual act of abduction and that the witnesses have deposed on the basis of what was disclosed by one Nilesh to Dheeraj (PW38). He submitted that the evidence of Nilesh being hearsay and Nilesh not having been examined, the said evidence becomes hearsay evidence and as such, inadmissible. Mr. Ponda submitted that the telegrams relied upon by the prosecution at the highest, can be used for corroboration and cannot be treated as substantive piece of evidence, in the absence of any witness stating that the deceased Ramnarayan and Anil Bheda were abducted by some policemen. He submitted that

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since abduction has not been proved by the prosecution, the telegrams cannot be relied upon for corroboration. It is submitted that even the principle of *res gestae* would not come into play in the peculiar facts of this case. Mr. Ponda further submitted that disclosure made by Anil Bheda and PW40-Aruna Bheda on 12th November 2006 with respect to abduction would not come within the purview of the principle of *res gestae.* It is submitted that what was disclosed by Anil Bheda to Aruna Bheda (PW40) was objected to by the learned advocate for the appellants/accused at the time of recording PW40's evidence, however, despite the same, the learned Judge recorded the said evidence, subject to objection, observing that the objection was left open for consideration at the time of final arguments. Mr. Ponda submitted that as far as the said objection is concerned, admittedly Anil Bheda did not die during the alleged incident alongwith the deceased and was alive on 12th November 2006 and for a few years thereafter and therefore, obviously what transpired on 11th November 2006 cannot be connected with his

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death and consequently, Section 32 of the Evidence Act will not be attracted. He submitted that even the principle of *res gestae* under Section 6 of the Evidence Act would not apply, having regard to the fact, that the principle warranting the application of the same, will not be attracted in the facts.

424.1 Mr. Ponda submitted that as far as CDR is concerned, although it is alleged by the prosecution that Mobile No. XXXXXX2987 standing in the name of **A5**, was being used by the respondent **(OA1)**, the prosecution has failed to prove the same. Learned senior counsel assailed the evidence of PW62-Rakeshchandra Prajapati, a Nodal Officer working with BPL Mobile Communications Ltd. (also known as 'Loop Mobile (India) Ltd.'), who has deposed with respect to the tower location of the mobile allegedly used by **OA1**, although standing in the name of **A5**. It is submitted that although, PW62's evidence shows that on 11th November 2006, the aforesaid number was used in the area i.e. Tower Nos. 17691 and 17692, that by itself,

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is not sufficient to show the complicity of the respondent **(OA1)**. He submitted that PW68-Geetanjali Datar, who was examined by the prosecution to show that the aforesaid mobile number was that of the respondent, has turned hostile and as such, her evidence is not of any significance. He further submitted that there is nothing to show that D.N. Nagar Police Station is in the area of Esic Nagar and that there is nothing to show the exact area covered by the Cell I.D having address of Esic Nagar i.e. 11891. He submitted that although four calls, out of which, three calls were made by PW78-Bipin Bihari and one call from the aforesaid number to Bipin Bihari, the prosecution has not led any evidence to show that **OA1** was at the area/location at the given time, as the prosecution had failed to prove that the aforesaid mobile was being used by the respondent **(OA1)** on 11th November 2006. Mr. Ponda also assailed the evidence of PW104-Anant Patil (hostile) and PW105-Sanjay Vanmane and as such, submitted that even the said evidence of the aforesaid two witnesses does not reveal that the respondent was using the

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aforesaid mobile at the relevant time.

424.2 Mr. Ponda further submitted that as far as the Ballistic Expert's evidence is concerned, the said evidence suffers from several infirmities. He submits that PW86-Gautam Ghadge cannot be termed as a Ballistic Expert, in terms of Section 45 of the Evidence Act, considering what has been disclosed by the said witness in his cross-examination. He submitted that there are several discrepancies that have come on record in the cross-examination of this expert witness, which discrepancies have remained unexplained and as such, implicit reliance cannot be placed on his evidence. Mr. Ponda further submitted that as regards the alleged firing of a bullet from the respondent's weapon is concerned i.e. Exh. 18-B (fired bullet), it is the prosecution case that it was fired from the revolver issued to the respondent (**OA1**) and in order to prove the same, the prosecution relied on Exh. 9 (Test Bullets), which were admittedly fired from respondent's revolver (Exh. 8) and on

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photograph, in juxtaposition showing Exh. 9 (test bullets) and Exh. 18-B (fired bullet). He submitted that the cross-examination of PW86 would reveal several discrepancies with respect to the striations, grooves, that had come on record. According to Mr. Ponda, having regard to the discrepancies in the evidence of PW86, it is abundantly clear that the striations, which were found on Exh. 8 (test) did not tally with the striations found on Exh. 18-B (bullet) and if the same is borne in mind, the only conclusion that can be arrived at, is that Exh. 18-B (bullet) was not fired from revolver (Exh. 8). He submitted that the prosecution has not explained why only respondent's weapon was sent to the Ballistic Expert for examination and why weapons of A3 and A7 were not taken charge of and sent to the Ballistic Expert. He submitted that the weapon of A7 was not sent for ballistic examination since he was not a member of the raiding party and hence, by that logic, the same would hold good even vis-a-vis respondent (OA1), since even in the FIR lodged by A9, the respondent (OA1) is not stated to be a member of the said

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raiding party.

424.3 As far as formation of squad is concerned, Mr. Ponda submitted that the prosecution has not brought on record cogent evidence to show that **A2, A3** and **A7** were directed to work under a squad and that the acts of **A2, A3** and **A7** can be attributed to the respondent **(OA1)**. He submitted that the formation of squad at the instance of PW78-Bipin Bihari, under **OA1** has been categorically denied by the said witness. He submitted that although there are some documents produced by the prosecution to show that some of the accused were relieved from their respective police stations and were sent on deputation to D.N. Nagar Police Station, that by itself, would not show that they were members of any such squad. He submitted that there is no document produced by the prosecution to show that there was a squad in existence. He submitted that infact, the evidence of PW78-Bipin Bihari, would reveal that squads were banned by the order of CP and as such, prosecution had failed to prove the

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formation of squad under the respondent **(OA1)**.

424.4 Mr. Ponda submitted that as far as the allegation by the prosecution that the respondent had called Mr. Anant Patil (PW104) to the police station, the same has not been proved beyond reasonable doubt, inasmuch as, the respondent was on leave on 12th November 2006 and as such, was not present in D.N. Nagar Police Station. He submitted that the evidence of PW104-Anant Patil, wherein he has stated that when he visited D.N. Nagar Police Station, he was informed that **OA1** was on a weekly-off, will have to be accepted. He submitted that having regard to the said evidence, the prosecution, in absence of any other evidence, cannot rely on the CDR of the respondent **(OA1)** and PW104-Anant Patil to show their locations at D.N. Nagar Police Station on 12th November 2006. According to Mr. Ponda, the respondent **(OA1)** has been falsely implicated at the behest of some senior Police Officers.

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424.5 Mr. Ponda, thus submitted that no ground is made out by the State and the complainant, warranting interference in the judgment and order, insofar as, it acquits the respondent **(OA1).**

B. Scope of Acquittal

425 We are conscious of the fact that the aforesaid appeals have been filed by the State of Maharashtra and by the complainant (brother of the deceased), and the scope for interference by the appellate Court when an accused has been acquitted by the trial Court. Thus, before we proceed to consider the submissions advanced by the learned counsel for the respective parties and the evidence on record adduced by the prosecution, it would be apposite to consider the law as to when an order of acquittal can be interfered with. Of course, the law with regard to the scope of interference by the Appellate Court in an appeal against acquittal, is no longer *res integra.*

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426 In ***Sheo Swarup v. King Emperor***[44], one of the earliest case dealing with the scope of the Appellate Court against an order of acquittal, the Privy Council held as under on page 404:

> *"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."*

427 The Supreme Court in ***M.G.Agarwal v. State of Maharashtra***[45], in paras 16 and 17 has observed as under:

> *"16. Section 423(1) prescribes the powers of the appellate court in disposing of appeals preferred before it and clauses (a)*

44 1934 SCC OnLine PC 42
45 AIR 1963 SC 200

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and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial court and so, the fact that the accused person is entitled for the benefit of a reasonable doubts will always be present in the mind of the High Court when its deals with the merits of the case. As an appellate court the High Court is generally slow in disturbing the finding of fact recorded by the trial court particularly when the said finding is based on an appreciation of oral evidence because the trial court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasised, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo

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Swarup v. King Emperor 61 IA 398 and Nur Mohammad v. Emperor AIR 1945 PC 151.

17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons" : vide Surajpal Singh v. State 1952 SCR 193 at p. 201. Similarly in Ajmer Singh v. State Of Punjab 1953 SCR 418 it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so". In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial". Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan AIR 1961 SC 715 and Harbans Singh v. State of Punjab AIR 1962 SC 439 and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Therefore, the question which

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we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial court was erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the findings of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence."

428 In ***Chandrappa v. State of Karnataka45, the Apex Court reiterated the legal position as under:***

"42. *From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions",

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> *"glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
>
> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

429 In ***Ghurey Lal v. State of U.P.***[46], the Apex Court after reviewing the previous decisions, laid down the correct approach that an Appellate Court should adopt in dealing with such cases. Para 70 of the said judgment is as under:

46 (2008) 10 SCC 450

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"70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

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(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."
(emphasis supplied)

430 In ***State of U.P. v. Banne***[47]**,** the Supreme Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances set out in para 28 are reproduced herein-under:

"28. Following are some of the circumstances in which perhaps this Court would be justified in interfering with the judgment of the High Court, but these are illustrative not exhaustive:

(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

47 (2009) 4 SCC 271

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(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

(emphasis supplied)

431 Similarly in ***Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)46, the Apex Court in para 27 has laid down the principles to be borne in mind by the Appellate Court while dealing with appeals, in particular, against the orders of acquittal.***

Para 27 reads thus:

"27. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded.

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(iii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed." *(emphasis supplied)*

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431.1 In para 303(1), the Apex Court has held that the Appellate Court has all necessary powers to re-evaluate the evidence laid before the trial Court as well as the conclusions reached and that it has a duty to specify the compelling and substantial reasons in case which reverses the order of acquittal passed by the trial Court. The reasons or reversal have to be cogent and adequate.

432 Similarly, in ***Babu v. State of Kerala***[48], the Apex Court in para 20 and 21 has held as under:

> *"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805] , Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*

48 (2010) 9 Supreme Court Cases 189

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[1992 Supp (2) SCC 312] , Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] , Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] , Aruvelu [(2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] and Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])

21. In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429 : AIR 1999 SC 677] this Court held that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."

433 Thus, the law on the issue i.e. scope for interference in an appeal against acquittal can very broadly be summarized as follows; that in exceptional cases where there are compelling and substantial reasons; and where the judgment under appeal is found to be perverse, clearly unreasonable, manifestly erroneous, contrary to the evidence on record, or contrary to law, and the findings have been arrived at, by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible

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material or is `against the weight of evidence' or if the finding so outrageously defies logic as to suffer from the vice of irrationality, the Appellate Court can interfere with the order of acquittal. However, whilst doing so, the Court has to bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence; that interference in a routine manner, only because another view is possible should be avoided.

434 Infact, while dealing with the judgment of acquittal, the Appellate Court has to consider the entire evidence on record, so as to arrive at a finding as to whether the view of the trial Court was perverse or otherwise unsustainable, warranting interference.

C. Analysis of the Evidence on record

435 Considering that the respondent–Pradeep Sharma **(OA1)** has been acquitted of the offences (Refer Para 3 of this

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judgment), we have perused the reasons of the learned trial Judge and the grounds on which he was acquitted. The said grounds are:

(i) that there is not even an iota of evidence against **OA1** for killing the deceased (para 1504 of the trial Court Judgment);

(ii) that there is no direct or circumstantial evidence against **OA1** (para 1478 of the trial Court Judgment);

(iii) that **OA1** cannot be implicated only on the basis of ballistic evidence, which is a weak piece of evidence (para 1478 of the trial Court Judgment);

(iv) that none of the witnesses have attributed any role to **OA1** (para 1477 of the trial Court Judgment); and;

(v) that the statements that **OA1** was head of the squad have no force (para 1477 of the trial Court Judgment).

436 According to Mr. Chavan, learned Spl. P.P and Dr. Yug Chaudhry, the findings recorded by the learned Judge are

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one line findings and that the same are contrary to the findings recorded by him, whilst convicting the other appellants/accused.

437 It is pertinent to note that although the learned Judge has recorded a finding, that **A7** and others had abducted Ramnarayan and that Ramnarayan and Anil Bheda were abducted together and that Anil Bheda was seen on the next day in the custody of the police officers (who were members of **OA1's** squad); has held that no squad existed under **OA1,** after placing reliance only on the sole testimony of PW78-Bipin Bihari, Addl. CP, West Region, Mumbai. It is also pertinent to note that the trial Court rejected the genuine encounter theory propagated by the accused and recorded a finding that there is ample evidence of abduction of Ramnarayan and Anil Bheda, that they were taken to D.N. Nagar Police Station and from there, Ramnarayan was taken to Nana Nani Park, where allegedly an encounter took place. The learned Judge also relied on the CDR evidence to convict all the other accused, however, failed to consider the

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evidence on record *qua* **OA1.** Learned Spl. PP and Dr. Chaudhry submitted that the perversity in the finding is also on the erroneous finding of law i.e. the ballistic report was a weak type of evidence. According to Dr. Chaudhry and Mr. Chavan, having regard to the evidence on record, no reasonable person could have reached such a conclusion, unsubstantiated by findings of fact, as arrived at by the trial Court, whilst acquitting **OA1**.

438 We have already noted the evidence as has come on record through the witnesses and have dealt with it, in great detail, whilst considering the evidence *qua* the accused herein-above and as such, do not intend to repeat the said evidence.

439 As far as **OA1** being the head of the squad of police personnel comprising **A2, A3, A7, A15, A13** and **A16** and others is concerned, we have already dealt with the said evidence in paras 33 to 61 herein-above, wherein we have discussed the entire evidence adduced by the prosecution to show the existence

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of a squad under **OA1** and of deputation of **A7, A15, A2** and **A3** to D.N. Nagar Police Station; and office order stating **A13** is working under **OA1** and **A9.** It is also brought on record, that **A11, A17** and **A19** were sent from Versova Police Station to D.N. Nagar Police Station, on 11th November 2006 for confidential work. Despite there being overwhelming evidence of witnesses, the learned Judge has rejected that **OA1** was the head of the squad, only because PW78-Bipin Bihari, Addl. C.P, a lone witness, denied the same in his cross-examination, as according to PW78, formation of squad was illegal and was banned by the then CP. No doubt, formation of squad was illegal, however, the fact remains and as deposed to by several witnesses, there was a squad in existence, *albeit* illegal and that several officers/police personnel were deputed to work under the said squad, headed by **OA1**. We have, in great detail, discussed how some of the police personnel were sent on deputation/otherwise, for working in the squad of **OA1**. Infact, the evidence of some of the witnesses has gone unchallenged with respect to formation of squad and **OA1**

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being the head of the squad. Thus, for the reasons set out in detail herein-above, we find that the prosecution has, by cogent and legal evidence of witnesses proved the existence of a squad and as such, do not wish to repeat the same. Thus, the finding recorded by the trial Court, relying solely on the evidence of PW78, as deposed to, in the cross-examination, is perverse. The learned Judge has not considered the overwhelming evidence of all other witnesses vis-a-vis existence of a squad under **OA1.**

440 We have also recorded a finding that Anil Bheda and Ramnarayan were abducted together on 11th November 2006 by some of the appellants/accused at 12:35–12:38 hrs. We have discussed in detail, the evidence with respect to abduction, which stands duly corroborated by sending of fax messages and telegrams to various authorities. The CDRs of the appellants/accused, has also been relied upon by the prosecution, to corroborate the same.

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441 It is the prosecution case that **OA1** was using mobile No. XXXXXX2987, though registered in the name of **A5**. It is not in dispute that the SDR (Exh. 533) shows that the said mobile number was registered in the name of **A5**. **A5** is a civilian, who according to several of the prosecution witnesses, would sit outside the office of **OA1** and was working for **OA1**. The same has been deposed to by **PW43** and **PW55**. The location of the said CDR (standing in the name of **A5** and used by O**A1**) is shown at D.N. Nagar Police Station, when the call was made by **A7** to **OA1** at **12:39 hrs**. (Exh. 543). The other evidence which will show that the said number was used by **OA1**, is the evidence of PW78-Bipin Bihari, Addl. C.P, West Region. The said witness has categorically deposed that he did not know **A5** nor had **A5** ever spoken to him, however, the CDR of **PW78** would show that there were several calls on the mobile number standing in **A5's** name, but used by **OA1**. The relevant CDR with respect to the same is at Exh. 543.

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442 In this context, it would be apposite to place on record the number of calls exchanged between PW78-Addl. CP Bipin Bihari and **OA1** (on mobile number standing in the name of **A5).**

10th November 2006 – 22:52 hrs (171 seconds call between PW78 and **OA1**)

11th November 2006 – 9 calls between PW78 and **OA1**

(6 calls made by PW78 to **OA1** and

3 calls made by **OA1** to PW78)

1st call - at 12:56 (PW78 to **OA1)** – 19 seconds – location of **OA1** at D.N. Nagar (abduction had taken place at around 12:35-call between **A7 to OA1** at 12:39.

2nd call - 14:34 hrs (PW78 to **OA1) -** 6 seconds – location of **OA1** at D.N. Nagar.

3rd call - 15:08:05 hrs **(OA1** to PW78) **-** 21 seconds – location of **OA1** at D.N. Nagar.

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4th call - 16:27 hrs **(OA1** to PW78) **-** 10 seconds – location of **OA1** at D.N. Nagar.

5th call - 19:04 hrs **(**PW78 to **OA1**) **-** 104 seconds – location of **OA1** at Juhu Circle.

6th call - 19:33 hrs **(**PW78 to **OA1**) **-** 13 seconds – location of **OA1** at D.N. Nagar.

7th call - 20:17 hrs **(OA1** to PW78) **-** 11 seconds – location of **OA1** at Nana Nani Park.

8th call - 21:12 hrs **(**PW78 to **OA1**) **–** 1 second – location of **OA1** at Seven Bungalows, Near Nana Nani Park.

9th call - 21:14 hrs **(**PW78 to **OA1**) **-** 134 seconds – location of **OA1** at Andheri (West).

12th November 2006 – 13:25 hrs **(**PW78 to **OA1**) **-** 31 seconds – location of **OA1** at D.N. Nagar (According to **OA1** it was his weekly off).

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13th November 2006 – 13:26 hrs **(OA1** to PW78) **-** 241 seconds.

13:30 hrs **(OA1** to PW78) – 50 seconds

443 The entire CDR of mobile number XXXXXX2987 used by **OA1** (standing in the name of **A5)** shows the mobile location on 11th November 2006 at 8:36 hrs at J.B. Nagar, where **OA1** resides and thereafter as stated aforesaid. It is also pertinent to note that there are numerous calls exchanged between PW78 and **OA1** on 11th November 2006. Admittedly, as is evident from the evidence of PW78, he did not know **A5.** PW78 when confronted with the CDRs has denied of knowing whose number it was i.e. mobile number - XXXXXX2987. Obviously, the evidence of PW78 clearly shows that he was trying to feign ignorance to protect **OA1** or else he would have been in trouble.

444 It is also pertinent to note that PW68-Geetanjali Datar, Court Sheristedar, was examined by the prosecution to

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show that she was given a number by a constable and that she had spoken to **OA1** on the said number, which is XXXXXX2987. Although PW68 has turned hostile, part of her evidence can be relied upon, to the extent, that she admits knowing **OA1**, as he was an I.O and whose case was in her Court in the month of October/November 2006; that in November 2006, one constable had given her mobile number of **OA1**; that she called **OA1** on 11th November 2006 and on 15th November 2006 and had spoken to the person using the said number on three occasions. It is not the case of the defence, that PW68 knew **A5** and had spoken to him. It may be noted that on 15th November 2006, at around 21:24 hrs, **OA1** spoke with **PW68-Geetanjali Datar** for 62 seconds, as is evident from the CDRs. This is the date when **A5** was at Kolhapur i.e. when he had taken Anil Bheda, PW40 and their son to Kolhapur. The said evidence of PW68 to that extent, of calls made by her to **OA1**, is duly corroborated by the CDR, which is at Exh. 543. It is also pertinent to note from the CDRs produced and proved by the prosecution, that there are 175 to

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180 calls from J.B. Nagar area, late in the night and early in the morning, where **OA1** was residing and not a single call from Santacruz, either late night or early morning, where **A5** was residing. Thus, we find from the evidence on record that **OA1** was using mobile No. XXXXXX2987, though the same was standing in **A5's** name. We have also discussed the circumstance of `CDR' whilst dealing with the said circumstance, in great detail and as such, do not wish to repeat the same.

445 It is also pertinent to note that there are calls between **A5 and OA1** (standing in **A5's** name) between 10th to 12th November 2006, which is highly improbable. The following chart clearly establishes that both the mobile numbers i.e. Mobile Nos. XXXXXX1156 and XXXXXX2987 were registered in **A5's** name, however both were used by **A5** and **OA1** respectively :

Sr.	**XXXXXX1156 used by A5 (in his own name)**	**XXXXXX2987 used by OA1 (in A5's name)**
1.	On **10.11.2006** from 19.12 to 21.43	On same day and during same time **OA1** is initially

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	location of **A5** is at Esic Nagar i.e. D.N. Nagar	at Vileparle and then at Marine Lines.
2.	On **11.11.2006** at 16.48 outgoing call to XXXXXX2987	Incoming call from XXXXXX1156.
3.	On **13.11.2006** at 10.47 **A5** is at Santacruz.	At this time **OA1** is at Vileparle and before that at J.B. Nagar.
4.	From **14.11.2006** to **18.11.2006, A5** is at Kolhapur with PW40 Anil and Parth (As is evident from the evidence of PW40-Aruna Bheda)	During this time **OA1** is at Mumbai and on 15.11.2006 at 21.24 talked with PW68 for 62 seconds and also with other witnesses.
5.	During **26.11.2006** to **30.11.2006, A5** is in Mumbai and there are calls on his other mobile i.e. XXXXXX5118 from the PCO of PW40's father.	During this time, **OA1** is at Delhi from where he had contacted other accused and witnesses in this case.
6.	Exh.556 shows Cell ID 16961 near to house of **A5**. Cell ID 17551 also shows area of Santacruz as per Exh.548. This phone shows 4 calls from cell ID 17551 on 10.11.2006, 11.11.2006 and 13.11.2006.	This phone does not show a single call from any of these two cell IDs or any call from Santacruz area i.e. near the residence of **A5.**
7.	This phone does not show a single call from J.B. Nagar area	This phone shows about 175 to 180 calls from JB Nagar area i.e. near the

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		residence of **OA1** (Cell IDs 10871, 10873, 13101, 13102, 13104, 13622 & 13623 Exh.548 & Exh.556).
8.	PWs-68,75,78,104 and 105 who did not know him had no talk with him on his two mobiles at any time	Regular calls between all these witnesses with **OA1.**
9.	Has no reason to talk to PW78, as PW78 did not know him.	**OA1** called PW78-Bipin Bihari at 20.17 hrs. from Nana Nani Park. **OA1** was a P.I working under him (Infact, the squad was formed by PW78 under **OA1**).
10	Has no reason to call alleged eye witness Ramrajpal Singh	To show encounter as genuine, **OA1** had every reason to introduce Ramrajpal Singh as an eye witness.
11.	PW104 had no talks on this phone, nor does PW104 know **A5**.	PW104 admitted talking on this number with someone known to him. He also admitted knowing **OA1.**
12.	Regular contact between **A5** and other accused from this number.	**OA1** was also in regular touch with other accused from this number.

446 It is also pertinent to note that from 14th November 2006 to 18th November 2006, **A5** was at Kolhapur with PW40-

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Aruna Bheda, Anil Bheda and Parth and that during this period, this number i.e. XXXXXX2987 used by **OA1** was operational in Mumbai and there were a number of calls from J.B. Nagar and D.N. Nagar Police Station area. Aruna Bheda has identified **A5** as being the person, who accompanied her, Anil Bheda and their son to Kolhapur.

447 **OA1** was using only one number. **OA1** has not brought on record that he was using any other number. The aforesaid number i.e. XXXXXX2987 was being used by **OA1** is also evident from PW104-A.T. Patil's evidence, though PW104 has been declared hostile. It is relevant to note that there was a call made by **OA1** to PW104 (Exh. 403), at 13:19 hours on 12th November 2006, asking him to come to D.N. Nagar Police Station. The same is corroborated by PW104, who has admitted that he was knowing **OA1**. Whereas, there is nothing to show that PW104 knew **A5**. There is evidence of PW40 to show that

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PW104 mediated for Anil Bheda's release and the same is corroborated by CDR (Exh.403) of PW104 and it is further corroborated by his 164 Cr.P.C statement (Exh.744) and the evidence of PW40-Aruna Bheda. Cell ID 4593 shows that, PW-104 had been to D.N Nagar Police Station at 15:00 hrs.

448 Although, PW104 was declared hostile, his evidence to the extent that it supports the prosecution can be relied upon. As is evident from the evidence of PW40, as PW104 mediated, Anil Bheda was saved. The evidence of PW104 shows that he knew Anil Bheda as well as **OA1.** The CDRs of PW104 and **OA1** would also show that **OA1** was using mobile number – XXXXXX2987. In this context, it will be apposite to reproduce the CDRs exchanged between PW104 and **OA1** on 12th November 2006 when PW104 visited D.N. Nagar Police Station to meet **OA1**.

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12th November 2006

1st call - at 13:19 hrs (**OA1** to PW104) – location of **OA1** at D.N. Nagar.

2nd call - at 13:57 hrs (**OA1** to PW104) – location of **OA1** at D.N. Nagar.

3rd call - at 14:02 hrs (**OA1** to PW104) – location of **OA1** at D.N. Nagar and PW104 at Ghatkopar.

4th call - at 14:22 hrs (**OA1** to PW104) – location of **OA1** at D.N. Nagar and PW104 at Chembur.

5th call - at 18:01 hrs (**OA1** to PW104) – location of both **OA1** and PW104 at D.N. Nagar.

6th call - at 20:47 hrs (PW104 to **OA1**) – location of PW104 was at Kurla i.e. at PW104's residence and **OA1** at D.N. Nagar.

449 It is pertinent to note that around the same time Anil Bheda was taken to Vashi Police Station by **A2** and **A3,** where Aruna Bheda withdrew the missing complaint lodged by her, as Anil Bheda was brought to the Vashi Police Station. In this

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context the evidence of PW40 is relevant. She had deposed in her evidence that Anil Bheda had disclosed to her when they came out of the Vashi Police Station, that since Anant Patil (PW104) mediated, his life was saved. It is also pertinent to note that PW104 has admitted that his 164 statement was correctly recorded. The statement of PW104 recorded under Section 164 shows that it was voluntarily recorded and that as Anil Bheda was his friend he had mediated between **OA1** and Anil Bheda.

450 It may also be noted that **OA1** received a call from **A7** at 12:39 hrs. i.e. one minute after the deceased was abducted from Sector 9. The location of **A7** as per the CDR, is at Sector 9 and that of **OA1** at Esics Nagar i.e. D.N. Nagar Police Station. We have discussed the CDR evidence in detail whilst dealing with the circumstance of CDR. The CDR of **A7** is at Exh. 409 and tower location at Exh. 406 and the CDR of **OA1** is at Exh. 543.

451 The other evidence which would point to the

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complicity of the respondent-**OA1**, is the evidence of PW32 and PW55. The evidence of these two witnesses would reveal that on 12th November 2006, the said witnesses were taken in a green Qualis vehicle used by **OA1's** squad to Bhatwadi, where Anil Bheda was confined by **A2 and A3**, who were members of **OA1's** squad. Since Anil Bheda and the deceased-Ramnarayan were abducted together, we have recorded a finding that Anil Bheda and Ramnarayan were abducted, whilst discussing the evidence of `Abduction' herein-above. There is no manner of doubt that the evidence on record, both documentary and oral, clearly reveals that Ramnarayan and Anil Bheda were in the custody of the accused and later, after Ramnarayan was shot in an alleged fake encounter, Anil Bheda was confined by the accused in their custody.

452 It is also pertinent to note that an FIR was lodged by **A9** that Ramnarayan died in an encounter at Nana Nani Park on 11th November 2006 at about 20:30 hrs. In the said C.R, apart

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from others, **A2, A3, A9 and A15** have been named. The said appellants/accused i.e. **A2, A3, A9 and A15** have admitted their presence at the time of the encounter, in which the deceased was killed, however, they maintained that it was a genuine encounter. We have set out the stand of each of the accused i.e. police in para 32 herein-above. Infact, almost all police personnel initially supported C.R. No. 302/2006, but later, some back tracked during trial and most of them, during the hearing of these appeals.

453 We have already recorded a finding that the encounter was not a genuine encounter and that after Ramnarayan and Anil Bheda were abducted, throughout, the two of them were in the custody of the police till they were taken to D.N. Nagar Police Station and thereafter, Ramnarayan was shot. From the evidence on record, it is crystal clear that a fake encounter was given the colour of a genuine encounter. It is not the case of the appellants/accused that although Ramnarayan was

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abducted, he escaped from their custody and thereafter, he was done to death in a genuine encounter. It may be noted, that once it is proved that Ramnarayan was abducted by the police, the burden was on the appellants/accused to prove under 106 as to what happened to him, which burden has not been discharged by the appellants/accused. We have already noted that the appellants/accused, to show that it was a genuine encounter, had planted a revolver and train tickets on the deceased. As noted earlier, the report of the fingerprint expert (Exh. 284) shows that no fingerprints were found on the weapon allegedly used by the deceased nor was anything found in the handwash, taken of the deceased. The aforesaid report reads thus :

अ.क्र.	तपासलेली वस्तू	वापरलेले माध्यम	मिळालेले ठसे
1.	रिव्हालव्हर (Made in Japan)	युनिव्हर्सल पावडर	नाही.
2.	6 chamber, लाकडी मुठ असलेला		

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The english translation of the aforesaid report reads thus :

Sr. No.	*Verified item*	*Used Source*	*Fingerprints Found*
1	*Revolver (made in Japan)*	*Universal Powder*	*NO*
2	*6 chember, having wooden handle*		

454 It may be noted that it is the case of the appellants/accused that Ramnarayan fired from a gun. If that is so, the same would have left some discharge/residue. As noted earlier, the handwritten notes of hand wash report (Exh. 673) mentions "nothing of note in relevance to fired gunshot residues were detected in turbid liquid (Exhibits 1 and 2)." We have already recorded our findings with respect to planting of railway tickets and weapon on the deceased person. As noted, PW11 examined the body and noted the contents of the clothes on the body in the MLC Entry 22278 (Exh. 174A). There is no mention of railway tickets nor there is any mention in Exh. 285 station

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diary entry of any railway tickets. The same has been deposed to by PW11. He has stated that no railway tickets have been mentioned in the station diary entry. Although, there is no mention in the station diary entry of railway tickets, there is mention of railway tickets in the muddemal register (Exh. 299A) and this would certainly raise suspicion about finding of tickets on the deceased, for the first time, though there is no such entry in the station diary. This leads us to believe that the said tickets were planted on the deceased, to show that it was a genuine encounter and that he had travelled by train and come to the spot, as alleged by **A9** in his FIR. We may note that we have dealt with the said evidence in detail, whilst dealing with the circumstance of `Murder / custodial death / encounter and as such, paras 132 to 214 can be referred to, to avoid duplication.

455 The other circumstance as against **OA1**, is the unusually high number of calls exchanged between him and the other members of the squad, before, and on the day when the

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deceased was killed and on the next day, **OA1's** CDR shows his contact with the co-accused i.e:

(i) Calls between **OA1** and **A2** - 20 calls from 10.11.20006 to 12.11.2006;

(ii) Calls between **OA1** and **A4** - 8 calls from 10.11.20006 to 12.11.2006;

(iii) Calls between **OA1** and **A5** - 5 calls from 10.11.20006 to 12.11.2006;

(iv) Calls between **OA1** and **A6** - 7 calls from 10.11.20006 to 12.11.2006;

(v) Calls between **OA1** and **A7** - 7 calls from 10.11.20006 to 12.11.2006;

(vi) Calls between **OA1** and **A15** - 13 calls from 10.11.20006 to 12.11.2006.

456 It is also pertinent to note that as per the CDR, **OA1's** presence is seen at Nana Nani Park on 11th November 2006 at

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20:17 hrs, which is where the alleged encounter is stated to have taken place.

457 As far as **OA1's** weapon is concerned, it is also pertinent to note that a ruger revolver **Butt No. 347** (Art.69) was issued by Naigaon Armory to **OA1**, as his service weapon on **24th December 2001**; that on **31st August 2008**, **OA1** was dismissed from service and was asked to surrender his service weapon; and that accordingly he surrendered his weapon (Art.69) to Dharavi Police Station on **1st September 2008**. The said evidence has been brought on record by the prosecution witnesses i.e. PW66, PW59 and PW56. The evidence of all the three witnesses would show that there is an unbroken chain of documents, which would reveal that the weapon throughout was with **OA1** i.e. **OA1** had uninterrupted and exclusive custody of the weapon (Art.69) from **24th December 2001** till **1st September 2008.**

458 PW86-Gautam Ghadge, Ballistic Expert has proved

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that the bullet Art.30.2 found in the deceased's body on 11th November 2006 was fired from **OA1's** service revolver i.e. Art.69. The prosecution, in support thereof, relied on the evidence of PW86, the ballistic expert and his hand notes and in particular, **Exhs.657–658**.

459 Although Mr. Ponda, learned senior counsel for the respondent vehemently submitted that the evidence of the ballistic expert's report cannot be relied upon, as the basis on which the report was arrived at, we do not find any substance in the said submission. We find that the ballistic expert has carried out the examination and has given detailed analysis of the examination carried out by him, as a ballistic expert and has come to the conclusion, after conducting various tests, that the bullet found in the deceased's body was fired from **OA1's** service revolver i.e. Art.69. The ballistic reports are at Exhs. 657-658. It is also pertinent to note that as per PW86 and his hand notes, an empty cartridge (Art.63) was submitted by the members of the

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encounter team to Versova Police Station, after the alleged encounter of the deceased. The evidence of PW86 also shows that the said empty bullet was fired from **OA1's** service revolver (Art.69). Out of the three bullets retrieved, one bullet was fired from O**A1's** weapon, one from **A9's** weapon and one from **A15's** weapon. **OA1** has disputed the finding recorded by the ballistic expert. As far as **A9** and **A15** are concerned, although they have not disputed firing at the deceased, inasmuch as, according to them, it was a genuine encounter, they disputed the Ballistic Expert's Report, however, they have not cross-examined PW86. We have perused the explanation offered by **OA1** to the question put to him with respect to the ballistic report under Section 313. **OA1** has not offered any explanation to the same in his 313 as to how the bullet Art.30/2 was fired from his service revolver (Art. 69), which was found in the deceased's body, nor has **OA1** given any explanation under Section 313 as to how an empty cartridge i.e. Art.63 fired from his service revolver (Art. 69) was surrendered by **A22** after the alleged encounter. Once it is

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established that the bullet found in the deceased's body was fired from the service revolver of **OA1**, the burden of providing an explanation to this incriminating circumstance lies on **OA1**, and as such, there is no explanation offered by **OA1.**

460 As far as **OA1** is concerned, the ballistic evidence is crucial and the same clinches the evidence *qua* the said accused, apart from the other evidence.

461 In order to prove the movement of the weapon i.e. there was an unbroken chain of movement of **OA1's** weapon, the following dates are crucial:

461.1 The evidence on record shows that on **24th December 2001, OA1** had handed over request letter dated 11th September 2001 (Exh.593A) signed by him, to the Naigaon Armory, for issuance of a substitute weapon, as the fire-arm issued to him earlier, had mal-functioned. Accordingly, **OA1** deposited the mal-functioned weapon. PW66-Shabbir Sayyad,

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Head Constable was attached to the Magazine Section, Armory Division, Naigaon. He has stated that a fire-arm was deposited by **OA1,** as it was malfunctioning, pursuant to which, he gave **OA1** a 0.38 ruger revolver bearing serial No. 161–21934, **Butt No.347 (Art.69)** and 30 rounds, against his signature (512A). The said signature was taken in the Armory Weapon Register. The said witness has stated that while issuing the said weapon i.e. Art. 69, **OA1** signed at three places. It is pertinent to note that there is no cross-examination on this aspect, nor has **OA1** disputed his signature either in the cross on the said document or under 313. PW67-Manoj Desai was attached as PC to Magazine Section, Armory Division, Naigaon at the relevant time. He has stated that he had made an overleaf entry about handing over the revolver and rounds to **OA1** (Exh. 593A). The said witness has identified the documents as well as the revolver handed over to **OA1**. There are no suggestions either to PW60, PW66 or PW67 that Exh. 512A or Exh.593A are forged entries. Infact, Exh.512A has been brought on record in the cross-examination of PW60 by

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OA1. Even in his statement under Section 313, **OA1** has not denied the said entries, but has claimed ignorance about what was stated by PW66 and PW67. It is pertinent to note that **OA1** does not dispute his three signatures on the exhibit, made in connection of the issuance of revolver i.e. (Exh. 593). It may be noted that although **OA1** has claimed ignorance of issuance of the gun to him, he admits depositing of the very same revolver with the Dharavi Police Station, after his dismissal. There is also no suggestion to the witnesses that no gun (Art. 69) was issued to him. Thus, having regard to the aforesaid, it is evident that the prosecution has conclusively proved that the revolver (Art. 69) was issued to **OA1** and that he was using the same.

461.2 **Art.18B** is the bullet found in the deceased's body, which is attributed to **OA1's** service revolver. **A22** submitted an empty cartridge to the Police Station i.e. Art. 23, which Article is linked to **OA1's** weapon (Art. 69). As noted earlier, there is no suggestion nor has **OA1** denied or disputed the

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receipt of the revolver (Art. 69) or the correctness of the entries in the Exhibits and nor has he disputed his signature, acknowledging receipt of the fire-arm. Thus, the issuance of revolver (Art. 69) and rounds to **OA1** has been conclusively proved by the prosecution.

462 As far as murder of Ramnarayan is concerned, at about 18:00 hrs on 11th November 2006, PW22 issued a revolver bearing **Butt No. 468 (Art. 16)** with 5 rounds, to **A22**. An entry to that effect was made in the Weapon Movement Register (Exh. 217A); that **A22** returned the said weapon and 4 rounds to PW23 on 12th November 2006, who made an entry to that effect in Exh. 222A. It is the prosecution case that 1 round was fired from **OA1's** gun and not from **A22's** and for this, reliance is placed as noted above, on the ballistic expert report and the evidence of PW86.

463 On 12th November 2006, between 2:40 hrs. to 3:15 hrs. i.e. after the murder of the deceased, **A22** handed over to

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PW39, a single empty cartridge (Art. 63), having description KF-98-380-2 claiming that he fired it from his revolver i.e. Butt No. 468-Art.16, during the alleged encounter. **A15** also produced a single empty cartridge (Art. 60 having description KF-01-380-2), claiming that he fired it from his revolver i.e. Butt No. 624. The said empty cartridges were seized under a panchnama (Exh. 286) before PW71-Dattatray Koyte, a panch witness and accordingly entered in the station diary entry i.e. Exh. 287A as well as in the Muddemal Register at Serial No. 149 (Exh. 300A).

464 It is pertinent to note that **A15** and **A22** declined to cross-examine PW39 and PW71 and as such, they have not challenged the surrender of the empty cartridge by them. In their 313 statements, with respect to Question No. 166, **OA1, A15** and **A22** have answered as under:

> *Q.166*
> *It has further come in his evidence that, accused API Sarvankar and API Palande came to police station. Accused API Sarvankar took out the empty shell from his revolver. So also, accused API Palande took out the empty shell from his revolver. The shell produced by accused Sarvankar had*

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mark 'KF 98 380 2' and that of accused API Palande had mark 'KF 01 380 2'. Each of the shells were packed separately and labels were affixed. Accordingly, panchnama was prepared in presence of panchas vide Exh.286. What you have to say about it?

Accused ***1****: It is correct (vol 27)*
Accused ***15****: It is true (34)*
Accused 22*: Yes (vol 42)*

465 Thus, from the answers to the aforesaid questions put under Section 313 Cr.P.C, it is evident that the said accused i.e. **OA1, A15** and **A22** have admitted to the entries i.e. empty shells being surrendered by **A15** and **A22.**

466 On the very same day i.e. on 12th November 2006, PW29-Dr. Gajanan Chavan, the Autopsy Surgeon, during the post-mortem (Exh. 237) extracted three bullets i.e. **Art. 30/1, Art. 30/2** and **Art. 30/3** from the body of the deceased and handed the said extracted three bullets to PW21 in a sealed condition, for forwarding the same to the CA vide his letter dated 1st November 2011 (Exh. 214). The evidence of PW21-Kailas Ekilwale, PC

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attached to Versova Police Station, shows that he collected three bullets i.e. Articles 30/1, 30/2 and 30/3 and the letter (Exh. 240) from PW29 and handed over the same, to PW39 in a sealed condition.

467 It is pertinent to note that there are no suggestions to the said witness i.e. PW29 and PW21 that the said Exh. 240 and Exh. 237 were forged documents. Infact, Exh. 214 has been brought on record, in the cross-examination of PW21.

468 It is pertinent to note that thereafter, PW39-Mohandas Sankhe, on 13th November 2006, forwarded the bullets and other seized articles to the CA for examination vide forwarding letter (Exh. 292) i.e. 3 bullets, and forwarding letter (Exh. 294) i.e. empty cartridges, etc. through PW53 and PW91. There is a station diary entry to that effect i.e. Exh. 297. The said articles were deposited by PW53 and PW91 with the CA in a sealed condition on the very same day. Again, we may note that

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there are no suggestions in the cross-examination of the said witness that, Exh. 292, Exh. 294 and Exh. 297 are forged documents, either to PW39, PW53 or PW91. Infact, Exh. 297 was brought on record in the cross-examination of PW39. Exh. 297 is the station diary entry (No.25). Thereafter, PW86, the ballistic expert handed over examination materials in a sealed condition alongwith his reports (Exh. 251A, 253A and 254A) to PW91 on 18th August 2007, who kept the said articles in safe custody in the Versova Police Station. The relevant entries made in the muddemal register with respect to the same are at Exhs. 298 and 299A. Infact, both the said exhibits were brought on record in the cross-examination of PW39. Exhs. 298 and 299A read thus :

मुद्देमाल नोंद वही.
शनिवार दिनांक 11/11/2006

	खटला कमांक	जप्तीचा दिनांक	मालमत्ता	(जेथे मालमत्ता ठेवली ते) अभि– रक्षस्थान	विल्हेवाटी संबधी शेरा
1	2	3	4	5	6

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147 ⁄ 06 पो.नि. संखे पो.षि. क्र. 27503	गुन्हा नोंद क्रमांक 302 ⁄ 06, कलम 307, 353, भादवी सह कलम 3,25,27, भाहका	ठाणे दैनंदीनी नोंद क्रमांक 41 ⁄ 06 दिनांक 11 ⁄ 11 ⁄ 2006	रिव्हालव्हरच्या दोन पितळी पुंगळया पुंगळयाच्या मागिल बाजूस KF-98-380-2 असे लिहलेले आहे. **EX 298 A**	सेफ 32/07	जा.क्र. 6523/06 दि. 13/11/2006 अन्वये सी.ए करीता पाठविला. कलीना येथुन मुद्देमाल व अहवाल आणला
148 ⁄ 06 पो.नि. संखे पो.ह. क्र. 22308	गुन्हा नोंद क्रमांक 302 ⁄ 06, कलम 307, 353, भादवी सह कलम 3,25,27, भाहका	ठाणे दैनंदीनी नोंद क्रमाक ⁄ 06 दिनांक ⁄ ⁄ मुद्देमाल व अहवाल आणला ठाणे दैनंदिनी क्र.	रविवार दिनांक 12 ⁄ 11 ⁄ 06 अ) घटनास्थळी मिळून आलेल्या वस्तू खालीलप्रमाणे 1) एक Made in Japan असे एक बाजूस कोरलेले रिवोव्हर 2) रिव्हालव्हर मधील दोन जिवंत काडतुसे त्यावर KF- 325 $ WL व तळास हॅमर मार्क असलेले 3) रिव्हालव्हर मधील दोन रिकामे पितळी पुगळया त्यांच्या तळाषी KF-325 $ WL असे मार्किग असून तळाषी हॅमर मार्क आहे. 4) घटनास्थळी पडलेली एक रिकामी पितळी पुगळी त्यावर KF-94 TMM-22 असे मार्किग **EX 298 A** 5) रक्त भरलेली एक बाटली. 6) माती मिश्रीत रक्त असलेली एक बाटली 7) माती भरलेली एक	सेफ स्टोअर	जा.क्र. 6523 ⁄ 06 दि. 13 ⁄ 11 ⁄ 2006 अन्वये सी.ए.करीता पाठविला. जावक क्रमांक 157 ⁄ 09 दि. 19 ⁄ 12 ⁄ 09 सदरचा मुद्देमाल मा. पोलीस उप आयुक्त वि. तपासी पथक मधिल श्री. चाळके यांचे ताब्यात दि. 19 ⁄ 12 ⁄ 09 रोजी देण्यात आला. ठाणे दैनदिनी क्रमांक 20 ⁄ 09 सदरचा मुद्देमाल जा.

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EX 299 A		दि. 11/11/06	बाटली **ब) इक्वेस्ट पंचनाम्यामध्ये ताब्यात घेतलेल्या वस्तू खालीलप्रमाणे** 1) स्ट्रेचरवरील रक्त भरलेली बाटली. 2) स्ट्रेचरवरील रक्त भरलेली दुसरी बाटली 3) करडया रंगाचा फुल शर्ट 4) करडया रंगाची फुल पॅन्ट 5) सफेद सॅडो बनियान 6) निळसर रंगाचा जॅगा 7) ब्राउन रंगाची बुट जोड 8) ब्राउन रंगाची पर्स त्यामध्ये 100रू 9 नोटा, 10 रू. एक नोट, 5 रू. एक कॉईन, 2 रू. चे दोन कॉईन, 25 पैषची सात नाणी, एकूण 919 एक टेलीफोन डायरी, दोन रेल्वे तिकीट 9) वर्सोवा वन मोबाईल मध्ये साडलेले रक्त भरलेली बाटली.		क. 8193/वर्सेवा/09 दि.19/12/09 अन्वये मा. पोलीस उप आयुक्त वि. तपासी पथक मधिल श्री. चाळके यांचे ताब्यात देण्यात आला.
149/06 पो.नि. संखे EX 300 A	गुन्हा नोंद क्रमांक 302/06, कलम 307, 353, भादवी सह कलम 3,25,27,भारतीय हत्यार	ठाणे दैनंदिनी क्र. 2/06	1) रिव्हालव्हरची पितळी पुंगळी पुगळीच्या मागिल बाजूस KF- 98. 380 .2 असे लिहलेले. 1) रिव्हालव्हरची पितळी पुंगळी पुगळीच्या मागिल बाजूस KF-1- 380 - 2 असे लिहलेले मुद्देमाल व अहवाल आणला	सेफ 32/07 EX 300 A	जा.क्र. 6523/06 दि. 13/11/2006 अन्वये सी.ए.करीता पाठविला.

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	कायदा				

English translation of the relevant Muddemal Entries, reads thus :

MUDDEMAL REGISTER

Saturday, date 11.11.2006

	Case Number	Date of Seizure	Muddemal Property	Place where the muddemal articles are kept for safe custody	Remarks regarding disposal
1	2	3	4	5	6
147/06 Police Inspector Sankhe, Police Constable – Buckle No. 27503	Crime Reg. No. 302/2006, Under Sections 307, 353 of the Indian Penal Code read with Sections 3, 25, 27 of the Indian Arms Act	Station Diary Entry No. 41/2006, dated 11.11.2006	Two empty brass cartridges from a revolver, having a mark viz. (unintelligible) 98 380.2, engraved at the bottom thereof. **Exhibit 298-A**	(kept in) the safe. 32/07	Sent for C.A. under the letter bearing Outward No. 6523/2006, dated 13.11.2006. Brought the Muddemal articles and

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					Report from Kalina.
148/06 Police Inspector Sankhe, Police Head Constable - Buckle No. 22308	Crime Reg. No. 302/2006, Under Sections 307, 353 of the Indian Penal Code read with Sections 3, 25, 27 of the Indian Arms Act	Station Diary Entry No. --/2006, dated -----. Brought the muddemal articles and the report.	Sunday, Date: 12.11.2006. (a) The articles that are found at the place of the incident are as under: 1) One Revolver having engraved 'Ducum Pad Shrachand' thereon on its one side. 2) Two live cartridges from revolver, having a mark viz. (unintelligible)	(kept in) Safe Store	Sent for C.A. under the letter bearing Outward No. 6523/2006, dated 13.11.2006.

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			325 + (unintelligible) thereon and a hammer mark at its bottom. 3) Two empty brass cartridges from Revolver, having a mark viz. (unintelligible) 325 + (unintelligible) thereon and a hammer mark at its bottom. 4) One empty brass cartridge having a mark viz. (unintelligible) 94 (unintelligible) 22 thereon		These muddemal articles have been handed over in the possession of Shri Chalke from the Special Investigation Team of the Deputy

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EX. 299 A			found lying at the place of the incident. **Exhibit 298-A** 5) One bottle containing blood. 6) One bottle containing blood mixed soil. 7) One bottle containing soil.		Commissioner of Police on the date 19.12.2009, under the letter bearing Outward No. 157/2009, dated 19.12.2009. Station Diary Entry No. 20/2009. These Muddemal Articles have been handed over in the possession
			B) <u>Articles that are taken into possession under Inquest panchnama, are as under</u>: 1) Bottle containing sample of blood spilled		

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			on stretcher. 2) Another bottle containing sample of blood spilled on stretcher. 3) Gray coloured full sleeves shirt 4) Gray coloured Full pant . 5) White 'Sando' Banian. 6) Bluish coloured underwear. 7) A Pair of brown coloured shoes 8) Brown coloured wallet containing 9		of Shri Chalke from the Special Investigation Team of the Deputy Commissioner of Police under the letter bearing outward no. 6193/Versova/09, dated 19.12.2009 .

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			currency notes of the denomination of Rs.100/- each, one currency note of the denomination of Rs.10/-, one coin of the denomination of Rs.5/-, two coins of the denomination of Rs.2/- each and seven coins of the denomination of paise 25 each, thus total amount of Rs.919, one telephone diary, two railway tickets.		

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			9) Bottle containing sample of blood spilled in Versova One Mobile van.		
149/06 P.I. Sankhe **EX. 300 A**	Crime Reg. No. 302/06, under sections 307, 353 of the Indian Penal Code r/w sections 3, 25, 27 of the Indian Arms Act.	Station Diary Entry No. 2/06	1) Brass cartridge of revolver, having a mark viz. (unintelligible) 98. 380.2 on the bottom thereof. 1) Brass cartridge of revolver, having a mark viz. (unintelligible) 1- 380.2 on the bottom thereof.	(Kept in) Safe 32/07 **Ex. 300 A**	Sent for C.A. under the letter bearing Outward no. 6523/06 dated 13.11.2006 .

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			Muddemal and the Report have been brought.		

469 On 30th August 2008, **OA1** was dismissed from service under Article 311. On 1st September 2008, after **OA1's** dismissal from service, PW59 (Admin PI, Dharavi Police Station) vide letter dated 1st September 2008 (Exh. 480) asked **OA1** to deposit his service weapon and ammunition at Dharavi Police Station; that **OA1** deposited his arms and ammunition, including the service revolver Butt No. 347 (Art. 69) and 6 rounds (Art. 115) at Dharavi Police Station on 1st September 2008. The said weapons and rounds were seized by PW59. Accordingly, station diary entry which is at Exh. 477A was effected by PW59. Thereafter, the arms and ammunition were handed over to PW56 for safe custody. PW56 kept the service revolver Butt No. 347 (Art. 69) and 6 rounds (Art. 115 colly) at Dharavi Police Station in safe custody in the armory cupboard.

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470 It is evident from the cross-examination of PW56 that **OA1** has accepted handing over of the weapon at his residence and not at Police Station. He, however, does not dispute surrendering of his weapon and signing on the letter (Exh. 480). The said Exh. 480 was produced by the prosecution at the instance of **OA1's** lawyer during the cross-examination of PW56. It was further suggested in the cross-examination to PW56 and which was admitted by him that the said weapon was in the custody of Dharavi Police Station from 1st September 2008 to 12th December 2009. The same although referred in the cross-examination of PW56, no question was asked or suggestion given regarding the corrections made in Exh. 478A. Exh. 478A reads thus :

दिनांक १२/१२/२००९

बडतर्फ पो.नि.श्री. प्रदीप रामेश्वर शर्मा/धारावी पो.ठाणे यांचे नावावरील .३८ बोअर रिव्हॉल्वर रूगर बटं क्र ३४७/१६१—२१९३४ फक्त शस्त्र पो. ह. क्र ९९००६८

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प्रविण कासावळेकर/धारावी पो. ठाणे यांनी नायगांव शास्त्रगारात जमा केले.

दिनांक १२/१२/२००९

नमुद पत्रातील जावक आवक प्रमाणे बडतर्फ पो. नि श्री. प्रदीप शर्मा धारावी पो. ठाणे यांचे नावावर असलेली ९ m.m काब्री. म. गन बट क्र. ६०० सोबत ०२ नग मॅगझीन आज रोजी नायगांव शास्त्रगारात पो. ह. ९९००६८/ प्रविण क्सासावळेकर, धारावी पो.ठाणे यांनी जमा केली.

English translation of Exh. 478A reads thus :

Date : 12/12/2009

"P.H.C. B. No. 990068 / Pravin Kasavalekar, Dharavi Police Station deposited 38 Bore Revolver 'Ruger' Butt No. 347/161-21934 only, allotted to the suspended P. I. Shri Pradeep Rameshwar Sharma/Dharavi Police Station, in Naigaon Armoury."

Date : 12/12/2009

"As per the Inward Outward number in the mentioned letter, today, P.H.C. B. No. 990068/ Pravin Kasavalekar, Dharavi Police Station deposited Magazines – 2 numbers alongwith '9 m.m. 'Kabari' Machine Gun Butt No.600' allotted to the

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suspended P. I. Shri Pradeep Sharma/Dharavi Police Station, in Naigaon Armoury."

471 It is pertinent to note that under Section 313, while answering Question 310, **OA1** has admitted depositing of the arms and ammunition in the Police Station on 1st September 2008. No suggestions have been given to PW56 or PW59 that the station diary entry with respect to the deposit of the gun (Exh. 477A) and Exh.480 and that the said documents are fabricated and forged documents. Infact, Exh. 480 was brought on record in the cross-examination of PW56. Infact, the trial Court has recorded a finding that **OA1** was possessing a service revolver from 24th December 2001 till 1st September 2008.

472 On **20th August 2009,** the present FIR i.e. C.R. No. 246/2009 was registered with the Versova Police Station as against the appellants/accused and the respondent.

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473 On 4th December 2009, PW110-K.M.M. Prasanna, Head of the SIT (I.O) requested Naigaon Armory vide letter Exh. 495 to provide **OA1's** service revolver Butt No. 347 (Art. 69) for ballistic examination. A perusal of the cross-examination of PW109 / PW110 would indicate that there are no suggestions made to the said witness that Exh. 495 is a fabricated or a forged document.

474 On 10th December 2009, PW98-Sandeep Dal, Sr. PI, Naigaon Armory, sent a letter (Exh. 488) to Sr. PI, Dharavi Police Station asking him to deposit **OA1's** service revolver, Butt No. 347 (Art. 69), as the same was requested by PW110 for ballistic examination.

475 On 12th December 2009, PW59, in response to the letter (Exh. 488) sent **OA1's** surrendered weapon i.e. ruger service revolver Butt No. 347 (Art. 69) and 6 rounds of ammunition with PW56 to Naigaon Armory vide covering letter

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(Exh. 478A) prepared by him. It is pertinent to note that there is no suggestion to this witness that he did not send the ruger revolver Butt No. 347 (Art. 69) to the Naigaon Armory.

476 On 17th December 2009, PW60-Maruti Patil attached to the Magazine Section at Naigaon Armory Depot, handed over revolver butt No. 347 (Art. 69) to PW109 under panchnama (Exh.261) before PW34-panch witness, by making an overleaf entry (Exh. 495) and also by making an entry in the Armory Weapon Register (Exh. 511A). After seizure of the weapon, PW107 and PW109 deposited the said weapon in the safe custody of Versova Police Station Labelled (Art. 42) and seal (Art. 43). The same were identified by PW34 and PW109. There are no suggestions with respect to the same in the cross of PW60 by OA1. The relevant evidence in that context is of PW34, PW60, PW107 and PW109.

477 PW110 vide letter dated 17th December 2009 (Exh. 717) addressed to PW99, requisitioned seized articles of C.R. No.

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302/2006, delivered by PW107 to PW99, Sr. PI, Versova Police Station. The evidence of PW99 and PW110 with respect to the same is as under:

478 **PW99-Suresh Nalawade**, Sr. PI, who was attached to Versova Police Station, handed over 6 sealed packets of C.R. No.302/2006 to PW107 on **19th December 2009** under a covering letter (Exh. 718). Accordingly, entry was taken in the muddemal register (Exh. 299A) as well as station diary entry was made (Exh. 751A). PW107 has deposed that he collected 13 sealed packets seized by SIT during investigation and had kept the same in the safe study of Versova Police Station. PW107 has further deposed that he deposited 19 packets, which were in a sealed condition, with FSL, Kalina vide forwarding letter (Exh. 656). The said 19 packets included 6 articles of C.R. No. 302/2006 and 13 articles seized during the investigation of the present crime. According to PW86, the ballistic expert, he opened the said sealed parcels and verified that the contents were as per the forwarding letter (Exh. 656).

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479 It is pertinent to note that neither any suggestions have been made to PW99 that he did not handover 6 sealed packets of the case property to PW107 vide Exh. 718 nor any suggestion has been made to PW107 that he did not handover the articles mentioned in the forwarding letter (Exh. 656) or that he made a false station diary entry (Exh. 751A) regarding ruger revolver (Art. 69). No suggestion has been given to PW86 that the ruger revolver butt No.347 (Art. 69) was not sent to him for ballistic examination and that a Glock pistol was sent in its place. Infact, PW107 has not been cross-examined on the point of depositing 19 sealed packets with the FSL.

480 According to PW86-the ballistic expert, he completed his report (Exh. 658) with respect to the seized articles alongwith articles collected by PW108 vide letter (Exh. 659) on 2nd February 2010. He has stated that as per his analysis, Art. 63 was fired from ruger revolver Butt No.347 (Art. 69) and not from

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revolver Butt No. 468 (Art. 16); that Art. 60 was fired from Butt No.624 (Art. 18) (**A15's** weapon) and Art. 46 colly. was fired from Butt No. 475 (Art. 15) (**A9's** weapon). The ballistic report shows that the three bullets which were retrieved from the deceased's body were fired from the service weapon issued to **OA1, A9** and **A15**. The two empties were surrendered by **A9,** which according to **A9** were fired from his service weapon; and one empty surrendered by **A15** which was fired from his weapon. The ballistic report would reveal that one empty surrendered by **A22** was fired from **OA1's** service revolver and one empty found on the spot allegedly fired by **A11** was infact fired from **A2's** service weapon.

481 It is pertinent to note that PW86 was only cross-examined by **OA1** and **A2** and that there is no cross-examination or challenge by **A9, A11, A15** and **A22.**

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482 PW86-the ballistic expert's report was challenged by **OA1** vis-a-vis, PW86's expertise and qualification. The evidence of PW86 would reveal that he had 20 years of experience, having joined in 1986 and that from 1990, he was in the Ballistic Department. PW86 has, in detail, set out the procedure adopted by him and how he reached the analysis, after conducting detailed investigation /examination. The evidence of PW86 as well as his report, inspires confidence and clearly shows his expertise in the field. We may again note, that we have again in great detail discussed the `Ballistic Evidence' circumstance in paras 186 to 245.

483 The aforesaid evidence clearly shows the movement of weapons and is duly supported by documents, as stated aforesaid. Thus, there is no reason to disbelieve the evidence of PW86 that has come on record with respect to the ballistic report (Exh. 658 Colly.).

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484 With respect to the ballistic evidence and the report, it is pertinent to note that **A11** had claimed that he fired, but the empty surrendered by him in C.R. No.302/2006, was found to have been fired from **A2's** service weapon. Similarly, the empty shell surrendered by **A22**, after firing, was found to have been fired from **OA1's** service weapon. The ballistic expert's report also clearly shows that **A9** and **A15** had also fired from their service weapons.

485 It is pertinent to note that the trial Court has believed, accepted and relied upon the evidence of PW86 (Ballistic Expert) and the Ballistic Report, whilst convicting other appellants/accused i.e. **A9, A2** and **A15.** It may also be noted that though the trial Judge accepted the ballistic expert's report that **OA1** had fired **A22's** bullet from his (**OA1's)** service weapon at Ramnarayan, yet he chose not to convict **OA1,** only on the basis of the ballistic expert's evidence, after observing that ballistic evidence by itself was a weak piece of evidence, in the absence of

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any corroboration to the same. We, whilst dealing with the circumstance of ballistic evidence, have in detail considered the law relating to the same and as such do not find it, to be a weak piece of evidence.

486 Be that as it may, apart from the ballistic evidence, there are other circumstances/evidence, which are clearly overlooked by the trial Court i.e. there were accused deputed to work under **OA1**; that there was a squad of **OA1**; that the evidence on record shows that **OA1** was using **A5's** mobile number, which also shows **OA1's** presence at the Nana Nani Park; and that **OA1** was continuously in touch with the co-accused. In addition to the aforesaid evidence, the disclosure made by Anil Bheda to his wife PW40-Aruna Bheda is also relevant and a circumstance *qua* **OA1**. We have in detail considered and held that the disclosure made by Anil Bheda and PW40 as being admissible under Section 6 - principle of *res gestae* in paras **112 to 129**. It is pertinent to note that Anil Bheda had disclosed to

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his wife, PW40, that Ramnarayan and he were abducted by **OA1's** men and taken to D.N. Nagar Police Station, where **OA1** was present, and that his life was saved because of the faxes and as PW104 mediated.

487 In addition, there is evidence of witnesses with respect to threats extended to them and to Anil Bheda, by family members of the accused and lawyers who were appearing for the accused, including lawyers appearing for **OA1**, at the relevant time, to toe a particular line and to leave the City.

488 All the aforesaid circumstances, have been ignored and clearly overlooked by the trial Court. In the facts, we hold that the finding of acquittal recorded by the trial Court, is clearly perverse and unsustainable, by ignoring or excluding relevant material, despite there being overwhelming evidence pointing to the complicity of **OA1** in the crime, thereby warranting our interference. We find the finding of the learned Judge to be

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perverse, inasmuch as, it is against the weight of evidence. We, in the facts, find that it is not possible to take any other view than the view taken by us, having regard to the overwhelming evidence adduced by the prosecution.

489 Thus, the circumstances relied upon by the prosecution even *qua* **OA1** form a chain, which is so complete and which unerringly points to the guilt of **OA1** and excludes any hypothesis consistent with the innocence of the **OA1.**

490 For the reasons aforesaid, the following order is passed :

ORDER

(1) The judgment and order dated 12th July 2013 passed by the Ad-hoc Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay, in Sessions Case No. 317/2010, to the

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extent that it acquits **OA1**- Pradeep Sharma, is quashed and set-aside and the respondent (OA1) in Criminal Appeal No. 854/2013 and Criminal Appeal No. 350/2015, is convicted and sentenced as under :

- for the offence punishable under Sections 120B r/w 364 of the IPC, to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for a period of two years;

- for the offence punishable under Section 120B r/w 365 of the IPC, to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for a period of one year;

- for the offence punishable under Section 120B r/w 368 of the IPC, to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for a period of one year;

- for the offence punishable under Section 368 of the IPC, to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for a period of one year;

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- for the offence punishable under Section 120B r/w 302 of the IPC, to suffer imprisonment for life, and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for a period of three years;

- for the offence punishable under Section 364 r/w 109 r/w 120B of the IPC, to suffer imprisonment for life, and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for a period of two years;

- for the offence punishable under Section 365 r/w 109 r/w 120B of the IPC, to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for a period of one year;

- for the offence punishable under Section 344 r/w 34 of the IPC, to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for a period of three months;

- for the offence punishable under Section 302 r/w 34 of the IPC, to suffer imprisonment for life, and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for a period of three years;

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- for the offence punishable under Section 201 r/w 109 r/w 120B of the IPC, to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for a period of three months;

- for the offence punishable under Section 119 of the IPC, to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for a period of three months.

(2) All substantive sentences to run concurrently.

(3) **OA1**- Pradeep Sharma to surrender before the appropriate Court, within three weeks from today.

491 We in the facts, do not think that it is necessary to hear the respondent **OA1** under Section 235(2) of Cr.P.C, since the sentence awarded for the offence under Section 302 i.e. for the principal offence, is imprisonment for life and life imprisonment being the minimum sentence that can be awarded

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for the offence punishable under Section 302 r/w other sections of the IPC. Rest of the sentences are to run concurrently with the sentence awarded under Section 302 read with other sections of the IPC.

492 Accordingly, both the appeals against acquittal of **OA1** i.e. Criminal Appeal Nos. 854/2013 and 350/2015 are allowed.

VI. CRIMINAL REVISION APPLICATION NO. 182/2023 :

493 The aforesaid application has been filed by the complainant (PW1)-brother of deceased-Ramnarayan, seeking enhancement of the sentence awarded to the respondents therein i.e. respondent Nos. 1 to 12, all police personnel i.e. for enhancement of their sentences from life imprisonment to death.

494 The applicant, who appeared in-person did not press the revision application, much less, argued the said application.

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495 In view of the same, nothing survives for consideration in the said application. The same stands disposed of, as not pressed.

496 Before parting with the judgment, we would like to acknowledge the efforts taken by all the learned counsel appearing for the appellants and Shri Palande **(A15)**, who appeared in-person, as well as Mr. Chavan, learned Special P.P. for the State and Dr. Chaudhry for the complainant. We would also like to place on record our special appreciation for the efforts taken and the invaluable assistance rendered by Mr. Chavan, learned Spl. PP and his team, in collating all the documents. It was a mammoth task. 57 Volumes, 110 witnesses and paper book running into 17064 pages. The hearing could not have been completed without interruptions, but for the cooperation of all the counsel appearing for the respective parties.

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496 All concerned to act on the authenticated copy of this judgment.

GAURI GODSE, J. REVATI MOHITE DERE, J.

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