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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 1027 OF 2003**

1. Mahesh @ Moha Dattaraya Bagal, ]  
Age: 29 years, Occupation: Hamal, R/o. Bhosare, ]  
Taluka Madha, District Solapur ]  
  
2. Maruti @ Pintu Dattatraya Harihar, ]  
Age: 22 years, Occupation: Hamal, R/o. Warkute, ]  
Taluka: Karmala, District: Solapur ]  
  
3. Vishnu Ramchandra Adlinge, ]  
Age; 20 years, Occupation: Education, ]  
R/o. Kurduwadi, Taluka: Madha, ]  
District: Solapur ] ...Appellants

Versus

The State of Maharashtra, ]  
through Police Inspector, ]  
Police Station "Pandharpur Taluka", ]  
District: Solapur ]  
(Copy to be served on Public Prosecutor of ]  
High Court of Judicature at Bombay) ] ...Respondent.

WITH

**CRIMINAL APPEAL NO. 875 OF 2003**

Ranjeet @ Ranjya Vishwanath Deshmukh, ]  
age 19 years, Occ. Hamal, Occu. Agriculturist, ]  
R/o. Bhoose, Tal. Madha, Dist. Solapur. ]  
At present in Yeroda Central Prison, Yeroda, Pune ] ...Appellant

Versus

The State of Maharashtra ] ...Respondent

WITH

**CRIMINAL APPEAL NO. 910 OF 2003**

Subhash Shrimant Dhayagude, ]  
Age 21 years, Indian inhabitant, residing ]  
at Kurduwadi, Taluka Madha, District: Solapur ]  
(Presently lodged at Kalamb Jail, ]  
District Kolhapur) ] ...Appellant

Versus

The State of Maharashtra ]  
through P.I., P.S. Pandharpur Taluka, ]  
District: Solapur ] ...Respondent.

Mr. G.R. Agarwal for Appellant No. 2 in Criminal Appeal No.1027  
of 2003

Mr. Shirish Gupte, Senior Advocate, with Mr. S.S Jadhavar for  
Appellants No. 1 and 3 in Criminal Appeal No. 1027 of 2003

Mr. Shirish Gupte, Senior Advocate, with Mr. S.V. Kotwal for  
the Appellant in Criminal Appeal No. 875 of 2003

Mr. D.G. Khamkar for the Appellant in Criminal Appeal No. 910 of 2003

Mr. K.V. Saste, Additional Public Prosecutor, for the State in all appeals.

**CORAM: BILAL NAZKI and**  
**A.R. JOSHI , JJ.**

**DATE OF RESERVING: 18-3-2009**  
**DATE OF PRONOUNCING: 18-9-2009**

**JUDGMENT** (Per Bilal Nazki, J.):-

On 6<sup>th</sup> June, 2000, a truck bearing Registration No. MH-23-1061 left Parali-Vaijinath, District Beed, for Pandharpur in Solapur District for fetching sugar. On reaching Pandharpur, the driver of the truck, viz., one Suresh Chate, contacted one Narayandas Harilal Marda, a commission agent in sugar, handed over to him a draft for Rs.2,72,620/-, which was the price for 200 bags of sugar. He loaded 100 bags of sugar in the truck from Vitthal Co-operative Sugar Factory, and started back to Parali-Vaijinath in the evening of the same day, i.e., 6<sup>th</sup> June, 2000. The truck was likely to reach its destination by the next day, but it did not reach. The truck had been sent by one Ashok Pannalal Jain, who had purchased the sugar, and had sent the truck for transporting the sugar. As he did not receive the truck, he started making enquiries. He contacted commission agent Narayandas Marda on telephone, and was informed by him that the truck had left Pandharpur on 6<sup>th</sup> June, 2000 at about 3.15 p.m. with 100 bags of sugar.

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2. On 8<sup>th</sup> June, 2000, Ashok Jain started in a car, and searched for the truck through the route from Pandharpur onwards. He could not find the truck. He made enquiries from *dhaba*, where trucks used to stop on the way, and came to know that the truck had stopped for the night at Mahisgaon, and had left early in the morning. Ashok Jain then contacted Narayandas Marda, and told him to report the matter to the police. On 9<sup>th</sup> June, 2000, a report was lodged at Police Station Pandharpur by him, being Crime No. 0099 of 2000 under Section 407 of the Indian Penal Code, and investigation got started. The police started search for the driver and cleaner of the truck, and Police Sub Inspector (P.S.I.) visited many places, and came to know, through informants, that the sugar bags were being sold in Wangarwadi in District Solapur. He went to the place, and seized 12 bags of sugar on 24<sup>th</sup> June, 2000 from two to three persons. On 25<sup>th</sup> June, 2000, he also seized 8 more sugar bags. On 30<sup>th</sup> June, 2000, he arrested one Uttam Jarichand Tupe on suspicion. On interrogation, said Tupe gave certain names of persons, who had committed the offence, and on 5<sup>th</sup> August, 2000, P.S.I. arrested accused Ranjeet Deshmukh, Pintu Harihar, Subhash Dhayagude, Vishnu Adlinge and Maruti Lobhe. On enquiries from them,

P.S.I. had learnt that they had sold sugar in the villages of Cinchgaon, Kurduwadi, Shirala, etc. Thereafter, bags of sugar were seized from various persons. P.S.I. came to know that murder of the driver and cleaner of the aforesaid truck had been committed.

3. Thereafter, the investigation was taken up by A.P.I. Ravindra Rasal. On 7<sup>th</sup> August, 2000, A.P.I. recorded statements of Vijay Bharat Kashid, Deepak Deokate and Subhash Shinde. He went to the house of Maruti Lobhe, and seized the jeep bearing Registration No. MH-12-W-9637. He also arrested Santosh Ashok Shinde, and made seizures. On 8<sup>th</sup> August, 2000, he arrested another accused Mahesh Bagal at Mangalwedha. Thereafter, statements of some witnesses were recorded, and bags containing sugar were seized from Suresh Mahadev Phadatare, Tanaji Maruti Mali and others. According to the prosecution, accused Mahesh Bagal made statement which led to the disclosure of knives used in the offence. Similarly, at the disclosure made by Santosh Ashok Shinde, 5 bags of sugar were recovered from his house. Ranjeet Deshmukh made disclosure with respect to R.C. Book and other R.T.O. papers of the truck. Certain inquiry reports from other police stations were sent for.

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4. Another accused made a disclosure statement, which led to the discovery of ropes. Statements of certain witnesses were recorded on 16<sup>th</sup> August, 2000. Five bags of sugar were seized from Sheetal Ratanchand Shah. On 19<sup>th</sup> August, 2000, Santosh Ashok Shinde was produced before the Chief Judicial Magistrate, Solapur, for getting his statement recorded under Section 306 of the Criminal Procedure Code and to grant him pardon. The Magistrate recorded his statement on 21<sup>st</sup> August, 2000, and granted him pardon on the same day. In his statement, this witness gave a detailed account of how the offence was committed, and also stated that after the murder of the driver, his dead body was thrown in the bushes of *chilari*. He also gave account that the driver and cleaner were killed on two different occasions. Subsequent to throwing the body of the driver in the bushes, the cleaner was killed by strangulation, and his dead body was thrown in a *nala* at a little distance from Velapur.

5. Thereafter, charges were framed under Section 364 read with Sections 34, 396, 201 and 414 read with Section 34 of the Indian Penal Code. After the charges were framed under different sections, the accused pleaded not guilty and claimed to be tried.

6. All the 7 accused were convicted for various offences. Accused Nos. 6 and 7 were convicted under Section 414 read with Section 34 of the Indian Penal Code, and they were sentenced to suffer rigorous imprisonment for two years, and they have undergone the sentence, and have not filed any appeal. Criminal Appeal No. 910 of 2003 is filed by accused No. 3, Criminal Appeal No. 875 of 2003 by accused No. 2 and Criminal Appeal No. 1027 of 2003 by accused No. 1, 4 and 5.

7. There are, in all, 60 witnesses examined by the prosecution. Most of them are the witnesses, from whom recoveries of sugar were made, the material witness being P.W. 1, who was the driver and granted pardon.

8. Learned Senior Advocate Mr. Gupte, appearing for some of the accused, submits that statement of the driver, P.W. 1, should not be the basis for conviction of the accused, as there is no corroboration of his statement. He further submits that his statement should not be given importance, in view of the fact that no reasons have been given by

the learned Magistrate to pardon. Learned Senior Advocate also submits that the medical opinion is contrary with regard to the mode of death as given by the approver. These contentions will be taken care of after the evidence is discussed.

9. Before coming to the statement of P.W. 1, it will be pertinent to note that the approver was arrested on 7<sup>th</sup> August, 2000. He made an application on 19<sup>th</sup> August, 2000, i.e., after 12 days in custody, and his statement was recorded on 21<sup>st</sup> August, 2000. The order of the Magistrate reads as under:-

“Shri R.S. Rasal, API – Pandharpur Taluka Police Station has produced Santosh Ashok Shinde, the accused in Crime No. 99/2000 for the offence punishable under Sections 407, 363, 396, 397, 201, 120-B of the IPC which are triable exclusively by the Court of Sessions. It appears from the report of the police that accused is not a principal accused but he is abettor in the case. The accused was produced before me on 19-8-2000 at about 5-35 p.m. The accused was asked whether he is ready to tender pardon. He has stated that he is voluntarily tendering the pardon. He has given application contending that he is one of the accused in Crime No.99/2000 for the offences 363, 365, 396, 397, 201, 120-B of the IPC. He is in jail. He is willing to get tender of the pardon. He is ready to state full and true disclosure of the whole of the circumstances and facts of the offence within his knowledge.

The police has also contended that there is no other direct evidence of the offence. Therefore, it is necessary to tender the pardon of this accused for the above reasons as stated under Section 306(a) of the Cr.P.C. Therefore, application is allowed, and pardon is granted.”

10. It would be profitable to go through the testimony of P.W. 60, Kamal Shivajirao Vadgaonkar, Chief Judicial Magistrate, who recorded the statement, and granted pardon, before the statement of P.W. 1 is discussed. P.W. 60 stated that he was Chief Judicial Magistrate since June, 2000. On 19<sup>th</sup> August, 2000, he was present in Court, and some policemen approached him with a letter from API Pandharpur. An accused was in their custody. In the letter of A.P.I. Pandharpur, it was mentioned that the accused in custody was ready to make a statement before him. He asked the accused if he was ready and willing to give a statement voluntarily. The accused expressed his readiness and willingness. He also gave an application, in which he stated that he would make a statement before him. The Magistrate passed necessary orders on the application of A.P.I., as well as on the application of accused, Santosh Shinde. He fixed the matter on 21<sup>st</sup> August, 2000 for recording the statement of Santosh Shinde. He identified his signature

on the application. It was marked Exhibits 192 and 193. He issued a letter to the Jail Superintendent, Solapur, for producing accused Santosh Shinde on 21<sup>st</sup> August, 2000. This also bears his signature, and it was Exhibit 194.

11. Accordingly, on 21<sup>st</sup> August, 2000, the accused was produced before him. The accused, again, expressed his willingness to make a statement voluntarily. The witness noted down that the accused had expressed his willingness to make the statement. This writing was marked Exhibit 195. Thereafter, he passed an order under Section 306-A of Cr.P.C. It also bears his signature. The contents are correct. It was marked Exhibit 196. Thereafter, he recorded the statement of Santosh Shinde. His statement is recorded in the hand-writing of the Bench Clerk, and bears the signature of the witness. He obtained the signature of the accused at the end of the statement. The statement was read over to the accused. He admitted it to be true and correct. Copy of the statement was given to Santosh Shinde. Statement of Santosh Shinde was marked Exhibit 197.

12. In response to cross-examination of counsel for some of the accused, he stated that it was true that at the end of the statement of Santosh Shinde, it was not written that the statement had been read over to Santosh, and he had admitted it to be true; but he denied that the statement of Santosh Shinde was not read over to him. Santosh Shinde was produced before him for the first time on 19<sup>th</sup> August, 2000. On that day, he had given the application. In his application, he had referred to various sections, including Section 396 of the Indian Penal Code, which was punishable with death. The application of Santosh was marked Exhibit 193-A. Shinde was produced before him at 5.25 p.m. after the working hours of the Court. It was not true that on 19<sup>th</sup> August, 2000, API Ravindra Rasal from Pandharpur Police station was also present in the Court with the accused. The witness also denied that Ravindra Rasal had brought Shinde to the Court. However, he admitted that in his order, Exhibit 196, there was a reference that API Rasal had produced Santosh Shinde, which was marked portion 'A'. However, he explained that this reference was made in the order, Exhibit 196, on the basis of the letter of Ravindra Rasal, Exhibit 192-A. He had given time to Santosh for

reflection since 19<sup>th</sup> August, 2000. He had not thought it necessary to give more time to Santosh Shinde for thinking over the matter, though the offence involved was punishable with death. 19<sup>th</sup> August, 2000 was a Saturday. Next day was a Sunday, and as such, directing the production on 21<sup>st</sup> August, 2000 would enable the accused to think over the matter. He recorded the statement of Santosh Shinde in his chamber, and not in court-hall. A.P.I. was not present, however his statement was recorded.

13. The witness further stated in his cross-examination that Santosh Shinde had not stated before him that at the *Dhaba*, Mahesh Bagal had asked Lobhe to stop the trax in front of the truck at some distance from it. He also stated that he had not stated before him that after about 10 to 15 minutes, Mahesh Bagal and Ranjit Deshmukh had returned and told him and Vishnu Adlinge that the driver and cleaner had taken meals and had gone to sleep in the truck. He also stated that Santosh Shinde had not stated before him that he himself and Vishnu Adlinge had woken up all of them. Santosh Shinde had not given the name of Lobhe that he had taken the trax towards Barshi.

Following improvements on the statement of P.W. 1 had also been pointed out to this witness:-

*“It is not in his (Shinde’s) statement that Lobhe had taken the trax towards Barshi. Santosh Shinde had not stated while giving the statement that Pintu Harihar and Vishnu Adlinge had caught the cleaner. He had scuffled for freeing himself. He had also not stated that he was held by pressing him down. Santosh Shinde had not stated before me that Ranjit Deshmukh and Mahesh Bagal had placed the noose around the neck of the cleaner and tightened the rope. Witness points out that it is there in the statement of Santosh Shinde that the cleaner was strangulated to death by means of a rope. Santosh Shine had not stated while giving the statement that on reaching Kurduwadi members of his family had scolded him and told that he may appear before the Court. He had not stated before me that he was arrested while he was sitting at one dhaba at Pandharpur. All these things are therefore not noted down by me in the statement of Santosh Shinde Exh. No. 197.”*

He denied the suggestion that he had granted pardon to Santosh Shinde on the say of the police.

14. In response to questions from the counsel for some of the other accused, the witness stated that there was a District Prison at Solapur and it was true that the persons in the jail were jail employees and not the policemen. The distance between District Prison, Solapur,

and the Court of C.J.M. would be covered within 10 minutes on foot. He did not know if the guards at Sub-Jail, Pandharpur, were policemen. After the evening of 19<sup>th</sup> August, 2000 and on 20<sup>th</sup> August, Santosh Shinde was in the Sub-Jail at Pandharpur. Then, he stated: *“It is not correct to suggest that Santosh Shinde ought to have been detained in the jail at Solapur since after the evening of 19/8/2000 till he was produced before me on 21/8/2000.”* He further stated: *“It is not true to say that Santosh Shinde had given the statement before me by remaining under the influence of the police from police station Pandharpur taluka.”*

15. Now, coming to P.W.1, Santosh Ashok Shinde, he stated that the incident had taken place one and a half years before. On 5<sup>th</sup> June, 2000, he had gone to Kolhapur for bringing the truck of Mahesh Bagal, accused No. 1. He, Pintu @ Maruti Harihar – accused No. 4, Mahesh Bagal – accused No. 1, Ranjit Deshmukh – accused No. 2, Subhash Dhaigude – accused No. 3, Vishnu Adlinge – accused No. 5, and the owner of the trax jeep Maruti Lobhe – accused No. 6, had gone to Kolhapur. On reaching Kolhapur, they had halted there for that night. Next day, the owner had not given the truck. On 6<sup>th</sup> June, 2000 at

about 2.00 to 2.30 pm., they started back towards Kurduwadi. In the evening, they had reached Pandharpur. The time was 7.00 to 7.30 p.m. They took their meals at Hotel Rangoli. They consumed liquor before taking the meals. He took beer. The vehicle was filled with diesel for proceeding towards Kurduwadi. They reached up to *Tin Rasta* square. Mahesh Bagal, accused No.1, asked to stop the trax. Maruti Lobhe, the truck owner, was driving the vehicle at that time. Lobhe stopped the vehicle.

Then, Mahesh Bagal stated that he was tense, as the owner had not given the truck, and, therefore, something had to be done for money. Then, Ranjit Deshmukh said that they would make a 'game' on some vehicle. By making 'game', it was meant that they will loot some vehicle. After about 15 to 20 minutes, a truck had come that way. It was passing towards Barshi. Sugar bags were loaded in that truck. Mahesh Bagal had said that game of this truck would be done. They started chasing the vehicle in the trax. They passed Kurduwadi, and proceeded through Barshi Road, chasing the truck. They chased the truck for a long distance. On crossing Mahisgaon, the truck had

stopped at one Dhaba. Mahesh Bagal asked Lobhe to stop the trax in front of the truck at some distance from it. The trax was stopped at some distance ahead of the truck. Mahesh Bagal and Ranjit Deshmukh got down from the trax and went to the *dhaba*. Mahesh Bagal and Ranjit Deshmukh returned after about 10 to 15 minutes, and told the witness and Vishnu Adlinge that the driver and cleaner had taken the meals and they had gone to sleep in the truck. He told the witness to wake them up when the truck would proceed further. Accused No. 1 gave threats to the witness and Vishnu Adlinge. He and Vishnu remained awake. Others slept in the trax. At 5.00 to 5.30 a.m., the truck moved towards Barshi. He and Vishnu awakened all of them. Then, they followed the truck in the trax. When Village Khandvi was about two kilometres away, the trax was taken in front of the truck and stopped. They got down from the trax and climbed up in the truck. They asked the driver of the truck whether he was going to dash the trax and climbed over that truck. Mahesh Bagal and Ranjit Deshmukh threatened the driver and cleaner of the truck with a knife. The driver was pushed aside from the driving seat, and the cleaner was also pushed aside. Mahesh Bagal asked Subhash Dhaigude to drive the truck.

Mahesh Bagal asked to turn around the truck near one school at Village Khandvi. The truck was turned around and started running towards Village Papnas. He was told to drive the truck through Vadshinge Road. On covering some distance, Mahesh Bagal asked Ranjit Deshmukh to take the rope from the top of the truck. Ranjit Deshmukh took the rope, and cut it into two pieces. One of the pieces was about 5 feet, and the other about 2½ feet. The driver and the cleaner started crying, saying they should not be killed. The driver said that he had children, and the accused could take whatever they wanted from him. Vishnu Adlinge and Pinku Harihar held the hands and legs of the driver. Mahesh Bagal and Ranjit Deshmukh tied his hands and legs with the ropes. He was made to lie on the rear seat in the cabin of the truck. He himself was sitting at the cleaner's side in the cabin. A noose of the rope was made, and it was fixed around the neck of the driver. Mahesh Bagal and Ranjit Deshmukh kept their legs on the neck of the driver, pulled the rope for tightening of the noose and killed the driver. After ensuring that the driver had died, they spread his shawl on his body. The truck was running while the driver was being murdered, and they were reaching Madha. They passed Madha, thereafter Anjangaon, Angar and came on

the highway near Mohol. From near Lokseva Hotel, the truck was turned towards Village Kurul. They started proceeding through Ankoli Road, and a tyre of the truck got punctured at Sayyad Warwade Pati. Subhash Dhaigude and Vishnu Adlinge detached the tyre, placed it in one jeep, and proceeded for repair of the puncture. After about two and a half to three hours, they had returned after repairing that tyre. It was again fitted in the place on the truck. The truck was started and taken through Ankoli Road. They had crossed Begumpur, Mangalwedha and had come on Sangola Highway. The truck was asked to be taken through one way on reaching near Village Gheradi. It had proceeded ahead from near Hunurpati.

On covering a distance of about 3 to 4 kilometres from Hunurpati, Mahesh Bagal had asked to stop the truck, looking that nobody was there on the road. There was a bush of *chilari-babul*. The bush was half round from above, and its branches were touching the ground. On stopping of the truck, Mahesh Bagal, Ranjit Deshmukh, Pintu Harihar and Vishnu Adlinge took the dead body of the driver down. He was himself sitting near the cleaner. Subhash Dhaigude was

sitting against the steering of the truck. The dead body of the driver was thrown beneath the bush of *Chilari*-babul.

Thereafter, the said four persons again sat in the truck. The truck was started, and they had proceeded towards *Jat*. They reached *Jat* in the evening at 5.00 to 5.30 p.m. They got down from the truck for taking meals in a hotel. The cleaner was also taken down from the truck. Mahesh Bagal and Ranjit Deshmukh told the cleaner that he should not get frightened, new cloths would be purchased for him, and he would be sent to his village in S.T. bus on purchasing tickets. They also took some liquor. The cleaner of the truck was also told that he would be given the money after unloading the truck. Mahesh Bagal, Pintu Harihar and Ranjit Deshmukh consumed some liquor and took the meals. The others took the meals without consuming any liquor. There was too much chilli in the curry served to Ranjit Deshmukh. He, therefore, abused the waiter and beat him.

On reaching the truck, it was found that the air pressure in the repaired tyre had reduced. Subhash Dhaigude said that the tyre was not properly repaired. The tyre was again detached, and was taken to

the shop nearby for repair of puncture. The tyre was again fitted to the truck. They left *Jat* and reached *Nagaj Phata*. They reached near Village Hatid. One petrol pump is there, where they filled the tank of the truck. Then, they reached Sangola and then Mahud. Mahesh asked Ranjit Deshmukh to close the door of the truck, as he was feeling cold. The door of the truck was shut. Pintu Harihar and Vishnu Adlinge caught the cleaner. He scuffled for freeing himself. He was held by pressing him down. Ranjit Deshmukh and Mahesh Bagal placed the noose around the cleaner's neck and tightened the rope. Blood oozed from his mouth, and he died. The truck was stopped near a *nala* near Village Velapur. The dead body of the cleaner was thrown from the truck. It fell on the ground, and the head of the dead body struck the ground. The dead body fell on the road. Mahesh Bagal got down from the truck, and pushed aside the dead body in the *nalla*-stream. He came back, and got in the truck. They passed Village Velapur. On covering a distance of about one and a half kilometre, Mahesh asked Subhash to stop the truck for passing urine. Mahesh Bagal got down from the truck with the pieces of rope. When he returned, he was not having those pieces of the rope. He again occupied the truck.

The truck proceeded towards Akluj. From Akluj, they came to Tembhorni. When they reached Tembhorni, it was about 12 midnight. In Hotel Satkar, they all had meals. They came to Kurduwadi in that truck. From there, they went to Bhogewadi, where the maternal uncle of Mahesh Bagal resides. He told his uncle that he obtained the tender for sugar, and needed accommodation for keeping the sugar. The uncle of Mahesh Bagal told him that there was no room for storing the sugar bags.

They proceeded towards Karmala. They reached Village Khambewadi, where the husband of his cousin aunt Shelke resides. He and Pintu told Shelke to allow them to keep the sugar bags there for the night, as something went wrong with the truck. It might rain. Therefore, they wanted to store the sugar. He was requested to keep the sugar for the night, as the truck was to be used for carrying *Varat* of marriage. The sugar bags from the truck were unloaded and kept in the cattle-shed of Shelke. They lifted the bags from the truck, and Mahesh Bagal and Ranjit Deshmukh carried them to the cattle-shed. Unloading of the truck was over.

Mahesh Bagal and Pintu Harihar took the truck from there. Rest of the accused slept at the house of Shelke. Mahesh Bagal and Pintu Harihar returned at about 10.00 a.m. They told him that they left the truck near one *dhaba* near Mirajgaon. In the noon, he told them that there was pain in his abdomen, and he would go to some dispensary. He went to Kurduwadi. Mahesh Bagal and Vishnu Adlinge also went to Kurduwadi. They obtained the tempo of one Sutar, collected Hamals from Nehrunagar and went back towards Khambewadi. Vishnu Adlinge went with the tempo, and Mahesh Bagal was searching him. He met him at one pan shop near the dairy at Kurduwadi. Mahesh Bagal called Maruti Lobhe. They proceeded to Khambewadi in the trax of Maruti Lobhe. Vishnu Adlinge and others loaded the tempo with the sugar bags with the help of those Hamals. Ranjit Deshmukh and Pintu Harihar sat in the cabin of the tempo with the hamals. The witness, Mahesh Bagal, Vishnu Adlinge and Subhash Dhaigude got in the trax of Maruti Lobhe. From Khambewadi, they went to Kurduwadi. The tempo was stopped near the railway colony. Four to five bags containing sugar were loaded in the trax. Those bags

were taken to Deepak Devkate. They then returned to the place where the tempo was parked. Three to four bags were again put into the trax and were taken to the grocery shop of Kashid. The witness, Pintu Harihar and Maruti Lobhe went in Kurduwadi locality. Mahesh Bagal, Ranjit Deshmukh, Vishnu Adlinge and Subhash Dhaigude proceeded in the tempo to Village Wangarwadi. They then returned to their houses.

After two to three days, the witness met Mahesh Bagal. Mahesh told him that everything was well. Sugar had reached to one Shah at Madha. Mahesh asked him not to tell as to what happened to the driver and the cleaner, and threatened him. In the evening of that day, Mahesh came to his house in the trax of Maruti Lobhe, wherein five bags of sugar were there. He told him that this sugar was being brought for giving to one customer. The customer told him that he was not having money. He, therefore, asked him to keep the sugar-bags for two to three days. He asked the mother of the witness that he allowed to keep the sugar in their house, and thereafter, he kept 5 bags of sugar in his house. Mahesh Bagal left the place. Next day early in the morning, the witness left for Pune. At Pune, the witness stayed with his aunt for a

couple of days. Mahesh Bagal came there when he was not there. On his return, his aunt told him that Mahesh Bagal had come. From Pune, he went to Mumbai, where his cousin sister lives. He stayed with his cousin for two months. He came to know that the matter had been detected, and the police had arrested all the persons. He came to know about it through a phone call made to him by a friend from Kurduwadi. He returned to Kurduwadi. Members of his family asked him to appear before the police. He went to Pandharpur, and was sitting at one *Dhaba*. Police came and arrested him. He told the policemen the incidents as they happened. He decided to be an accomplice. He gave an application before the police, and thereafter, gave one statement also. Mahesh Bagal, Ranjit Deshmukh, Subhash Dhaigude, Maruti @ Pintu Harihar, Maruti Lobhe, Vishnu Adlinge and Uttam Tupe were sitting in the court-hall on the bench of the accused.

16. On cross-examination by counsel for some of the accused, the witness gave his family background, and stated that he had studied up to 8<sup>th</sup> class, and after leaving the education, he started looking after the she-buffalo and selling the milk etc. He used to go to Sangola, Akluj

and Tembhurni. He had never visited Jat before these incidents. He was arrested by Police Inspector Rasal of Pandharpur Taluka Police Station. He did not know Sainath Abhangrao. He had read his name in newspaper and had seen his photograph in newspaper. He was from Pandharpur. He had not told the police that Sainath Abhangrao was his friend. He did not know that police had informed Sainath Abhangrao that he was arrested. One case under Section 324 of the Indian Penal Code was pending against him in the Court at Madha. He did not know what were the offences of Sections 366, 364, etc., of the Cr.P.C.

17. The witness was in jail from 19<sup>th</sup> April, 2001. He was not granted bail. He was in jail with other accused at Pandharpur since the time of his arrest till he was shifted to Solapur Jail with effect from 19<sup>th</sup> April, 2001. It was true that other accused were taken to Solapur, Sangola, Vita and such other places, and it was alleged that they had committed so many other offences, but it was not true that he had developed an apprehension in his mind that such accusation would be made against him also. He denied that he had suffered some mental

pain after his arrest. He denied that the pain had increased gradually. He denied that he had been taken to the Civil Hospital, Solapur, from the jail for treatment regularly; but he stated that he was taken once a month to the hospital. He was taken to the Civil Hospital, Solapur, for treatment 7 to 8 times; but it was not true to say that the doctors were of the opinion that his mental faculty would be affected. It was true that he was feeling that the trial of the case be started at an early date. It was not true that police had brought pressure on him to state before Court that trial of the case be started soon. It was true that he had given an application, saying that the trial be started earlier. The application dated 2<sup>nd</sup> June, 2001 was the application, and the application bears his signature. This application was marked Exhibit No.16. Then he stated: *“The mention in the application that my mental disease is increasing, I am required to be taken to Civil Hospital every after 7 days and the doctors had expressed possibility of affecting my mental faculty marked as ‘A’ is incorrect. The mention in the application that I was having this suffering since last 10 months marked as portion ‘B’ is also not correct.”* The witness then stated that these things were written in the application, as the accused were giving him threats.

The hand-writing of the application is of his friend Ambadas Chavan, who is from Akkalkot Taluka. The witness had stated that he felt like approaching the police and telling them all these details after their occurrence, but he had not gone to police because of the fear of the accused.

18. The statement of the witness was recorded in the Court at Solapur before the deposition. Police Officer Rasal had not taken him to Solapur for that statement. He was taken to Solapur twice for recording his statement, and on both occasions, Police Officer Rasal was not with him. It was true that Police Officer Rasal was the Investigating Officer of the case. He did not feel that he would face trouble if he did not depose as per the statement he made before the Court at Solapur. Then, following improvements were pointed out: *“It is true that I had deposed in the Court as per my statement which was recorded in the Court at Solapur. I do not remember if I had stated before the Court at Solapur while giving the statement that when the truck had stopped at the dhaba Mahesh Bagal had asked Lobhe to stop the trax in front of the truck at some distance from it. I cannot give any reason why this is not noted*

*down in my statement recorded by the Court at Solapur. It is not there in my statement even before the Court that the trax had stopped in front of the truck at some distance from it. While giving the statement before the Court I had told that after about 10 to 15 minutes Mahesh Bagal and Ranjit Deshmukh had returned and told myself and Vishnu Adlinge that the driver and cleaner had taken meals and gone to sleep in the truck. These things are not noted down in my statement in this particular way. It is not noted down in my statement recorded by the Court at Solapur that myself and Vishnu remained awake and others had slept in the trax. Witness states that he had stated these things before the Court as he remembered the details. While giving the statement before the Court at Solapur I had stated that myself and Vishnu Adlinge had woken up all of us. I cannot give any reason how this is not noted down in my statement. I had told that after we had climbed in the truck Lobhe had taken the trax towards Barshi. I cannot give any reason why this is not noted down in my statement. While giving the statement before the Court at Solapur I had said that Pintu Harihar and Vishnu Adlinge had caught the cleaner. He had scuffled for freeing himself. He was held by pressing him down. Ranjit Deshmukh and Mahesh Bagal had placed the noose around the neck*

*of cleaner and tightened the rope. I cannot give any reason why these details are not noted down in my statement recorded by the Court. While giving the statement before the Court at Solapur I had not stated that the tempo was stopped near Railway Colony. I do not remember if I had stated while giving the statement before the Court at Solapur that on reaching Kurduwadi members of my family scolded me and told that I may appear before the police. I cannot assign any reason why this is not noted down in my statement. I do not remember if I had stated while giving the statement before the Court at Solapur that I was arrested while I was sitting at one dhaba at Pandharpur. I cannot give any reason why this is not noted down in my statement.”*

19. The father of this witness was working in railway, but it was not true that police threatened him that if he did not depose, his father would lose his job. Police did not assure him that they would assist him in performance of the marriage of his sister. He had not yielded to any pressure from any police personnel. He had not given a false statement, and had not been given any assurance by the police. The number of the case was 2/2001. The number was noted on the jail warrant and the

jail card. He did not know any other number of the case. He did not know what offences were there under Sections 363 and 365 of I.P.C. He was arrested for the offences under Sections 363, 365, 396, 397 and 120-B of I.P.C. These sections are written on the jail card, which are given to the prisoners on every Monday at the time of round by the Jail Superintendent at Solapur. He had come to know of these sections in jail at Solapur. He was in jail at Pandharpur for about 9 months. Then, after he was shifted to Solapur, he came to know of these sections. While he was in jail at Pandharpur, he had sent the application to C.J.M., Solapur, saying that he was ready to become an accomplice. There was mention of sections in this application. The crime number is also mentioned therein. He knew the Judicial Magistrate and the Chief Judicial Magistrate. The jailor at Pandharpur had told him about this. Pandharpur Jail is located almost opposite to Pandharpur Taluka Police Station. He was presented before the C.J.M. twice since the time of his arrest till the time of recording his statement. He was produced before the Court of J.M.F.C. Pandharpur on a couple of occasions. He did not remember if he was arrested on 8<sup>th</sup> August, 2000, but he remembered that it was the 8<sup>th</sup> month of 2000. He did not remember whether he was

remanded to police custody till 16<sup>th</sup> August, 2000. He did not know whether P.C.R. was enhanced by two more days. He had read in newspaper that Sainath Abhangrao was the President of Shiv Sena for the district. It was true that he was the District President of Shivshakti Sanghatana. He had never met him. He knew that he was an influential man. It was true that after he was arrested, Police Officer Rasal had asked him as to whom he would like to be informed about his arrest. He had told him to inform the members of his family. It was not true to say that he had told Police Officer Rasal to inform about his arrest to Sainath Abhangrao. He did not know if Rasal had informed Sainath Abhangrao.

20. The witness was produced before the Magistrate at Solapur by the police from Pandharpur. On that day, his statement was not recorded. He was brought back to Pandharpur Jail. He was taken to Solapur for the second time by the police from Pandharpur. He was not tortured by the police. He was not under pressure of the police. He was not told by the police that they were sitting in the court-hall, and if he failed to depose as told, he would be implicated in another case.

There were two policemen sitting in the court-hall who were from Police Station Pandharpur Taluka. They were sitting in plain clothes, and their names were Hamid Shaikh and Balu Jadhav. When accused Mahesh Bagal had said that “*game karaichi aahe*”, he had not gone away from that place. He had not told them not to do such things. They were in a hotel at Jat for about half an hour to three-fourth hour. The cleaner had not raised any shouts in the hotel at Jat. Five hours were required for the truck to reach Mahud. Many persons remained there in the square at Mahud. It was not true to say that no incident as deposed by him had taken place. He did not remember as to at what time they had reached the *dhaba* near Mahisgaon. It might have been about 11.00 p.m. when Mahesh Bagal and Ranjit Deshmukh had told him and Vishnu Adlinge at that *dhaba* that the truck driver and cleaner had taken the meals and had slept in the truck.

21. P.W. 2, Ashok Pannalal Jain, is the owner of the truck. He stated that he purchased sugar from sugar factory on wholesale basis and he was then transporting the sugar in his own trucks. He had two trucks, one MH-23-1061 and the other MH-23-1188.

Suresh @ Suryakant Chate was the driver of Truck bearing No. MH-23-1061. Suryakant was working with him for four years. Balu was the driver of the other truck bearing No. MH-23-1188. On 5<sup>th</sup> June, 2000, he had sent his truck, MH-23-1061 for fetching 100 bags of sugar from Pandharpur. The driver was Suryakant. Bandu was the cleaner on the truck. Bandu used to work as a Hamal at his shop. Bandu had gone with the truck, as the cleaner was not available. The witness came to know that sugar bags were loaded in the truck on 6<sup>th</sup> June, 2000. On 7<sup>th</sup> June, 2000, he waited for the arrival of the truck with sugar bags at Parli Vaijinath between 10.00 to 11.00 a.m. He waited for the arrival of the truck throughout the day but it did not arrive till that night. On 8<sup>th</sup> June, 2000, he started in his car looking for the truck through the road proceeding to Ambejogai, Kalamb, Karmala, Barshi and Kurduwadi. He enquired at the dhaba near Mahisgaon about the truck, as it used to halt there for the night. He was told that during the night, the truck halted there, and left for Parali Vaijinath in the morning. On getting this information, he started back towards Parli Vaijinath. Then, he informed Narayandas Marda that he was told that the truck came up to that dhaba, and thereafter, it was not traced. Therefore, he told Narayandas

Marda to pursue the matter with the police. Narayandas told him that it was late in the night, and, therefore, he would inform the police next day. On 15<sup>th</sup> June, 2000, he received a phone call from police that his truck had been located near Mirajgaon in District Ahmednagar. His brother went there, and obtained the custody of the truck. He did not obtain the possession, as it was lying abandoned. The sugar bags, which had been loaded in it, were not in the truck. The driver and cleaner were also not present. The truck was then brought to the Police Station Pandharpur Taluka. The witness went to Pandharpur and took the truck in his custody. One bundle of rope of the length of 100 to 110 feet was there in the truck. The papers of the truck were also not there in it. The wax-coated tarpaulin was also there in the truck. He had executed a bond before he got the custody of the truck. On 8<sup>th</sup> August, 2000, he was informed on phone by the police that the driver and cleaner of the vehicle had been murdered. He brought the family members of the driver and the cleaner to Pandharpur. The cloths of the cleaner, which he was wearing while leaving Parli Vaijinath were shown to him, but he could not identify them. He received 21 sugar bags from Police Station Pandharur Taluka. Another 60 bags were received by

him. On 19<sup>th</sup> August, 2000, he received a phone call from Police Station Pandharpur Taluka, asking him to get the rope bundle, which was found earlier in the truck. He identified this bundle as Article 21.

Then, he was cross-examined, but nothing worthwhile, either for the prosecution or the defence, could be elicited from him.

22. P.W. 3, Narayandas Harilal Marda, was a commission agent in sale of sugar. Pannalal Jain & Sons from Parali-Vaijinath was his customer. It was the firm of Ashok Jain. He used to give the phone calls, and thereafter, he used to send the truck. The witness used to load the truck and send the sugar bags to their place. The firm, Pannalal Jain, was having the truck. Its number was MH-23-1061. Suresh was the driver of that truck. On 6<sup>th</sup> June, 2000, a truck had arrived at Pandharpur for fetching the sugar bags. The draft had been sent by the customer in the name of the sugar factory. He received the draft on 6<sup>th</sup> June, 2000 for Rs.2,72,620/- for 200 bags of sugar. 100 bags were loaded in the truck on that day from the sugar factory. In the evening of 7<sup>th</sup> June, 2000, he received a phone call from

Ashok Jain, informing that the truck had not reached. On 8<sup>th</sup> June, 2000, he, again, received a phone call that the truck had not reached, and Ashok Jain had told him that although he went through the route of the truck, he could not find the truck. The witness told Ashok Jain that the matter be reported to the police. On 9<sup>th</sup> June, 2000, he gave a report to Police Station Pandharpur Taluka. He had informed the police that 100 bags of sugar, truck, driver and cleaner were missing. He identified his signature on the report as Exhibit 22. On 16<sup>th</sup> June, 2000, he received a phone call from the police that the truck was brought to Police Station Pandharpur Taluka, as it was found at Mirajgaon. He was told that 20 bags of sugar were found. He took the delivery of 20 bags of sugar from the police, and executed a bond in favour of the police. He identified the signature on the bond as Exhibit 22.

23. P.W.4, Anantrao Udhav Ubale, was a panch witness when 5 bags of sugar were seized from Boleshankar Hotel of Village Chinchgaon.

24. P.W.5, Subhash Ajinath Shinde, runs a hotel styled as “Bholeshankar Hotel” on Kurduwadi to Barshi road. He sells tea to customers, and for preparing tea, he needs sugar. He purchases the required quantity of sugar from Kurduwadi. One year to one and one-fourth years before, Ranjit Deshmukh had come to his hotel in a Canter. By Canter he meant a tempo. Ranjit gave him 5 bags of sugar. He sold the sugar at Rs.1250/- per bag. The witness purchased 5 bags of sugar. One driver was driving the tempo, and, in all, four persons were there in the tempo. Other persons were Mahesh Bagal and Maruti Lobhe. After two months of the purchase of sugar, police came to the hotel, and they enquired from him about the purchase, and he told them that he had purchased 5 bags of sugar. Police seized 5 bags of sugar from his hotel. Then, he learnt that the sugar was stolen property. He was also put to cross-examination, but nothing worthwhile could be elicited.

25. P.W.6, Suresh Bhanudas Mengade, was a panch witness when 10 bags of sugar were seized from the shop of Balu Maruti Dhavale.

26. P.W.7, Balu Maruti Dhavale, runs a grocery shop in Village Sade. He stated that the name of his maternal uncle was Nivrutti Lobhe. Maruti Lobhe was the son of his maternal uncle. In the 6<sup>th</sup> month of year 2000, there was election in his village. He was contesting that election. Early on the day of election, Maruti Lobhe had come to him, and informed that he had obtained an agency for sugar, and if he needed any sugar, he would supply it. Then the witness asked him about the rate. Maruti told him that it would be Rs.1300/- per quintal. Then he asked him to bring the sugar, and he would purchase it. He got busy with the election. Maruti Lobhe brought 5 bags of sugar each to his grocery shop by making two trips in his jeep. The number of the jeep was MH-12-9637. Some stock of sugar was already there in his shop. After about a month, the police from Police Station Pandharpur Taluka came to his shop. They made enquiries about Maruti Lobhe. In that enquiry, the witness told the police that he had purchased 10 bags of sugar at the grocery shop. Police informed him that the sugar was sold to him by Maruti after committing robbery. Police seized 10 bags of sugar, and took them to Pandharpur. Seizure panchnama was made, and his signature was also obtained.

27. P.W. 8, Appasaheb Ranganath Kapare, is a panch witness to the recovery of sugar at the shop of P.W. 7.

28. P.W. 9, Mahindra Hukumchand Shah, is another grocery shop owner. He sells sugar, rice, oils, etc. In June, 2000, Ranjit Deshmukh came to his shop in a tempo, and asked him to keep 10 bags of sugar in his shop, as he was not having any tarpaulin to cover the sugar bags. The witness kept 10 bags of sugar in his godown. Ranjit Deshmukh did not come back to get back the sugar. He made enquiries about Deshmukh, and came to know that Deshmukh was not in his village, Bhose. In the meantime, he sold three bags of sugar. He kept the money with him, so that it could be handed over to Ranjit Deshmukh. In the month of August, 2000, police from Police Station Pandharpur Taluka came, and he told them that he had received 10 bags of sugar from Deshmukh and had sold three bags. He had reached 7 bags to the police. He was also put to cross-examination, but nothing worthwhile could be elicited.

29. P.W.10, Shital Ratanchand Shah, submitted that his cousin, Mahindra Shah, had got a grocery shop. Ranjit Deshmukh and Mahesh Bagal kept some sugar in the shop of my brother. About a year passed since that incident. Ranjit told me that he was not having tarpaulin, and the sugar might get wet. Five sugar bags were kept in the shop. In the month of August, 2000, police came to the shop. He was informed that the sugar was stolen property, and the same was seized.

30. P.W. 11, Tanaji Maruti Mali, sells sweetmeat in his shop. It is admitted that Adlinge is his aunt. She resides in Kurduwadi. Vishnu is the son of his aunt. In the month of June, 2000, Vishnu came to his house and asked him whether he could purchase sugar. He said that his friend had an agency in sugar. He told him that he was ready to purchase sugar, as the rate quoted was Rs.1300/- per quintal, which was low. Therefore, he purchased sugar at the rate of Rs.1300/- per bag from him. On 9<sup>th</sup> August, 2000 police from Police Station Pandharpur Taluka had come to him. They searched his house, and found 5 bags of sugar. He had utilised four bags, as he had purchased, in all, 9 bags.

31. P.W. 12, Popat Sitaram Lokare, again, has a shop. In June, 2000, Mahesh Bagal had come to him with Gurudev Patil. They told him that something wrong had gone with their truck, and they needed money, so that the truck could be repaired. They demanded Rs.10,000/- to 15,000/-. They also told him that if he was interested, he could purchase sugar for this amount. The rate was fixed at Rs.1300/- per 100 Kg. He purchased 10 bags of sugar at Rs.1300/-. After some days, it was also recovered by the police.

32. P.W. 13, Anandrao Ramdas Aarkile, was witness to the disclosure statements made by Mahendra Shah, who had produced 7 bags of sugar and three empty bags, and Fadatare, who had produced two bags of sugar and three empty gunny bags.

33. P.W.14, Kakasaheb Baburao Gurade, was the witness to recovery of rope.

34. P.W. 15, Suryakant Jagannath Pawar, was, again, witness to a panchnama regarding 5 bags of sugar.

35. P.W. 16, Vijay Bharat Kashid, is, again, a shopkeeper. In the sixth month of 2000, Dhaigude and Lobhe came to his shop, and asked him if he wanted to purchase sugar, as they had got an agency. He purchased 8 bags of sugar from them for Rs.1200/- per quintal. He gave them Rs.9600/-. Then, sugar was brought by them in a trax-jeep. Then, police, after two months, recovered the sugar, and informed him that it was a stolen property.

36. P.W. 17, Nivrutti Jagannath Jagtap, also is a shopkeeper. Mahesh Bagal brought sugar to his shop, and informed that he was selling sugar on commission basis. He purchased 5 bags at Rs.1110/-. After about 15 days, police came, and recovered the same, and informed him that it was a stolen property.

37. P.W. 18, Popat Gajendra Khadul, is also a shopkeeper, but he is a witness to some panchnama of sugar.

38. P.W.19, Rajendra Vishwambhar Tupe, is also a witness to the panchnama of seizure of sugar.

39. P.W. 20, Prashant Hanmnt Sutar, again, is a witness to seizure of 8 bags of sugar from the shop of one Deokate.

40. P.Ws. 21 and 22, Raju Bira Padvalkar and Raosaheb Udhav Thore, respectively, are also panch witnesses to the seizure of sugar from various shopkeepers.

41. P.W. 23, Navnath Machindra Varkute, is another shopkeeper. He said that Maruti Lobhe came to him and offered sugar at the rate of Rs.1300/- per quintal. He purchased one bag from him for Rs.1300/-. After a month, police came and recovered it.

42. P.W. 24, Uttareshwar Pralhad Sutar, also purchased sugar at the rate of Rs.1300/- a bag from Maruti Lobhe and then, it was recovered after some time by the police.

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43. P.W. 25, Suresh Mahadeo Phadatare, said that Ranjit Deshmukh came to his shop and offered him sugar at the rate of Rs.1300/- per bag. He purchased 5 bags from him. After some time, police came and recovered three bags from his shop. Two bags were already sold by him.

44. P.W. 26, Dipak Bhanudas Deokate: Sugar was offered to him by Maruti Lobhe and Kumar Dhaigude. He purchased two bags of sugar at Rs.1200/- per bag and police recovered these bags also after some time.

45. P.W. 27, Babaji Narayan Dhotre, has been witness to disclosure having been made by Pintu Maruti Harihar with respect to two pieces of tarpaulin, which were then recovered on the disclosure of the accused by the police.

46. P.W. 28, Prashant Damodhar Sonawane, was a witness to disclosure having been made by accused Bagal about a knife. This recovery was made from accused No.1. In his examination-in-chief, he

stated that when he reached the police station, one more accused i.e. P.W.1, Shinde, was present.

47. P.W. 29, Jotiba Pandurang Chandanshive, was witness to disclosure by Mahesh Bagal with respect to the rope.

47A. P.W. 30, Gulab Bhau Chabukswar, was witness to the visit of police to the house of Navnath Varkute in Village Shirala. Navnath Varkute had produced a bag containing sugar. The weight of the bag was around 50 Kg.

48. P.W. 31, Raosaheb Sopan Shelke, is another important witness. He stated that his wife's name was Jayashree Shelke. She was from Village Varkute. Her cousin brother Santosh Shinde resided at Kurduwadi. About a year and a half before when he was sleeping in his house, Santosh Shinde came to his house in the night at about 2.30 a.m. And asked him that he might be allowed to keep the bags containing sugar at his place, as it was raining. He told him that he could keep the sugar bags in the cattle shed. Accordingly, Santosh Shinde kept the

bags containing sugar in the cattle shed. Santosh Shinde, Pintu Harihar and five to six others, whose names he did not know, had unloaded the bags of sugar from the vehicle. The bags containing sugar were about 80 in number. While they were unloading the bags, he returned to his bed and went to sleep. In the morning, a tempo was brought there and sugar bags were taken away. The tempo was brought at 5.00 to 5.30 p.m. and it departed from his place after loading sugar at about 7.00 p.m. He was present when the sugar was being loaded in the tempo. He asked Santosh as to whose sugar it was. He told him that sugar was of his friend, and they were taking it away. Santosh Shinde, Pintu, Ranjit and some others were there. He could identify those persons by looking at their faces. They were sitting in the court-hall on the bench. They had kept one bag of sugar at his house. Police arrived in the village. His statement was recorded by the police. He did not know how Santosh Shinde brought those bags of sugar to his house. He also admitted in cross-examination that his statement had been recorded by the Magistrate.

49. P.W. 32, Bajirao Sandipan Shinde, submitted that he had purchased a jeep bearing Registration No. MH-12-W-9637 in 1996. This

vehicle was financed, and he had to pay monthly instalments of Rs.7,500/- each. As he could not pay the instalments, after some time, Rs.60,000/- were due. Therefore, he decided to dispose of the vehicle. He sold ultimately the vehicle to Maruti and Nagnath Lobhe for Rs.1,90,000/-. Rs.1,00,000/- were received in cash and Rs.30,000/- were to be paid after two months. Outstanding of Rs.60,000/- towards the finance company had also to be paid by Lobhe. These terms and conditions were written down on stamp paper of Rs.10/-. Maruti and Nagnath Lobhe had given him cash of Rs.1,00,000/- and he had given them possession of the vehicle. He identified Marui Lobhe in the court-hall.

50. P.W. 33, Prakash Asaram Kamble, is a Medical Officer. He performed the *post-mortem* on 9<sup>th</sup> June, 1980 on the body of an unknown male. He found following injuries:-

(i) Abrasion on both hands at the wrists inconcurrently, size of the injury was about 2 cms in width;

(ii) Abrasion over the left leg, just below the ankle joint on anterior surface, size of the injury was 4 cms x 2 cms, it was transverse;

(iii) Blackish mark below the thyroid cartilage, transversely placed, size of the injury was 8 cms x 2 cms, subcutaneous haemorrhagic fluid was seen;

(iv) Blackish discolouration over the chest.

He submitted that the injuries caused were within 24 hours before death.

51. P.W. 34, Shivaji Shankar Deokar, again, is a witness to whom the sugar was sold by Ranjit Deshmukh at the rate of Rs.1250/- per quintal. It was later on seized by the police.

52. P.W. 35, Bhimrao Namdev Ubale, was a police head constable who made enquiries in unnatural death bearing A.D. No. 42 of 2000. He recorded statements of four witnesses, caused a photo of the dead body to be taken and sent a report to the Police Inspector Jat.

53. P.W. 36, Dilip Shaharao Phadake, is a tempo driver working as driver of Chandrakant Hanumant Sutar. On many occasions, he was engaged by Mahesh Bagal, Ranjit Deshmukh, Maruti Lobhe, Subhash

Dhaigude and Pintu Harihar to lift jawar from one place to another. On one occasion, he was told by Mahesh Bagal that jawar was to be brought from Karmala and carried to Chinchgaon. The hire charges of Rs.900/- were fixed. He obtained an advance of Rs.350/-. He was told to wait at the check post at Kurduwadi. He accordingly reached the check post. Three coolies were made to get in his tempo. Vishnu Adlinge had come with me. As per the direction of Mahesh Bagal, he had taken the tempo on Karmala Road. They reached up to Khambewadi. There was a locality by the side of the road. He parked the tempo for loading jawar. Persons from that vasti asked him to come for meals. He went in one house and took the meals. Mahesh Bagal, Ranjit Deshmukh and some others were there. He alone had taken the meals. Others were loading the tempo. After taking the meals, he came out near the tempo. He found that the bags loaded in the tempo were not jawar bags but were sugar bags. He asked Mahesh Bagal how he loaded the bags containing sugar when he was told that he had to transport the bags containing jawar. He told Mahesh Bagal that he would not carry the bags containing sugar but Mahesh Bagal threatened. One tyre of tempo got punctured at that place. He removed that punctured tyre and fitted

another good tyre there. He had come to Barshi Naka with the tempo. Mahesh Bagal and a couple of others got in his tempo and they had gone to the shop of Shrikrishna Tyre at Chinchgaon. Ten bags of sugar were taken there. He slept in the cabin of the tempo. Next day, he was told to take the tempo towards Paranda. He took to Paranda and stopped near a college. Some bags were taken away from the tempo by loading them in a jeep, and he was told to wait at Vaishali Dhaba. He accordingly waited there. When we reached Vaishali Dhaba, it was raining. He slept in the cabin of the tempo. Next day, he brought the tempo at the shop of Phadatare at Madha. Five bags were unloaded in the shop of Phadatare. They had gone to the shop of one Shah. Ten bags were unloaded for Shah and five bags were unloaded for his brother. They had come to Modnimb. Nine bags were given to one Mali. They went to Wangarwadi. Twenty bags were unloaded there for one trader. We came back to Kurduwadi. Five bags each were taken away through the jeep. He was given the hire charges of Rs.2300/-. Then, he took the vehicle to the house of his master. Whenever the sugar bags were unloaded from his tempo, some men stayed with him, so that he would not run away.

54. P.W. 37, Subhash Baburao Jadhav, was witness to seizure of trax-jeep.

55. P.W. 38, Bajarang Babu Chavan, was a panch when the dead body was recovered from near a Babul Tree in Village Khairav.

56. P.W. 39, Babasaheb Dattu Borkar, was the cook in Saiprasad Hotel, where a large number of truck drivers stayed and ate meals. He said that the truck in question had arrived at about 9.30 p.m. He took meals and slept in the truck. He did not know the cleaner, because he was not usually coming with the truck. The driver was wearing a Shando baniyan and dirty pants. The cleaner was wearing a shirt and dirty pants. He woke up the driver at about 4.00 a.m. He left the hotel with the truck. The truck was loaded with sugar. After one day, the owner of the truck had come to the hotel, and enquired from me about the truck.

57. P.W. 40, Ramesh Bibhishan Sarvade, is the owner of a pan shop, which remains open for 24 hours. On 6<sup>th</sup> June, 2000, the truck

driver came and told him that his truck was loaded with sugar and his truck had got punctured at Kurduwadi, and, therefore, he was late. One cleaner was with him. He did not know the cleaner, because he was not the usual cleaner. This pan shop was just near the hotel. He also told that after finishing the meals, the driver and cleaner slept in the truck and left in the morning.

58. P.Ws. 41 and 42, Dhanraj Sampati Chate and Rambhau Sheshrao Badane, respectively, are not important.

59. P.W. 43, Shirish Dattatraya Chavan, is a villager, who said that there was Grampanchayat Election on 9<sup>th</sup> June, 2000. At about 10.00 a.m., he had gone to Maloli for casting his vote. While returning towards land at about 11.30 a.m., Sayaba Ghorpade and Mahada Magar were with him. He noticed a dead body in the bushes of Mahananda on the Western side of Ghumerga Bridge. The bridge is on one *nala*. The dead body was of a man of the age of 25 to 30 years. There was an injury on the head of the dead body. Blood was oozing from the nostrils. Earlier day he heard that a tempo met with an accident near

the bridge. The trees and bushes at the place of dead body were quite thick. He thought that the man was killed in the accident of the tempo and he accordingly informed the police at Police Station Velapur. They reduced to writing his information.

60. P.W. 44, Chandrakant Hanmant Sutar, is the owner of vehicle Tata-709. He was driving the vehicle himself. In year 2000, his vehicle was taken to Kolhapur. It was taken by some persons after fixing the hire charges with the driver. Some sort of incident occurred and he was called to the police station. Police obtained his vehicle in their custody. After about 8 days, the vehicle was given in his possession. At that time, a writing was obtained from him on a stamp paper.

61. P.W.45, Janardhan Rama Madane, stated that he was working as a labourer. He had two sons and one daughter. He stated that two years before when he was taking his son to hospital, he came to Maloli to Akluj Road at about 7.00 a.m. for catching a bus. One tempo used for the carriage of milk arrived there from Salmah. He and his son, Vitthal Magar, got into that vehicle. The tempo proceeded in the direction of

Akluj. When they reached up to Chumera Nala (Odha), the driver said that the steering of the tempo got locked. The tempo fell from the bridge. He sustained injuries on his limbs and his son, Vitthal, also sustained injuries. He went to Police Station Velapur, and reported the matter there. Police had written his report and obtained his signature.

62. P.W. 46, Vitthal Bhagwan Magar, was also in the tempo, to which a reference is given by P.W. 45. The driver told that something had gone wrong with the steering. The vehicle fell in the nalla. He and other occupants of the vehicle sustained injuries. However, he came on the road, and got into another tempo used for carrying milk and came up to Velapur. The police sent us to the hospital. Nothing more happened in the accident.

63. P.W.47, Samadhan Ramchandra Sule, also is a witness to the incident of Tempo bearing Registration No.MH-12-B-805.

64. P.W.48, Chandrakant Bajarang Pokale, also is a witness with respect to the accident of the tempo. On 9<sup>th</sup> June, 2000, one

Shirish Dattatraya Chavan came to police station, Velapur. He informed that the dead body of a male was lying in the bushes of Mahanandi by the side of Ghumera Bridge. He said that the dead body was of a man involved in the accident. He recorded statement of Shirish Dattatraya Chavan. The witness went to that place and saw the dead body. He had effected an inquest thereupon. The inquest bearing his signature was Exhibit 125.

64A. P.W. 49, Shirish Shankarrao Bhosale, a Clerk in the Accounts Section of Vitthal Co-operative Sugar Factory, received money from a person who purchased 200 bags of sugar.

65. P.W. 50, Bhagwat Jalinder Kadam, is also a witness to the same transaction.

66. P.W. 51, Nagnath Rajaram Gund, is also a witness who testified that he had issued the Gate Pass to the truck in question for taking out 200 bags of sugar.

67. P.W. 52, Mansukh Babu Sayyad, is a security man, who also testified that the truck in question had carried 200 bags of sugar on the relevant date.

68. P.W. 53, Balasaheb Sadashiv Mhetre, is a photographer, who took the photographs of the dead body.

69. P.W. 54, Anil Shripati Khot, took the viscera in a sealed condition to the C.A.'s Office.

70. P.W. 55, Suresh Sundar Ghodake, was a panch witness to the seizure of the truck.

71. P.W. 56, Yaqub Shaikur Pimpri, P.S.I., registered Crime No. 99 of 2000, and did some investigation in the case.

72. P.W. 57, Dharmraj Dagadu Ombase, was the A.P.I., who also conducted the investigation in the matter.

73. P.W. 58, Ravindra Manikrao Rasal, was also A.P.I., for sometime, and also conducted the investigation. This witness assumes some importance, because the prosecution has challenged the testimony of P.W.1 as an approver. This witness said that on 19<sup>th</sup> August, 2000, he sent Santosh Shinde before the Chief Judicial Magistrate, Solapur, on getting permission from J.M.F.C., Pandharpur. He was sent through police escort from Police Station, Pandharpur Taluka. The defence counsel submitted that according to this witness on 19<sup>th</sup> August, 2000, the accused was in judicial custody in a jail. How was the custody of this person obtained by the policeman, so that he could be produced before the Magistrate? He stated in his statement that he obtained permission of J.M.F.C. In cross-examination, he was asked to produce such permission.

74. P.W. 59, Dr. Ashok Shankar Randive, is another doctor, who conducted the *post-mortem* of another dead body. He gave his report, Exhibit 127. According to him, the cause of death was strangulation.

75. The appellants have relied upon a judgment of the Supreme Court in *Sheshanna Bhumanna Yadav v. State of Maharashtra*, reported in AIR 1970 S.C. 1330. In paragraph 12, the Supreme Court held as under:-

“The law with regard to appreciation of approver’s evidence is based on the effect of Sections 133 and 114 illustration (b) of the Evidence Act, namely, that an accomplice is competent to depose but as a rule of caution it will be unsafe to convict upon his testimony alone. The warning of the danger of convicting on uncorroborated evidence is therefore given when the evidence is that of an accomplice. The primary meaning of accomplice is any party to the crime charged and someone who aids and abets the commission of crime. The nature of corroboration is that it is confirmatory evidence and it may consist of the evidence of second witness or of circumstances like the conduct of the person against whom it is required. Corroboration must connect or tend to connect the accused with the crime. When it is said that the corroborative evidence must implicate the accused in material particulars it means that it is not enough that a piece of evidence tends to confirm the truth of a part of the testimony to be corroborated. That evidence must confirm that part of the testimony which suggests that the crime was committed by the accused. If a witness says that the accused and he stole the sheep and he put the skins in a certain place, the discovery of the skins in that place would not corroborate the evidence of the witness as against the accused. But if the skins were found in the accused’s house, this would corroborate because it would tend to confirm the statement that the accused had some hand in the theft.”

The law is clear that even on the evidence of accomplice alone, conviction can be made, but as rule of prudence, the Courts have to insist on corroboration.

76. In *Bhiva Doulu Patil v. State of Maharashtra*, reported in AIR 1963 S.C. 599, while interpreting Section 133 of the Evidence Act, 1872, the Court held:-

“It cannot be doubted that under that section a conviction based merely on the uncorroborated testimony of an accomplice may not be illegal, the courts nevertheless cannot lose sight of the rule of prudence and practice which in the words of Martin B. in *R. v. Boyes*, (1861) 9 Cox CC 32 ‘has become so hallowed as to be deserving of respect’ and the words of Lord Abinger ‘it deserves to have all the reverence of the law’. This rule of guidance is to be found in illustration (b) to S. 114 of the Evidence Act which is as follows:-

‘The court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars’.

Both sections are part of one subject and have to be considered together. The Privy Council in *Bhuboni Sahu v. The King*, 76 Ind App 147: (AIR 1949 PC 257) when its attention was drawn to the judgment of Madras High Court in *In re Rajagopal* ILR (1944) Mad 308: (AIR 1944 Mad 117) where conviction was based upon the evidence of an accomplice supported by the statement of a co-accused said as follows:-

‘Their Lordships ---- ----- ---- would nevertheless observe that Courts should be slow to depart from the rule of prudence, based on long experience, which requires some independent evidence implicating the particular accused. The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue.’

7. The combined effect of Ss. 133 and 114, illustration (b) may be stated as follows: According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. The law may be stated in the words of Lord Reading C.J. in *R. v. Baskerville*, 1916-2 KB 658 as follows:-

‘There is no doubt that the uncorroborated evidence of an accomplice is admissible in law (*R. v. James Atwood*, (1787) 1 Leach 464). But it has been long a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice, and in the discretion of the Judge, to advise them not to convict upon such evidence, but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence (*R. v. Stubbs*, (1855) *Dears C C* 555; in re, *Meunier*, 1894-2Q.B. 415).’

77. The testimony of P.W.1 is not challenged by the defence as wholly unreliable, but it has been pointed out by the defence that there are certain omissions and there are certain contradictions, and his testimony is not corroborated in material particulars. The instances given by the defence are:

“(i) PW1 in his evidence at pages No. 102 and 104 states that the tyre of truck got punctured and was taken for repairing in one shop. On page 105 of his evidence he states that the diesel was filled at one petrol pump. On page 104 he states that the truck halted at hotel for taking meal where the waiter was abused and beaten. But not any person from the shop, petrol pump or hotel is examined to corroborate P.W.1 Santosh Shinde.

(ii) PW1 on page 106 of his evidence states that initially the accused persons took the truck to Bhogewadi where the maternal uncle of accused No.1 Mahesh resides for keeping sugar bags. But said uncle is not examined by prosecution.

(iii) PW1 on page 106 of his evidence states that he went to his uncle PW 31 Raosaheb Shelke for keeping sugar bags.

He said to his uncle that it might rain. Hence bags might be kept there. On the contrary, Raosaheb says that it was raining. PW1 further says that the truck is required for Varat which is not corroborated by PW 31 Raosaheb.”

78. To the first point, we do not find that by not getting a witness from the establishment, petrol pump or hotel, the testimony of P.W.1, Santosh Shinde, cannot be accepted, as his story has been supported by almost 30 witnesses and almost each bag of sugar has been recovered at the disclosures by accused. This testimony is supported by a close relation of one of P.W. 1. One witness, who is the husband of cousin of one of the accused, testified categorically that the accused persons had gone to his house at 2.00 a.m. in the night, and stored the sugar in his cattle shed. Similarly, the non-production of maternal uncle of accused No.1 would not be vital to the case, as there is ample evidence to suggest that the sugar was taken from the truck, it was sold to the person and money was received.

At (iii) above, it is stated that there is contradiction. Similar is the answer to the objection raised at (iii) above.

Therefore, we do not find any material contradiction between the testimony of the witnesses and the accomplice, which would in any way discredit the case of the prosecution.

79. Another ground to challenge the prosecution story was that according to the approver, one of the deceased died about 36 hours prior to conduct of his *post-mortem*, whereas the doctor found that the death occurred 24 hours prior to the *post-mortem*. The doctor's view in this matter cannot be accepted as conclusive proof about the time of the death of the deceased.

80. In material facts, we find that the approver's evidence is sufficiently corroborated by testimony of other witnesses and recovery made at the disclosure of the accused persons.

81. Another confusion was sought to be created on the basis of testimony of some of the witnesses. It appears that an accident had taken place around the same date when this occurrence took place at a place where the body of one of the deceased was thrown.

The learned senior counsel appearing for the appellants has submitted that the body found was, perhaps, the body of a person who suffered the accident in a tempo, and he relies on the testimony of P.Ws. 45, 46 and 47. P.W.45, as stated earlier, submitted that he suffered an accident, but he never said that anybody had died in the accident. Similarly, P.W. 46 was also in the tempo, and some of them who were in the tempo suffered injuries, but he had categorically said that nothing had come on record, except that this accident had happened there. P.W.47 also does not say that anybody died in such an accident, although there appears to be some confusion when the deposition of P.W.47 is taken into consideration when he submitted that there was an accident, he went to the police and he made an inquest on the dead body of the person who died in the accident, because the dead body was found on the basis of a report given by a person who had seen the dead body. In order to connect this dead body to the accident of the tempo, the evidence had to show who was the person in the tempo who died. Persons who travelled in the tempo were all alive, and persons who travelled in the tempo deposed that nobody out of them died, although there was an accident.

82. The learned counsel for the appellants has also argued that safeguards under Section 306 of the Criminal Procedure Code were not adhered to, and, therefore, there has been a miscarriage of justice. In this connection, he relies on a judgment of the Supreme Court in *Suresh Chandra Bahri v. State of Bihar, etc., etc.*, reported in 1965 S.C.C. (Cri) 60. In paragraph 30, the Supreme Court analysed the section and ultimately held:-

“The object and purpose in enacting this mandatory provision is obviously intended to provide a safeguard to the accused inasmuch as the approver has to make a statement disclosing his evidence at the preliminary stage before the committal order is made and the accused not only becomes aware of the evidence against him but he is also afforded an opportunity to meet with the evidence of an approver before the committing court itself at the very threshold so that he may take steps to show that the approver’s evidence at the trial was untrustworthy in case there are any contradictions or improvements made by him during his evidence at the trial. It is for this reason that the examination of the approver at two stages has been provided for and if the said mandatory provision is not complied with, the accused would be deprived of the said benefit. This may cause serious prejudice to him resulting in failure of justice as he will lose the opportunity of showing the approver’s evidence as unreliable. Further clause (b) of sub-section (4) of Section 306 of the Code will also go to show that it mandates that a person who has accepted a tender of pardon shall, unless he is already on bail be detained in custody until the termination of the trial.”

We have not seen in this case anywhere that these safeguards were not kept in mind.

83. Therefore, we have no doubt in our mind that the conviction under Section 364 read with Section 34 and Sections 396, 201 and 414 read with Section 34 of the Indian Penal Code was not misplaced. The prosecution has been able to prove the case beyond shadow of doubt against the accused persons. Therefore, the conviction and sentence are upheld. The appeals are dismissed.

**BILAL NAZKI, J.**

**A.R. JOSHI, J.**