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Exh. 169

IN THE COURT OF THE EXTRA JOINT SESSIONS JUDGE, PUNE
AT PUNE.
(S.R.KHANZODE)

SESSIONS CASE NO.: 236/2001

STATE OF MAHARASHTRA
(Police Station ,Saswad)

...Complainant

VS

1. Dnyāneshwar Suresh Borkar,
age 22 years , occ.education.

2. Amit @ Bapu Nanasaheb Bhandwalkar,
age 19 years, occ.education.

Both resident of Bhambodi,
Tal.Purandar, District Pune.

...Accused.

THE STATE represented by Special Public Prosecutor, Shri Vijay Sawant.
THE ACCUSED NO. 1 represented by Adv. Shri P.S.Suryavanshi & Shri Kambh
THE ACCUSED NO. 2 represented by Adv. Shri V.B.Pathare.

ORAL JUDGEMENT

(Delivered on this 15th, 16th and 18th day of December, 2004)

Accused no.1 Dnyaneshwar and accused no.2 Amit @ Bapu ,face trial for the offences punishable under section 120B ; 364A r/w 34, Sec. 364A; Sec.302, Sec. 302 r/w Sec.34, Sec. 201, Sec. 201 r/w Sec.34;Sec. 384 , Sec. 384 r/w sec.34 ; Sec. 506 (Part II) r/w Sec. 34,Sec. 506(II); of the Indian Penal Code.

2. The prosecution case in brief is that Dr.Ashok Mahadev Mainkar and his wife, Dr.Ashwini are medical practitioners at Saswad ,Taluka Purandar, District Pune. They had two children – elder daughter Ruta and a younger son Rishikesh ,who were respectively aged about 14 and 13 years at the time of the incident. Rishikesh used to attend computer class at Saswad. On the evening of 4.2.2001, when Dr.Mainkar had been to Pune to pick up his wife, Rishikesh left for his computer class around 6 a.m.Thereafter he did not return home . After Dr. Mainkar returned home in the late evening, since Rishikesh did not return till then,he started making enquiry for him. Rishikesh was not found and therefore on the morning of the next day,he gave missing report of Rishikesh at Police station Saswad.Police took immediate steps to trace the boy.In the evening of that day ,Dr.Mainkar received telephone call which revealed that something odd must have happened to Rishikesh and he was suspected to be kidnapped for ransom.The report was accordingly lodged with the police on the basis of which,this crime was registered bearing no. 13/2001 under Sections 363,384,506 of the Indian Penal Code .Thereafter Dr.Mainkar started receiving phone calls from the kidnapper who assumed the name as 'Salimbhai'. Police made arrangements to trace the calls and ultimately laid hands on accused no.1 Dnyaneshwar . It was further found that Rishikesh was murdered by the accused no.1 Dnyaneshwar.Accused no.2 Amit and one juvenile offender Nilesh Borkar were his accomplices in the said

felony. Rishikesh's dead body was discovered at the instance of accused no.1 Dnyaneshwar. The offence was converted accordingly to cover kidnapping and murder, etc. After completing the investigation, the accused were charge-sheeted on 02.05.2001. The learned Magistrate by order dt. 06.07.01 committed the accused persons for trial before the Court of Sessions.

3. Charge (Exh. 5) for the offences referred above was framed and explained to the accused no.1 Dnyaneshwar and accused no.2 Amit @ Bapu by my learned predecessor, to which they pleaded not guilty. (Exh. 6 & 7). Their defence is that of total denial.

10 4. Hearing Shri Vijay Sawant, learned Special Public Prosecutor, Shri P.S. Suryavanshi, learned counsel appearing for the accused no.1 Dnyaneshwar and Shri V.B. Pathare, learned counsel for the accused no.2 Amit @ Bapu, the following points arise for my determination and I record my findings against each of them, for the reasons to follow:

15 POINTS

FINDINGS

1. Does the prosecution prove that the accused no.1 Dnyaneshwar kidnapped deceased Rishikesh, in order that such person may be murdered or may be so disposed off as to put in danger of being murdered?

... Yes

20 2. Does the prosecution prove that the accused no.1 Dnyaneshwar no.2 Amit and the juvenile offender Nilesh formed common intention to kidnap for ransom, deceased Rishikesh and in furtherance thereof committed the said felony punishable under sec. 364A of the IPC?

... No

25 3. Does the prosecution prove that accused no.1 Dnyaneshwar committed murder of deceased Rishikesh?

... Yes

4.Does prosecution prove that accused no.1 Dnyaneshwar and accused no.2 Amit @ Bapu and the juvenile offender Nilesh formed the common intention to kidnap and murder or murder deceased Rishikesh ,and in furtherance thereof committed those felonies ?

... Yes, but only in respect of murder. No offence against accused no.2 Amit established, punishable under Sec. 364 r/w sec.34 of IPC

5.Does the prosecution prove that both the accused no.1 Dnyaneshwar and accused no.2 Amit alongwith the juvenile offender Nilesh were party to criminal conspiracy to commit the offence of kidnapping and murder of deceased Rishikesh ?

... No

6.Does prosecution prove that accused no.1 Dnyaneshwar no.2 Amit @ Bapu and the juvenile offender Nilesh,formed common intention to commit the offence of extortion(for which they face charge),and in furtherance thereof committed the said felony ?

... No.

7.Does prosecution prove that the accused no.1 Dnyaneshwar, no.2 Amit @ Bapu and the juvenile offender Nilesh, formed common intention to commit offence of criminal intimidation by threatening Dr.AshokMahadev Mainkar, to kill his son Rishikesh and in furtherance thereof committed the said felony ?

.. No.

8.Does prosecution prove that the accused no.1 Dnyaneshwar no.2 Amit and the juvenile offender Nilesh ,formed common to cause disappearance of evidence of murder of Rishikesh with intention to screen the offenders from legal punishment?

... Yes.

9.What order ?

... As per final order.

REASONS

5. For the reasons to follow, I find that the accused no.1 Dnyaneshwar s/o Suresh Borkar is guilty for the offences punishable under section 302, 201 r/w sec. 34, Sec. 201 simplicitor and sec. 364 of the Indian Penal Code. He is acquitted of the other charges. Similarly accused no.2 Amit is found guilty for the offences punishable under section 302 r/w sec. 34 and 201 r/w sec. 34 of the Indian Penal Code and for the other charges he is acquitted. Considering the fact that today's court time will shortly be over, I propose to hear both these accused on the question of sentence and then to proceed with the reasoning. The Learned Special Public Prosecutor as well as Counsels for both the accused (Shri Kamble appearing for the accused no.1 Dnyaneshwar for and on behalf of Adv. Shri P.S. Suryavanshi) and Shri V.B. Pathare for accused no.2 Amit, agreed to it and hence I proceeded to hear both the accused on the question of sentence accordingly. Both the accused made their respective submissions, but the learned counsels appearing for both sides requested that the matter be adjourned till tomorrow to hear them on this point. Hence the judgement is adjourned till tomorrow.

16.12.04.

6. In order to bring home guilt to the accused, prosecution relied upon various circumstances. There is no eye witness to the incident of actual murder. However extra-judicial confession made by the accused no.2 Amit to his cousin brother Gokul (PW 28) narrating the event of actual killing of Rishikesh is relied upon by the prosecution which supports the other evidence of murder of Rishikesh. The other evidence is the circumstantial evidence which has woven together various circumstances, which read together establish the guilt of the accused no.1 Dnyaneshwar and accused no.2 Amit, in committing this felony. This chain of

circumstances inter alia refers amongst others ,to events of missing of Rishikesh on the evening of 4.2.2001 ,(around 6 p.m.) ,after his visit to his computer class ,the accused no.1 Dnyaneshwar present around the same time near the said computer class and also sending his friend PW 25- Dattatraya Tupe to bring Rishikesh from the said class,Rishikesh leaving with the accused no.1 Dnyaneshwar and thereafter only found murdered ; movements of the accused no.1 Dnyaneshwar, no.2 Amit and the juvenile offender Nilesh around the same time,in between 4.30 p.m.to 7.30 p.m.on 4.2.2001 ,after making preparation for the crime viz. digging pit in the field known as SAVAR belonging to the accused no.1 Dnyaneshwar which is situated within the limits of village Kumbharwalan but near to the limit of village Bhambode where accused reside; plan to kill and bury the dead body and in furtherance thereof purchasing salt from the grocery shops which was found to be used while burying the dead body of Rishikesh; the other circumstances which relate to the phone calls made by accused no.1 Dnyaneshwar to Dr.Mainkar on Dr.Mainkar's phone no. '22553' from various places starting from the phone call made at 8.40p.m.on 5.2.2001 and subsequent phone calls made on the 6th ,7th and the 8th ,till ultimately tracing those phone calls, police reached to the accused no.1 Dnyaneshwar; one circumstance whereby selling the gold chain,accused no.1 Dnyaneshwar raised funds for himself to facilitate the execution of his plan to collect ransom amount from Dr.Mainkar; the various discoveries made by accused no.1 Dnyaneshwar inter alia including discovery of dead body of Rishikesh, discovery by accused no.1 Dnyaneshwar of the HERCULES bicycle used by Rishikesh and so also the personal articles of Rishikesh such as leather wallet (purse),wrist watch and chappal; another circumstance is that jean-pant on the person of Rishikesh at the time of his killing was burnt and accused no.1 Dnyaneshwar has shown the place where it was burnt and discovered the ash of the burnt clothing.

7. The other evidence is of discovery of articles like GHAMELE ,TIKAU ,

used for digging the pit ,at the instance of accused no.1 Dnyaneshwar and the other article for digging the pit i.e. spade discovered at the instance of juvenile offender Nilesh Borkar.

8. Starting with the evidence of Dr.Mainkar (PW 38 Exh.121) to unfold the events of missing of Rishikesh from the evening of 4.2.2001, it can be seen that on that evening Dr.Mainkar went to Pune to bring back his wife Ashwini who had gone there for some work. In their absence, both the children were at home. Rishikesh left his home to visit his computer class i.e. APTECH COMPUTER CLASS at Saswad. When from Pune Dr.Mainkar contacted his home on the phone, his daughter Ruta informed him that Rishikesh who had left home to visit his computer class was yet to return home. When Dr.Mainkar returned home along with his wife around 10 p.m., he found his daughter Ruta waiting for him in the porch and he came to know that Rishikesh had not returned home till then. Ruta further informed him that when she made enquiry about Rishikesh at his computer class around 8 p.m., Rishikesh was not there and one boy named Jagtap informed her on the phone that Rishikesh was with him and would return on the next day. The evidence does not clearly unfold the circumstance as to who this Jagtap was. From the evidence of Dr.Mainkar it is further revealed that Rishikesh was not a person who would remain out of the house without giving any information and therefore he immediately started making enquiry about Rishikesh from the teacher at the computer class and from friends of Rishikesh. At around 11 p.m., anxious about Rishikesh Dr.Mainkar even visited the police station at Saswad but the police official present there advised him to wait for some time since children were in the habit of leaving and thereafter returning home. Rishikesh did not return home throughout the night. Therefore, in the morning Dr.Mainkar again went to Police Station Saswad and gave report of missing of Rishikesh. (Exh.122). Police Sub-Inspector (PSI) Kshirsagar who was in charge of Police Station Saswad took

immediate steps to trace the missing Rishikesh. He had circulated information giving details of Rishikesh along with his photograph and description of his clothing to the adjoining police stations. He also warned adjoining police stations over the wireless. Copy of such information given to the adjoining Police stations on 5.2.2001 is on record at Exh.140. However, their efforts were not bearing fruits.

9. Thereafter on 5.2.2001, around 8.40 p.m. PW 38- Dr. Mainkar received the first phone call from the kidnapper telling him in Hindi that Rishikesh was with him and demanded ransom amount of Rs. 5 lac. After this, Dr. Mainkar only after spending a restless night could make up his mind to report this development to the police. Then around 6 a.m. on 6.2.2001 he went to the Police Station Saswad and informed the police about the phone call and lodged formal complaint of kidnapping of his son Rishikesh for ransom. The said complaint is on record at Exh.123 and on the basis of it, this crime no.13/2001 for offences under Sec 363,384,506 of the IPC was registered after taking note at the station diary at serial no. 7/2001. PSI Kshirsagar (PW 41) also did not waste time to take further steps. He had already taken steps to inform and request the Telephone officials to keep track of the phone calls of Dr. Mainkar. Letter given to that effect dt.5.2.2001 is on record at Exh.105- (Art L-1). It appears from the record that consequent to it phone of Dr. Mainkar was kept under observation from around 10 p.m. of 5.2.01. The evidence of the telephone official and the summary of the calls made on the phone of Dr. Mainkar collected from the computer data of Saswad Telephone Exchange (Exh.106) further confirms these facts.

10. Simultaneously two police constables were deputed at the residence of Dr. Mainkar and two constables were deputed at the Telephone Exchange Saswad to monitor the calls of the kidnapper. This precaution yielded results to ultimately trace the calls made by the kidnapper and lay hands on the accused no.1 Dnyaneshwar as

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the author of those calls.

11. Before dealing with the evidence relating to the various phone calls made by the kidnapper, who assumed the name of 'Salimbhai', from time to time from the evening of 5.2.2001 until late evening of 8.2.2001, let us look at the other circumstances and happenings. I have already referred to the event of missing of Rishikesh from around 6 p.m. of 4.2.2001. PW 26 Atul Chavan (Exh. 93) is the person serving at Aptech Computer Education at Saswad. According to him, deceased Rishikesh was their student since 2.11.1999 and Rishikesh used to attend evening batch between 7 p.m. to 8.30 p.m. The students were allowed to make free use of internet on Sundays between 11 a.m. to 5 p.m. On 4.2.2001 at 6 p.m. deceased Rishikesh visited the computer class and met PW 26 Atul Chavan and enquired from him about one Rohit Jagtap. Since such a person was not present then, he told Rishikesh accordingly and Rishikesh left. After Rishikesh had left one boy came and enquired about Rishikesh and he informed the said boy that Rishikesh had just left the class. The said boy was none other than PW 25 Dattatraya Tupe. In his evidence Dattatraya Tupe (Exh. 92) stated that he is an inhabitant of Borkar- vasti of Ambodi (in the charge wrongly mentioned as 'Bhambodi') Village and knew accused no.1 Dnyaneshwar as well as the juvenile offender Nilesh since from the time prior to this incident. On 4.2.2001, around 4.45 p.m. he went to Saswad S.T. Stand to make a phone call. When returning to his village on his bicycle, he met the accused no.1 Dnyaneshwar and they had tea in the hotel. Thereafter accused no.1 Dnyaneshwar asked him to call Rishikesh from the Aptech Class. When he told accused no.1 Dnyaneshwar that he did not know Rishikesh, accused no.1 Dnyaneshwar assured him that he need not worry about that, since Rishikesh was already informed and he should only visit the class and give message to Rishikesh. Accordingly P.W. 25 Dattatraya Tupe went to the Aptech Class and made enquiry with the teacher present

there about Rishikesh but the teacher told him that Rishikesh had just left the class and he might have crossed Rishikesh near the staircase. Therefore, he returned back to inform accused no.1 Dnyaneshwar about this. At that time one boy was standing with accused no.1 Dnyaneshwar whom the accused no.1 Dnyaneshwar introduced to Dattatraya Tupe, as Rishikesh. Rishikesh was wearing T-shirt of chocolate and yellow colour vertical stripes and full pant. Thereafter accused no.1 Dnyaneshwar and Rishikesh went away together on M-80 of the accused no.1 Dnyaneshwar. M-80 of accused no.1 Dnyaneshwar bears the number as MH 12-AK-1980. Witness Dattatraya Tupe further identified the T-shirt which he had noticed on the person of Rishikesh in the above referred meeting. It is the same tee-shirt which was found on the dead body of Rishikesh when it was exhumed. Thus if Rishikesh was murdered soon after his kidnapping at around 6 p.m. from the Aptech Class on 4.2.2001, he was seen alive for the last time in the company of the accused no. 1 Dnyaneshwar. Therefore when this theory comes into play, where the time gap between the point of time when the accused no.1 Dnyaneshwar and deceased Rishikesh were last seen together and when deceased Rishikesh is found dead, then the possibility of any person other than the accused no.1 Dnyaneshwar being the author of the crime becomes impossible and the circumstances can be relied upon to fasten guilt on the accused. Useful reference on the point can be made to Bodhraj @ Bodha and others vs State of Jammu & Kashmir, reported in 2003 Supreme Court Cases (Criminal) 2001. In the given case, in all probability murder of deceased Rishikesh is committed on the 4th itself referring to the event of murder as revealed from the extra-judicial confessions of both the accused no.2 Amit and accused no.1 Dnyaneshwar. The fact that on 4th afternoon and evening itself both these accused along with their accomplice -the juvenile offender Nilesh, were seen in the company of each other and after considering the totality of all the circumstances including the opinion of the autopsy surgeon as to the probable time of death of Rishikesh.

So many days in the intervening period!

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12. Coming to the extra-judicial confession of accused no.2 Amit made to the PW 28 Gokul Khomne (Exh.96), I find it not only inspires confidence but it appears to be voluntarily made to a close relative and a person of confidence of accused no.2 Amit and the circumstances in which it is made makes it safe to accept the same and rely upon it. It is observed in Magharsingh vs State of Punjab, reported in AIR 1975 Supreme Court 1320, to the effect that the evidence furnished by extra-judicial confession made by the accused to witnesses cannot be termed tainted evidence and if corroboration is required, it is only by way of abundant caution and if the Court believes the witness before whom the confession is made and is satisfied that the confession was voluntary, then in such a case, the conviction can be founded on such evidence alone.

13. The same can be said in respect of the extra-judicial confession of the juvenile offender Nilesh Borkar made to PW 23 Rahul Borkar, regarding digging of the pit from which later on the dead body of Rishikesh at the instance of accused no.1 Dnyaneshwar was discovered. The other extra-judicial confession is made by accused no.1 Dnyaneshwar himself before his friend and person of confidence Pramod Tekawade (PW 29). All these extra-judicial confessions to which reference in detail would be made in the course of this judgement, are found to be made voluntarily, without any inducement, and are safe to accept, and the persons to whom they are made are reliable witnesses.

14. The accused no.2 Amit stated to his cousin brother Gokul Khomne -PW 28(exh. 96) that on 11.2.2001, when he was working at a building construction site accused no.2 Amit came to meet him and on seeing accused no.2 Amit, he observed that health of accused no.2 Amit was seen deteriorating. Vernacular version of the

Amik confession on Borkar killing by

said observation is "Babu tu lai suklal ahe". Thereupon accused no.2 Amit opened himself and told him that he and Nilesh Borkar had dug a pit at SAVAR (i.e. the name of the field from which dead body of Rishikesh was discovered) and thereafter accused no.1 Dnyaneshwar brought Rishikesh there on the vehicle and with the help of a wire, suffocated Rishikesh at neck (strangulation?) and before that pressed neck of Rishikesh with hand and after killing Rishikesh, he himself (i.e. accused no.2 Amit), accused no.1 Dnyaneshwar and Nilesh Borkar buried Rishikesh in the pit. It is further revealed from his evidence that after coming to know about murder of Rishikesh, though he did not inform the police about it, he had disclosed this information to the parents of accused no.2 Amit and to his own family members also. His such conduct cannot be termed as unnatural considering his close relationship with accused no.2 Amit. Therefore, not informing the police immediately is a circumstance at all to discard his evidence. The extra-judicial confession made to him by the accused no.2 Amit can be safely accepted and relied upon and this establishes the event of actual murder of Rishikesh by accused no.1 Dnyaneshwar by strangulation with clutch wire. When the dead body of deceased Rishikesh was exhumed and discovered at the instance of accused no.1 Dnyaneshwar, this clutch wire was found knotted around the neck of deceased Rishikesh and the autopsy surgeon Dr. Eknath Male (PW 35, Exh. 110) has also further confirmed death of Rishikesh as death by strangulation. His post-mortem notes are also on record at Exh. 111.

15. Thus these subsequent events discovered further serve to corroborate the version of the incident given by the accused no.2 Amit in his extra-judicial confession.

16. The accused no.1 Dnyaneshwar knew P.W. 29 Pramod Tekawade since they were studying together at Waghere College at Saswad and were

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5 friends. According to P.W 29 -Pramod, on 6.2.2001, accused no.1 Dnyaneshwar told him that one boy was with him ,and for whom he would be getting money. When P.W.29 Pramod inquired from accused no.1 Dnyaneshwar as to who was the said boy, accused no.1 Dnyaneshwar replied that he would know about it later on but confirmed that the said boy was from a rich family (mothya gharcha). Witness Pramod Tekawade further stated that accused no.1 Dnyaneshwar owns and uses an M-80 red colour vehicle. The next extra-judicial confession made to him by accused no.1 Dnyaneshwar is on the same day in the evening ,in the presence of another friend Pravin Tekawade. According to witness Pramod Tekawade (exh.97),when they were 10 at the house of Pravin Tekawade , taking the chance of privacy accused no.1 Dnyaneshwar requested him not to disclose anything to Pravin which he had disclosed to him in the morning (i.e. about one boy with accused no.1 Dnyaneshwar and for whom accused no.1 would be getting money etc..)and thereafter when they went out and were sitting by the side of the ODHA ,accused no.1 Dnyaneshwar disclosed to 15 him and Pravin that three days back he had murdered one boy with the help of clutch wire and that he had burnt all the evidence and when Pravin inquired from accused no.1 Dnyaneshwar as to who was the boy, the accused no.1 Dnyaneshwar told that the said boy was of marriageable age and that missing information of the said boy would be known to them later on .Accused no.1 Dnyaneshwar further told them that said boy 20 was creating obstacles in the business and therefore,accused no.1 Dnyaneshwar committed said act. Accused no.1 Dnyaneshwar further disclosed to them that when his father was alive a person from Saswad got transferred property to himself taking advantage of liquor vice of his father and that the property of his father was grabbed by the said person and that the person had accumulated more property on the basis of the property of his father and that said person was to give accused no.1 Dnyaneshwar Rs. five lac ,for acquiring the said property.At this juncture,the accused 25 no.1 Dnyaneshwar further told them that to bring and collect that money of Rs. five

lac, they should find a person who was not knowing any one of them and when they expressed their inability to find such a person, and when Pravin Tekawade asked accused no.1 Dnyaneshwar as to from where that money was to be brought, accused no.1 Dnyaneshwar told them that from near Bhairoba Temple, said money was to be brought. It is revealed from the evidence that Bhairoba Temple is near to the house of PW 38 -Dr.Mainkar. This sort of extra-judicial confession that incorporates other facts which appear to be planted falsely, apparently to camouflage the real intention to find suitable person to collect ransom, speaks of the mind of the accused no.1 Dnyaneshwar to the effect that one boy was in his custody or taken by him in custody and for which he was expecting to receive amount of Rs. five lac and the said amount was to be brought from near the Bhairoba Temple. As the other evidence would reveal, the boy was from the well-to-do family of Dr.Mainkar and ransom amount of Rs. five lac was demanded from Dr.Mainkar and the kidnapper was asking Dr.Mainkar to keep that amount ready and to hand over the same to a person who would come to visit Dr.Mainkar on his behalf. Therefore these revelations of the extra-judicial confession in the light of the other circumstances disclosed, assume importance. It also supports other evidence to confirm that Rishikesh was murdered soon after kidnapping.

17. Referring to the evidence of P.W 21 Chandrakant Yadav, on 4.2.2001 around 4.30 p.m. accused no.1 Dnyaneshwar visited his tea shop in the company of two other persons, one of them was the accused no.2 Amit, for a cup of tea. The accused no.1 Dnyaneshwar came to his hotel using his M-80 moped along with his friends. At that time he paid extra amount i.e. Rs.21.50 ps against the bill of Rs. 6/- and asked this witness to keep the balance amount. This particular strange conduct perhaps led this witness to remember the incident and the event. There is also no reason to disbelieve this witness who confirms the presence of accused no.1

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Dnyaneshwar and accused no.2 Amit together shortly before the kidnapping of deceased Rishikesh around 6 p.m.

5 18. After the kidnapping or killing of Rishikesh ,immediately thereafter in a field belonging to accused no.1 Dnyaneshwar and known as SAVAR the accused no.1 Dnyaneshwar, and accused no.2 Amit and the juvenile offender Nilesh ,were noticed together going on the M-80 vehicle of accused no.1 Dnyaneshwar by the Waghapur -Saswad Road,towards Saswad around 7 p.m. , by the P.W. no.22 Vimal Borkar .This particular location also has some importance since the chappal of deceased Rishikesh (ART 20) was discovered later from the well in the vicinity of this area at the instance of accused no.1 Dnyaneshwar.The evidence of the P.W. 22 Vimal Borkar stands well during her cross-examination and is reliable.

noticed seeing through

15 19. Shortly thereafter around 7.30 p.m. the accused no.1 Dnyaneshwar, no.2 Amit and juvenile offender Nilesh Borkar were noticed by P.W. 23 Rahul Borkar,going on the M-80 vehicle of red colour of the accused no.1 Dnyaneshwar, in Saswad direction.This witness was at that time gossiping with his friend near the Yeshwantrao Temple of the village and knew the accused since they belonged to his village Ambodi . It is argued on behalf of the defence that this witness like the others is also a got-up witness but I find no reason to accept such a submission. The credibility of this witness remains unimpeached during the course of cross-examination and there is no reason to disbelieve the witness.

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18.12.2004.Contd...

20. Around 8 p.m. on 4.2.2001 it is stated that one person calling himself Rohit Jagtap phoned at the residence of Dr.Mainkar which was received by his daughter Ruta and she was informed that Rishikesh was with him and would return home in the

10/10/18
Rohit Jagtap?

morning. This fact is mentioned in the missing report given by Dr. Mainkar at Exh. 122. Perhaps such information therefore led PSI Kshirsagar to suspect kidnapping and thus to take precautionary measures along with other measures requesting telephone officials to keep the phone of Dr. Mainkar bearing no. 22553 under surveillance (exh. 105, Art L-1). However in his evidence Dr. Mainkar (PW 38) has stated that Ruta made phone call to computer class around 8 p.m. of 4.2.2001 where she was told accordingly by Rohit Jagtap. This mistake may be inadvertently occurred. There is no cross-examination to Dr. Mainkar on this aspect and therefore it does not assume much significance and one has to consider this fact on the basis of the information given in the missing report Exh. 122, the correctness of which is also affirmed by Dr. Mainkar in his evidence. P.W. 41 PSI Kshirsagar in the initial part of his investigation tried to trace person assuming name of 'Rohit Jagtap' but there is no clear evidence to identify said Rohit Jagtap, as observed earlier.

21. The other importance piece of evidence(s) against the accused no. 1 Dnyaneshwar is in respect of various discoveries which inter alia include pointing out the place of discovery of the dead body of Rishikesh which was buried in his field known as SAVAR, discovery of the personally used articles of deceased Rishikesh which were on his person and used by him when he was kidnapped viz. the leather wallet (ART 19), wrist watch (ART 18), chappals (ART 20) and bicycle of HERCULES company, black colour (ART 28). He has also shown place where the jean-pant on the person of Rishikesh at the time of his killing was burnt as mentioned earlier. The ash which was seized from the place, further confirms that it was the ash of burnt cloth.

22. These discoveries are made as per the information voluntarily disclosed and the willingness shown by the accused no. 1 Dnyaneshwar from time to time. On each

promised to Rohit Jagtap

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5 occasion, after getting information about his willingness to discover these articles, the police called panchas, recorded his memorandum statement(s) and then recorded panchanama(s) of what happened as part of the discovery of those particular items. At the time of the discovery of dead body of Rishikesh, even the Tehsildar and Executive Magistrate, of Saswad viz. the PW 37 Maruti Borkar was present. It is argued on behalf of defence that all these discoveries are made up show and the accused never gave any statement and discovered any items. I am afraid the evidence does not support the same and such contentions cannot be accepted. It is also argued that when initially house of accused no.1 Dnyaneshwar was searched for Rishikesh, soon after the arrest of accused no.1 Dnyaneshwar, police did not find any wrist watch or leather wallet in the house. This argument is also devoid of substance, since these two articles were concealed, one behind the Television set and the other behind the photo frame and were discovered only at the instance of the accused no.1 Dnyaneshwar subsequently. The other articles discovered is the iron casket (Ghamele) from ota of the house of accused no.1 Dnyaneshwar at his instance, again at a later point of time and for the same reason stated above, this discovery also cannot be attacked only for the reason that in the initial search of the house of the accused it was not found. I find that considering the totality of the circumstances and scanning the evidence of each and every witness, connected with these discoveries, there is no reason to discard such evidence. These discoveries undoubtedly confirm the involvement and participation of the accused no.1 Dnyaneshwar with the killing of Rishikesh.

23. The accused no.1 Dnyaneshwar was arrested on the evening of 8.2.2001. He was nabbed after he was traced through his phone calls made to Dr. Mainkar and to which I will come later on. After his arrest, for the search of Rishikesh, immediately along with accused no.1 Dnyaneshwar, the police went to the house of accused no.1 Dnyaneshwar at village Ambodi along with the panch witnesses. His house was

searched .Rishikesh was not found but clothes which were the personal apparel and in use of accused no.1 Dnyaneshwar were seized at that time.Those clothes are Art. 1 to 10.This fact is admitted by accused no.1 Dnyaneshwar in his statement recorded under section 313 of the Criminal Procedure Code,1973 (referred hereinafter as the Code for brevity). Said house search was taken in presence of panch Santosh Dhonde (PW 5 Exh.45)and the house search panchanama,which started at 7 p.m. and ended at 8.30 p.m. is on record at Exh.47 . Earlier, accused no.1 Dnyaneshwar was arrested at 6 p.m.as per the arrest panchanama,- Exh.46.The Investigating Officer PSI Kshirsagar (PW 41) also confirmed these facts.

24. While in police custody after his arrest,the accused no.1 Dnyaneshwar on 8.2.2001, in the late evening showed his willingness to discover the bicycle belonging to the deceased Rishikesh ,thrown by him in the well. His memorandum statement in the presence of panch witness – PW 1 Dr.Dilip Waghlikar (exh.28) is on record at Exh.29 and thereafter the accused no.1 Dnyaneshwar led them to the well near Taradutt Park Colony and told that the bicycle was thrown in the well. It was not visible since the well had water. However when search was taken with help of rope and hook,the bicycle was found and was taken out and then seized.It was a black colour bicycle of HERCULES company belonging to Rishikesh , reference to which was made in the missing report at Exh.122. The panchanama,drawn of the process is on record at Exh. 30. The accused simply denied this circumstance in his statement recorded under section 313 of the Code (Question 45) .In his further written statement filed at the time of recording his statement under section 313 of the Code (Exh. 6A) accused no.1 Dnyaneshwar has stated that PSI Kshirsagar himself threw the bicycle in the well and then prepared the documents of alleged discovery implicating him. No such reference can be found during the cross-examination of PW 41 PSI Kshirsagar. The conduct of the accused no.1 Dnyaneshwar in simply denying and further giving

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5 false statement under section 313 of the Code, only supports the prosecution evidence on this point on record and offers corroboration to the evidence of discovery of this bicycle by the accused no.1 Dnyaneshwar. It appears that accused no.1 Dnyaneshwar had meticulously planned each and every step of this felony, which is executed by him and which is established from the evidence led in this case. Let it be making preparation and digging pit where the deceased was buried, let it be purchasing salt to dispose of dead body of deceased Rishikesh, let it be searching a person for sending him to house of Dr. Mainkar as emissary for collecting the ransom amount or otherwise. Likewise referring to the movements of accused no.1 Dnyaneshwar, and to 10 which reference is made earlier on the evening of 4.2.2001, it is further seen that after he returned to Saswad, after kidnapping and killing Rishikesh, around 8 p.m. there was one phone call received by Ruta at her house telling her that Rishikesh was with the caller by name Rohit Jagtap and would return in the morning. Around the same time, the bicycle which was left at APTECH CLASS, since Rishikesh was taken from there 15 by accused no.1 Dnyaneshwar on his vehicle, in all probability must have been disposed off by the accused no.1 Dnyaneshwar by throwing it in the well, to destroy evidence of kidnapping. Nobody else had any reason to do so or had knowledge of the said bicycle, except the accused no.1 Dnyaneshwar.

How planned?

24. Accused no.1 Dnyaneshwar thereafter continued to be in police custody and when taken in confidence as a part of the interrogation, further disclosed 20 information as to where he had buried the dead body of Rishikesh. PW 41 PSI Kshirsagar therefore immediately had reported to Tehsildar and Executive Magistrate PW 37 Maruti Borkar, since the dead body was to be exhumed after the place was shown by accused no.1 Dnyaneshwar. The said request letter which was received by 25 PW 37 Maruti Borkar at 7.45 a.m. on 9.2.2001 is at Exh. 117 and which also bears the endorsement of this witness. Thereafter PW 41 PSI Kshirsagar, called the panchas and

recorded memorandum statement of accused no.1 Dnyaneshwar accordingly. Panch witness of this event PW 2 Dr.Sanjay Raval (Exh.31) says about the statement given by accused no.1 Dnyaneshwar which led to discovery of the place where when dig out dead body of Rishikesh was found buried. Exh.32 is the memorandum statement while Exh.33 is panchanama of the process and these events are further confirmed and established and find support from the evidence of the Investigating Officer PW 41 PSI Kshirsagar and PW 37 Maruti Borkar as well as from the photographs covering the vent taken by the police photographer PW 39 Arun Bhavlikar (Exh.125) . These photographs are amongst the photographs at Exh.40 /1to 44.

25. This discovery is attacked on behalf of the defence on the ground that the panch witness Dr.Sanjay Raval being the Medical Practitioner was obliging Dr.Mainkar and on the ground that there was no reason for the Executive Magistrate PW 37 Maruti Borkar to sign the memorandum statement and the panchanama when there is no reference to him in contents of those two documents.I am afraid this contention is also devoid of any substance.There is no reason to believe that PW 2 Sanjay Raval was obliging Dr.Mainkar . The circumstances in which Executive Magistrate Maruti Borkar was summoned , since the dead body of Rishikesh was to be exhumed as per the information disclosed by accused no.1 Dnyaneshwar is already mentioned earlier (Exh.117) .Therefore,the presence of Executive Magistrate who stated that he followed the jeep in which accused no.1 Dnyaneshwar was leading police party and panch witness to show the place where he had buried dead body of Rishikesh ,further brings credibility to this evidence and acceptance thereof. His signatures are undoubtedly on these documents. Mention in the body and contents of the documents of his presence was not necessary or material, and mere omission thereof in the contents of the documents would not affect n the credibility of this piece of evidence. The discovery also cannot be attacked by saying that the dead body was

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buried in the field SAVAR ,since known to the police is not a discovery .I am afraid it was only the field SAVAR mentioned but where exactly the dead body was buried was not known to police or to the panch witnesses and that place was only within the knowledge of the accused no.1 Dnyaneshwar which he pointed out and when the soil was unearthed at that place at some depth, the dead body of Rishikesh was found. It was taken away. It was already in a state of decomposition. Looking to it's condition, inquest panchanama, as well as the post mortem was arranged in the field itself. After the dead body was taken out, Dr. Mainkar was summoned to the place. He came with his daughter Ruta and identified the dead body as that of his son Rishikesh and also received the dead body for the last rites, after the post mortem examination was over. The receipt Exh.109 is signed by Dr. Mainkar and his daughter Ruta. The dead body was handed over to Dr. Mainkar to complete the formalities by Police Head-constable Gautam Makhre (PW 34 Exh.107) . Inquest panchanama which was carried out in the presence of panch witness (PW2) Dr. Raval is on record at Exh.34 . Clothes found on the dead body of Rishikesh viz. banian Art 14, underwear and T-shirt of chocolate yellow colour vertical stripes , were identified as the clothes of deceased Rishikesh by Dr. Mainkar They find mention in the missing report Exh.122 and description of clothes on the person of Rishikesh was also given by witness PW 25 Dattatraya Tupe ,supra. Clutch wire was found wrapped around the neck of the deceased Rishikesh with knot. The dead body was buried by spreading salt over it to which reference is made earlier. All these circumstances amongst others not only bring home guilt to the accused no.1 Dnyaneshwar to the killing of Rishikesh, they also support the extra-judicial confession of accused no.2 Amit to PW 28 Gokul Klonne. supra.

25 26. A few days after the discovery of the dead body of Rishikesh while in police custody, the accused no.1 Dnyaneshwar showed his willingness to discover the

place where he had burnt the jean-pant removed from the body of Rishikesh after his killing. Therefore, immediately ,thereafter panch witnesses were called and memorandum statement dt.11.2.2001 at 11.20 a.m.was recorded in the presence of panch witness PW 3 Balasaheb Bhintade (Exh.36) .This memorandum statement is on record at Exh.37 and thereafter accused led them to the place and showed the ditch where some clothes were seen burnt and therefore sample of ash (ART 17) from that place was collected and seized.Discovery panchanama is at Exh.38. Sample of the ash was sent to Forensic Science Laboratory, confirmed it to be the ash of burnt clothes (Exh.156) .

27. When the accused no.1 Dnyaneshwar showed his willingness to discover the place where the full pant of Rishikesh was burnt at the same time he had also shown willingness to discover the wrist watch belonging to Rishikesh (Exh.37) and thereafter after showing the place where the pant was burnt,he led the police party to his house ,went inside it and from behind the tape-recorder kept on the TV, took out the wrist watch of ESCORT company with black dial and produced it .It was seized accordingly.The wrist watch seized is at ART 18 and the panchanama of discovery is at Exh. 38, supra. This wrist watch is further identified by Dr.Mainkar, as one belonging to Rishikesh.

28. The accused no.1 Dnyaneshwar was not disclosing everything at one and the same point of time. On 11.2.2001,after returning to police station,after discovering the wristwatch ,supra,the accused no.1 again showed willingness after about an hour thereafter to show the place where he had concealed his M-80 vehicle of red colour. As earlier pointed out he was found moving on this vehicle and had even taken Rishikesh at the time of his kidnapping with him on the said vehicle and brought him to the field SAVAR on the same vehicle and then killed him. Further when his

subsequent movements were traced when he was making some of the phone calls to Dr. Mainkar to demand the ransom amount he was using the same vehicle. Memorandum statement of accused for this discovery was also recorded in the presence of PW 3 Balasaheb Bhintade and is on record at Exh.39 and thereafter accused led them to the place where at the base of a culvert over a nala, a place which could not be seen by regular passersby from over the culvert, he showed and discovered his M-80 vehicle and which was accordingly seized under panchama at Exh.40. In respect of this discovery also when accused no.1 Dnyaneshwar was put a question in his statement under section 313 of the Code, he simply denied it and did not offer any explanation. At the same time in his written statement filed at that time Exh.6A, he tried to make up a story that he had given report of missing of the M-80 vehicle to police and on the pretext of tracing it, PSI Kshirsagar falsely implicated him. There is no reference to such type of story during the cross-examination of PW 41 PSI Kshirsagar. This conduct of the accused no.1 Dnyaneshwar, by discovering the M-80 belonging to him from a place which was not known to anyone except the accused no.1 himself and then offering a very false explanation in his statement Exh.6A about the vehicle, like in the case of the discovery of the HERCULES bicycle discovered by him earlier, supports the prosecution case and also offers the missing link to the circumstantial evidence appearing against him. Useful reference on the point can be made to observations of their Lordships in the matter of Anthony D'souza and others vs. State of Karnataka, reported in 2003 (1) CRIMES 100 (SC); and Vasa Chandrashekhar Rao etc. vs. Poona Satyanarayan and others etc. reported in 2000 (2) Crimes, 328 (SC).

29. When the accused showed his willingness and intention to discover the concealed M-80 vehicle, at the same time he had also shown his willingness to discover the leather purse of Rishikesh (Exh.39). After pointing out the place

wherefrom the M-80 was discovered, accused no.1 Dnyaneshwar further led the police party and panchas to his house and took out the leather purse of black colour concealed behind a photo frame. It was seized accordingly as per panchanama, Exh.40 and the said leather purse is at ART 19 which was identified by Dr.Mainkar as belonging to deceased Rishikesh.

30. After discovery of the M-80 vehicle and the purse at the instance of accused no.1 Dnyaneshwar, police party returned to the police station. Thereafter the accused no.1 Dnyaneshwar again showed willingness to show the chappal (i.e. footwear) belonging to deceased Rishikesh which he had thrown in the well. His memorandum statement was accordingly recorded in presence of panchas (Exh.41). Panch witness was again PW 3 Balasaheb Bhintade. Accused no.1 Dnyaneshwar then led them to the well which had less water and from the well the said chappal (ART 20) was discovered and seized. This chappal is further identified by Dr.Mainkar as belonging to Rishikesh. These events are photographed by the photographer PW 39 Arun Bhavdikar, supra.

31. The place of discovery of the M-80 vehicle had another supporting evidence. The last telephone call to Dr.Mainkar made by the kidnapper which was traced as made from village Ekatpur from the coin box kept at the shop of one Kaluram Zhurange (PW 19). This witness had given information that the person who made the said telephone call came with one Sudhakar Zhurange and then proceeded on his red-colour M-80 vehicle towards Khalad. The direction in which the caller, who was later on identified as the accused no.1 Dnyaneshwar, proceeded. Therefore it is relevant when the M-80 vehicle was discovered by the accused no.1 Dnyaneshwar from the ODHA situated on the road, in which direction he proceeded after making the telephone call from the coin box of Sudhakar Zhurange.

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32. These discoveries in the presence of panch witness PW 3 Balasheb Bhitande were also attacked on the ground that they were made one after another and at different points of time ,on 11.2.2001 but I find that this submission is also devoid of any substance,since the discoveries were made consequent to the disclosures made by the accused no.1 Dnyaneshwar at different points of time. It is only accused no.1 who chose to make his statements at different points of time ,one after another,and I find no reason to discard the evidence of these discoveries on this count. The evidence of the panch witness PW 3 Bhitande , the course adopted by the Investigating Officer PSI Kshirsagar and the other evidence on this point appears trust worthy and acceptable.

33. As stated in his evidence by the Investigating Officer PSI Kshirsagar, (PW 41 Exh 139) , it was revealed during his investigation that accused no.1 Dnyaneshwar, as a part of his preparations to commit this felony maintained one exercise book in which he had taken notes of his computer class and in which it was found later on that the conversation modules were written down by accused no.1 Dnyaneshwar Therefore when search of the house of accused no.1 Dnyaneshwar was taken in presence of PW no. 4 Jamir Bagwar (Exh.43) on 19.2.2001 at around 11 a.m this computer class note book of accused no.1 Dnyaneshwar was found and seized (ART 1) as per the panchanama at Exh.44 and the module conversations written in Hindi and Marathi (Devnagari script) are on the page of said note book which is marked Exh. 44A.Accused no.1 Dnyaneshwar admits the writing on Exh.44A as his own handwriting in his statement recorded under section 313 of the Code.However,according to him,police got forcibly written said matter from him. Such a story is stated for the first time by him in his statement under Section 313 of the Code and finds no place anywhere in cross-examination of the relevant witnesses.

The Handwriting Experts opinion (PW 36 Firoz Shaikh and report Exh.114) also confirms that the writing on the Exh.4.4A is of the accused no.1 Dnyaneshwar .However since accused himself admits his handwriting,this opinion only confirms the said fact. Looking to the matter of the module conversations, it confirms to the conversation which the kidnapper who introduced himself at that time as SALIMBHAI made with Dr.Mainkar and to which Dr.Mainkar referred in detail during his evidence. Therefore,this piece of evidence Exh 44A emerges as one of the strong pieces of evidence against accused no.1 Dnyaneshwar to connect him with this felony and shows how minutely he was preparing for committing this felony.

34. Last discovery at the instance of accused no.1 Dnyaneshwar is of the iron casket (Ghamele) ART 24 and the TIKAU (ART 25) . The casket was discovered from the ~~otta~~ of house of accused no.1 Dnyaneshwar as pointed out by him and the TIKAU was discovered after the accused no.1 Dnyaneshwar showed the person to whom he had handed over the same. PW no. 61 Ishwar Harganekar is the panch witness (Exh.48) on the memorandum statement Exh. 49 ,and Exh.50 is the panchanama of this process. There is no reason to disbelieve this piece of evidence.

35. Thus , the discoveries referred above,particularly finding the place where lead body of Rishikesh was buried and jean pant was burnt , at the instance of accused no.1 Dnyaneshwar as well as seizure of the articles used by deceased Rishikesh viz.the Banian (ART 28) , purse (ART 19) ,wrist watch (ART 18) .chappals (ART 20) ,at the instance of the accused no.1 Dnyaneshwar again emerge as strong pieces of evidence connecting accused no.1 Dnyaneshwar with the murder of Rishikesh.

36. As part of his preparations to commit the crime which show that accused

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WHY? no.1 Dnyaneshwar had already decided to kill Rishikesh. In spite of killing him, he had demanded ransom amount from Dr. Mainkar, the accused no.1 Dnyaneshwar to bury the dead body after killing. Accused no.1 Dnyaneshwar purchased salt in order to facilitate early decomposition of the body as well as to prevent emission of foul odour. He had purchased salt on 4.2.2001 from two grocery shop owners. The evidence of PW 20 Dilip Katkar (Exh.81) and PW 13 Shashikant Golande (Exh.72) further confirms the fact of purchase of such salt in large quantities (of 5 kgs each) by accused no.1 Dnyaneshwar from their respective shops. It is argued on behalf of the defence that accused no.1 Dnyaneshwar went to these shops as a normal customer to purchase salt and there was no special reason for these witnesses to remember and identify accused no.1 Dnyaneshwar. But at the same time, there is no reason shown as to why only on the basis of such hypothesis, these two witnesses should be branded as untruthful witnesses. The accused was not their regular customer to make bulk purchases of salt. I find their evidence also inspires confidence and there is no reason to disbelieve their evidence.

37. At a subsequent point of time, the samples of salt purchased from the witnesses Golande and Katkar were also taken and sent for examination to the Forensic Science Laboratory. The fact remains that the dead body of Rishikesh was buried in the soil along with the salt and therefore this piece of evidence also in the context of other evidence assumes importance. PW 8 Maruti Pingale (Exh.550) is the witness in whose presence samples of salt sold to the accused no.1 Dnyaneshwar were collected from the grocery shop owners as per panchanamas Exh.56 and 57 respectively on 11.2.2001 and on 25.2.2001.

38. As earlier stated after receiving the missing report of Rishikesh on 5.2.2001 PW 41 PSI Kshirsagar had taken the precaution amongst others requesting telephone

officials to keep the phone installed at the house of Dr. Mainkar bearing no. 22553, under surveillance. PW 33 Pandurang Bhosale, Sub-divisional Engineer in Department of Telecom and who was in-charge of Saswad Telephone Exchange at the relevant time, threw light as to how his Department reacted to the request of police and kept the telephone of Dr. Mainkar under surveillance. From 6.2.2001 police constables were also deputed at the Saswad Telephone Exchange. Conversations of the kidnapper are also recorded at the house of Dr. Mainkar and trace of each call is made through the Exchange. The computer data of the calls received at different points of time of telephone number of Dr. Mainkar is at Exh. 106 (page 1 to 7) which further confirm the calls from various PCO Booths and coin boxes made to the house of Dr. Mainkar by the kidnapper. This offers definite and positive support to the evidence collected in this behalf of the telephone calls made by the kidnapper from various PCO booths and coin boxes. PW 33 Pandurang Bhosale also stated in his evidence that as soon as the kidnapper made the call the information was given to the police as to from where it was made. The police could swiftly move to collect further information from the PCO booths or coin boxes about the caller. In the course of it, they got the description as to age of the caller, and the fact that the caller was using M-80 vehicle of red colour; and after the last call made on 8.2.2001, at 5 p.m. with the information disclosed by the shop owner from where said call was made and by Sudhakar Zhurange who was accompanying accused no. 1 Dnyaneshwar at that time, ultimately pin point and arrest accused no. 1 Dnyaneshwar and further led to his arrest.

39. It is revealed from the evidence that the first call was made to Dr. Mainkar by a kidnapper on 5.2.2001 at 8.40 p.m. This call was made before the Telephone Exchange moved into action and kept the telephone of Dr. Mainkar under surveillance because the data of the Telephone Exchange shows that such surveillance was made

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from around 10 p.m. on 5.2.2001 . But alarmed by the phone call ,on the next morning report was lodged to police station (exh.123) by Dr.Mainkar and on the basis of which this crime was registered.

40. The next call from the kidnapper ,who at that time assumed the name of
5 SALIMBHAI received in the late evening of 6.2.2001 and the kidnapper asked as to
the effect as to whether his ransom amount was kept ready. " Hamara kaam kiya
kya?" This call was traced as found made by the kidnapper from the PCO Booth of
PW 18 Dattatraya Jagtap (Exh. 78) who had given description of the caller as a boy
aged 20 to 21 years , thin built and wearing grey colour pant (Art 10) and yellow
10 colour T-shirt (Art 3) and print -out of the said call which comes automatically from
the stored data in the machine at the STD Booth ,is on record at Exh. 79 . PW 18
Dattatraya Jagtap,also identified accused no.1 Dynaneshwar as a person who made
said call.He also identified the clothes worn at that time by accused no.1 Dnyaneshwar
viz. Shirt Art 3, Pant -Art 10 which were the clothes seized from the house of accused
15 no. 1 Dnyaneshwar at the time when after his arrest the police searched his house for
Rishikesh,supra.Therefore,the evidence of PW 8 with these circumstances strongly
implicates the accused no.1 Dnyaneshwar with this crime.

41. The next call from the kidnapper who had assumed the name of
SALIMBHAI was received by Dr.Mainkar at around 7.15 a.m. on 7.2.2001 .The
20 Kidnapper at that time again asked from Dr.Mainkar to the effect as to whether his
ransom money was kept ready and further informed that his emissary would visit him
to collect the ransom amount at around 12 noon.The said call was traced as coming
from the PCO Booth from near Jejuri ST Stand belonging to PW 17 DilipYevle.

42. As revealed from evidence of PW 38 Dr.Mainkar,no emissary arrived at 12

noon. However at around 7 p.m. on 7.2.2001, Dr. Mainkar received another telephone call from the Kidnapper who assumed the name of SALIMBHAI asking him as to why the police were informed and whether the telephone was tapped. At that time the kidnapper even gave threats to Dr. Mainkar to kill his son and his family. He again told Dr. Mainkar that his emissary would come to collect the ransom at around 12 noon the next day and would introduce himself as a person coming from SALIMBHAI. This call was traced as made from Hadapsar, Pune.

43. On 8.2.2001, at around 12.30 p.m. the kidnapper again contacted Dr. Mainkar and informed him that his emissary would collect the ransom and would reach by 1 p.m. and the said person would be wearing salwar (it should be dhoti), cap (topi) and shirt (Kurta) and that the said person was about 40 years of age and had no moustache. Said telephone call is traced as made from PCO booth of Asha Gandhi (PW 16 Exh.76) situated on Pune Saswad Road in front of SUVIDHA MANGAL KARYALAYA at Vekrainagar. When the accused no.1 Dnyaneshwar made this call he was travelling in an autorickshaw from Pune to Saswad in the company of his friends and after collecting a person on the pretext of working him at Jaggery (Gural). The evidence of PW 31 Vijay Kamthe (Exh.100) and PW 32 Ramesh Parte who was the rickshaw driver (Exh.101) further confirms these facts and so does the evidence of PW 30 Bapu Bhapkar (exh.99). PW 30 Bapu Bhapkar and PW 31 Vijay Kamthe are friends of accused no.1 Dnyaneshwar and with them he visited their ailing friend at Hadapsar and then while returning as a preparation towards the commission of this felony, the accused no.1 Dnyaneshwar picked up the person on the pretext of making him work on the Jaggery (Gural) and ultimately tried to send him to collect the ransom amount from Dr. Mainkar, giving description of the said person to Dr. Mainkar as his emissary and to which reference is made earlier. This is an eye-witness account, corroborated and supported by the other evidence on record of making of phone call

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to collect ransom -
considered to be an
eye witness.*

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by accused no. 1 Dnyaneshwar to demand ransom amount from Dr. Mainkar for his kidnapped son Rishikesh. I find no reason to disbelieve this piece of evidence.

44. However the person who was contacted by accused no.1 Dnyaneshwar to send as an emissary to Dr. Mainkar, refused to oblige the accused no.1 and therefore his attempt failed. On 8.2.2001, around 1.45 p.m. and again at 2 p.m. the accused no.1 Dnyaneshwar who was assuming the name as SALIMBHAI made a telephone call to Dr. Mainkar respectively from the coin boxes of Vaishali Palve near the Saswad Vegetable Market and coin box installed at Amol Medical Stores Saswad. At 3.30 p.m. the kidnapper assuming name of SALIMBHAI again telephoned Dr. Mainkar, and informed him that his emissary had visited the hospital of Dr. Mainkar but there were police and further questioned Dr. Mainkar as to whether he was deceived. Said call was traced as made from Vitthal Petrol Pump, Jejuri. PW 15 Valmiki Jadhav (Exh.75), who is Manager of this Petrol pump further confirms this fact. The next call received by Dr. Mainkar was around 3.45 or 4 p.m. from the kidnapper assuming name of SALIMBHAI and informing him that ransom amount of Rs. five lac demanded be kept at the small temple painted with white colour on which the slogan "CHALO NASIK" was written and where nearby a decayed jeep is lying. He further promised that on getting the amount from Dr. Mainkar, his son would be returned to him. This call was traced as made from Jejuri from the STD booth of PW 40 Jotiba Ingavle. This witness PW 40 Jotiba Ingavle also gave description of the caller to the police, when contacted and further confirmed that the said caller was using M-80 moped and had gone in the direction of Saswad after making the call. The content of conduct of the caller made him remember the caller and he also identified accused no.1 Dnyaneshwar as the said caller in the identification parade held on 15.2.2001. This identification parade was held by Executive Magistrate PW 37 Maruti Borkar and the record of it is on record at Exh. 118 and 118A. Thus, at this juncture of time, the

police had received additional information about the kidnapper who was using M-80 of red colour. The last call from the kidnapper was made at 5 p.m. to Dr. Mainkar to finally inform him that his emissary would not come. This call was traced as made from the telephone kept at the shop of PW 19 Kaluram Zhurange. At this juncture tracing the call, immediately the police contacted the telephone owner (from which said call was made) and received description that the caller was using M-80 vehicle and had come with one Sudhakar Zhurange to make the call. Accused no.1 Dnyaneshwar who was ultimately identified as the said caller, cut the phone when he found that other people's attention was drawn to him. He did not disclose upon enquiry by P.W. no.19 Kaluram as to where he wanted to make the phone call since he represented that he could not get the connection. PW 19 also informed the police that the person i.e. the caller proceeded towards village of Khalad on his M-80 moped. PW 41 PSI Kshirsagar reached the village Ektapur and contacted PW Kaluram in person and also caught hold of Sudhakar Zhurange, in whose company accused no.1 Dnyaneshwar had made the telephone call and then taking Sudhakar Zhurange with him he went in search of the accused no.1 Dnyaneshwar. At this juncture not only description but the police were in possession of the name of the accused no.1 Dnyaneshwar which they collected from his friend Sudhakar Zhurange. Police parties were alerted and the accused no.1 Dnyaneshwar was ultimately nabbed from near the Saswad octroi post towards of Jejuri side. Evidence of PW 27 Sudhakar Zhurange (Exh.95) further confirms this fact.

45 Referring to the omissions revealed from evidence of PW 27 Sudhakar Zhurange to the effect that he failed to state before police about disclosing identity of telephone caller from the shop of Zhurange as that of the accused no.1 Dnyaneshwar etc. it is argued for the defence that this witness should not be believed. But looking to the totality of the circumstances and particularly the evidence of PW 19 Kaluram

Inconsistent in Sudhakar Zhurange's statement

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Jhurange and PW 41 PSI Kshirsagar, I find that these omissions cannot be given any importance because the fact of making the telephone calls from the telephone of Kaluram Jhurange by the accused no.1 Dnyaneshwar is well established from other evidence also.

5 46. As earlier pointed out, accused no.1 Dnyaneshwar was arrested on 8.2.2001. During the investigation as per information gathered Investigating agency could lay hands on accused no.2 Amit and arrested him on 18.2.2001 and so also the juvenile offender Nilesh Borkar. While in police custody accused no.2 Amit discovered an insecticide bottle (Art 22) thrown by him in the field as per his
10 memorandum statement dt. 27.2.2001 (Exh.59) and subsequent panchanama of discovery (exh.60) in presence of panch witness PW 9 Balu Jagtap (exh. 53). It is submitted on behalf of Adv. Mr. Vijay Sawant, Spl. Public Prosecutor for the State that initially there was plan to kill Rishikesh with insecticide and therefore this
15 discovery showing the complicity of accused no.2 Amit with preparation of the killing is important. I am afraid the evidence on record does not support this.

47. Juvenile offender Nilesh Borkar, after his arrest while in police custody on 27.2.2001 showed his willingness to discover the spade i.e. one of the instruments used for digging the pit and accordingly after giving the statement, discovered the same in
20 presence of panch witness PW 9 Balu Jagtap. Memorandum statement as well as discovery statement are at Exh.61,62 while spade discovered is at Art 21.

48. Juvenile Offender Nilesh also made one extra judicial confession to PW 23 Rahul Borkar (Exh.88). According to PW 23 Rahul Earlier on 4.2.2001 when he had seen the accused no. 1 Dnyaneshwar, accused no.2 Amit and the juvenile offender Nilesh going on M-8- vehicle driven by the accused no.1 Dnyaneshwar around 7.30

p.m. and to which reference is made earlier. PW 23 Rahul Borkar further stated in his evidence that some 2 to 4 days thereafter he read in the newspaper about arrest of accused no. 1 Dnyaneshwar in connection with KHANDANI case. After this, when he saw Nilesch Borkar sitting at the Square in the village (Nilesch Borkar is also an inhabitant of village Bhambodi like the accused no. 1 Dnyaneshwar) he made enquiry from him as to whether he had gone to Veer. Nilesch Borkar thereupon answered him in the affirmative and when he further asked Nilesch Borkar the reason thereof Nilesch disclosed to him that the accused no. 1 Dnyaneshwar had taken him to dig a pit. This extra judicial confession relates to an event of digging the pit at the instance of the accused no. 1 Dnyaneshwar on field SAVAR. There is reference to Veer. It is submitted on behalf of Adv. Mr. Vijay Sawant, Spl. Public Prosecutor, that Veer is a religious place which is visited by people to confess their sins. However, to the submission about the importance of Village Veer from this point of view, there is no evidence on record. It is not a fact of which judicial notice can be taken, but learned Spl. Public Prosecutor tried to explain this particular circumstance in the manner as stated above. Nilesch Borkar is not on trial before this Court and as such no much importance can be given to this extra judicial confession and it cannot be used against the accused no. 1 Dnyaneshwar or accused no. 2 Amit. Same can be said in respect of incriminating circumstance pleaded to raise funds for his activity by selling gold chain by accused no. Dnyaneshwar, supra.

19. PW 49 Kishore Jagtap is the STD booth owner near the PMT Bus stop at Saswad. According to him enquiry was made by police with him in respect of telephone call made to the house of Dr. Mainkar on 4.2.2001 around 2005 hrs to 2100 hrs. Print out of those calls made, are seized from him which is on record at Exh. 74. This only supports the case of prosecution that around 8 p.m. the phone call was made to house of Dr. Mainkar in the background of the alleged prosecution story emerging

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from the missing report Exh.122 about phone call of Rohit Jagtap which was received by Ruta , daughter of Dr.Mainkar but he failed to identify or connect the call with the accused before us.

5 50. PW 7 Samir Takale (Exh.52) is the witness in whose presence the clones of deceased produced after post mortem examination were seized as per the seizure panchanama on record (exh.53) on 9.2.2001 .In the presence of this witness only on 18.2.2001, accused no.2 Amit , juvenile offender Nilesh were arrested at 7 p.m.as per the arrest panchanama, Exh.54.

10 51. Identification parades which were held by PW 37 Maruti Borkar for the accused no.1 Dnyaneshwar and no.2 Amit ,separately and memorandum of which are on record at Exh.118,118A ,Exh.119 and Exh.119A are attacked by the defence stating that guidelines issued by the Hon'ble High Court as contained in the Criminal Manual have not been observed and there is no certificate attached below the said memorandums. These guidelines are contained in para 16 of Chapter I of the Criminal Manual.Looking to the totality of the circumstances and the evidence of PW 37 Maruti Borkar , I find that every fairness is shown in favour of the accused . The identification parades were conducted with utmost caution taking all precautions that the witnesses had no chance to see the accused and that the accused were also explained properly about the procedure. It is argued that from the verandah of the chamber of the Tehsildar at Saswad,lock-up can be seen and therefore,there was every possibility of witness seeing the accused before identification.This possibility is totally ruled out from the evidence of PW 37 Maruti Borkar since his evidence reveals that the accused were wearing veils and only when they were brought in his chamber for identification parade ,their veils were removed.About the certificate, it can also hardly 25 destroy the evidence of PW 37 Maruti Borkar on the point of holding identification

parades. Endorsement contained at para 16 © (xvi) reads as under :

“Identification parade was conducted by me personally with the help of two respectable witnesses, namely Shri.... and Shri.... whose tures have been obtained in token of what transpired in their presence ...”

52. Referring to the evidence of PW 37 Maruti Borkar and the facts stated by him affirming and establishing the procedure followed by him while conducting identification parade, mere omission to put below endorsement, supra, would not affect the evidentiary value of the identification parade held by him.

53. It is revealed from the evidence of the autopsy surgeon (PW 35) Dr Eknath Male that he had perused the Chemical Analyser's report of viscera and further confirmed his earlier opinion of death of Rishikesh by strangulation as per the post mortem notes (Exh.111) and to which reference is made earlier. This establishes that the deceased Rishikesh met homicidal death by strangulation and no other factor was responsible for his death. There is no reason to disbelieve the evidence of this witness Dr. Eknath Male (PW 35) though further writing in respect of confirming his opinion was not obtained by the investigating agency.

54. The other documents on record which were proved from the evidence of PW 41, PSI Kshirsagar, Investigating Officer are witnessing steps taken by him during investigation such as sending the articles to the Forensic Science Laboratory for examination (Exh.41) police report and request sent to Medical Officer for post-mortem examination (Exh.142) letter dt. 23.2.2001 to Gram Panchayat to collect death certificate of Rishikesh (Exh.143) death certificate collected accordingly (Exh.144), request made to the Taluka Magistrate to hold identification parade (exh.145)

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letter to draw sketch of scene of offence (Exh.146) , sketch drawn is on record at Exh.129 and which is an admitted document , refers to the place from which dead body of Rishikesh was recovered; request to the Judicial Magistrate (F.C.) to record statements of witnesses under section 164 of the Cr.P.C. (Exh.148) ,letter given on 5.3.01 to the Judicial Magistrate in whose magisterial custody the accused were at that time , to give directions to produce accused for identification parade (exh.147),correspondence to the Handwriting Expert for information in respect of writing Exh.44A (exh.149,150) and further correspondence with Medical Officer in respect of post -mortem report (exh.153,154). Exh. 152 is letter sent to the Forensic Science Laboratory alongwith the articles sent for examination on 14.3.2001. C.A reports received are on record at Exh.156 to 159. As per the reports (exh.158) examination of viscera of deceased Rishikesh detected no poison.So also examination of the skin of Rishikesh (exh. 159) . Exh.157 is the CA report in respect of insecticide bottle alleged to have been recovered at the instance of accused no.2 Amit ,which confirms poison therein as herbicide oxyfluorfen.

55. Specimen of handwriting of accused no.1 Dnyaneshwar were collected by the Investigating Agency in presence of panch witness PW 11, Bapu Kadmane (Exh.66) which are on record at Exh.67/1 to 67/6 and the panchanama thereof is at Exh.68 These specimen writings of accused no.1 Dnyaneshwar were sent to the Handwriting Expert for comparison. Opinion of the Handwriting Expert is already referred.

56. About the telephone call made on 5.2.2001 to Dr.Mainkar around 8.30 a.m. it was found to be made from STD Booth at Yashodeep Hotel near Waghere College Bus Stop, belonging to PW 12 Narayan Shinde (Exh.69) and the print out thereof is at Exh.17. PW 12 Narayan Shinde also identified accused no.1 Dnyaneshwar as the

person who made the telephone call in the identification parade. Accused no.1 Dnyaneshwar was studying at Waghere College.

57. As far as the motive is concerned, in view of the conduct of the accused no.1 Dnyaneshwar, subsequent to the killing of Rishikesh the motive was certainly to kidnap and kill Rishikesh and lover and above to demand ransom amount for kidnapping Rishikesh. This certainly is established from the conversations made by accused no.1 Dnyaneshwar over telephone from time to time to Dr. Mainkar. But this motive as per the record and evidence is shared by accused no.1 Dnyaneshwar alone and no others i.e. either accused no.2 Amit or juvenile offender Nilesh Borkar. There is no clear evidence to establish participation of other accused nourishing the said motive.

58. In one of his extra-judicial confessions, accused no.1 Dnyaneshwar also tried to float a story about grabbing of the property of his father taking advantage of the vice of his father but it appears to be imaginary and false story and certainly is not the motive behind the crime which is clearly confined to the kidnapping for murder of Rishikesh and then also using the incident of kidnapping to demand ransom amount from Dr. Mainkar.

59. Thus, I find that by a number of events and circumstantial evidence including the evidence as to the crime and the actual killing to which reference is made earlier, the prosecution has squarely brought home guilt to accused no.1 Dnyaneshwar for kidnapping for murder Rishikesh and further murdering him. However, even looking to the extra-judicial confession of the accused no.2 Amit, in respect of the offence of actual killing of Rishikesh, it cannot be held that for this kidnapping for murder he shared common intention with the accused no.1

*Common intention
established*

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5 Dnyaneshwar. However, his conduct during the incident of murder of Rishikesh and subsequent conduct in remaining silent over it, speaks about his sharing common intention with accused no.1 Dnyaneshwar in committing murder of Rishikesh. When the accused no.1 brought Rishikesh to the already dug out pit and after murdering Rishikesh by strangulation with the wire, the accused no.2 Amit helped to bury the dead body of Rishikesh in the said pit. The incident of burying the dead body certainly amounts to the act of destroying or concealing evidence of murder of Rishikesh in order to screen the offenders. Therefore, both accused no.1 and no.2 are guilty for the said offences punishable under section 201, (simplicitor) as well as 10 section 201 r/w section 34 of the Indian Penal Code. Point no.8 is therefore answered accordingly in the affirmative.

60. As earlier observed, accused no.1 Dnyaneshwar and the accused no.2 Amit shared the common intention with juvenile offender Nilesh to commit murder of Rishikesh and did execute the same by committing murder of Rishikesh. Therefore 15 accused no.2 Amit has committed offence punishable under Sec.302 r/w section 34 of the Indian Penal Code. Accused no.1 Dnyaneshwar actually committed murder of Rishikesh after kidnapping him for that purpose. Therefore, he is to be held guilty for both offences punishable under sections 302 and section 364 of the Indian Penal Code.

61. Accused face charge for the offence punishable under section 364A Indian 20 Penal Code, which is kidnapping for ransom and threatening to cause death or hurt to the kidnapped person in order to compel the Government or any foreign State or any international Government organisation to do or abstain from doing any act or to pay ransom. In the instant case, there is no question of any compulsion to any Government or to any foreign State or international government organisation. The motive is for 25 kidnapping and murder of Rishikesh is well surfaced. Even after murder accused no.1

Not a fact - dec
 immediate have heard (7)

Dnyaneshwar started demanding ransom from Dr. Mainkar. But, initial kidnapping is not for ransom since otherwise Rishikesh would not have been killed soon after the kidnapping. Therefore section 364A of the Indian Penal Code may not be attracted in the instant case. However, accused no. 1 Dnyaneshwar is to be held guilty for the offence punishable under section 364 of the Indian Penal Code for the reasons stated above. I therefore, hold and answer point no. 1 to 4 accordingly.

62. There is absolutely no evidence to support the charge for offence punishable under Section 120B since no agreement between accused no. 1 Dnyaneshwar and accused no. 2 Amit to commit this felony viz. kidnapping and murder of Rishikesh or even to demand ransom is established. There is also no evidence against the accused to support the charge of extortion under section 384 or 384 r/w section 34 of the Indian Penal Code. Amount of ransom demanded was never parted by Dr. Mainkar. Similarly the evidence on record falls short of bring home guilt for the offences punishable under section 506 and section 506 r/w section 34 of the Indian Penal Code. Both accused are acquitted accordingly for these charges. Consequently I answer the points nos. 5, 6 and 7 are answered in the negative.

63 I have heard learned Counsel Shri Vijay Sawant, Special Public Prosecutor and Counsel for both the accused i.e. Adv. Mr. Suryavanshi and Adv. Mr. Pathare, on the question of sentence. At this time Adv. Asim Sarode representing the India Centre for Human Rights and Law also tried to intervene to canvass his point that death penalty being absolute, in a civilised society it should not be inflicted in this case. He could not be heard in his such capacity but his argument was further canvassed by learned Counsel Shri P. S. Suryavanshi for the accused no. 1 Dnyaneshwar by submitting memorandum to that effect on record at Exh. 64. As per the present position in a statute book capital punishment still remains but it is to be awarded

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only in rarest of rare cases. Therefore demand for this extreme punishment of death is to be scanned in the basis of evidence led in this case and to decide whether it falls into the one of those rarest of rare cases as far as committing of murder of Rishikesh is concerned. Considering the participation of accused no. 2 Amit only at the point when Rishikesh was killed and that he was not a party to pre-plan murder of Rishikesh as far as he is concerned, it would not fall in rarest of rare cases and would warrant only the regular penalty of imprisonment for life for the offence punishable under section 302 r/w sec. 34 of the Indian Penal Code. Learned Special Public Prosecutor also conceded to this. Accused no. 2 Amit pleaded for consideration of his age and for minimum punishment. Considering overall circumstances, I feel punishment as per final order would be proper for him.

65. However the case of accused no. 1 Dnyaneshwar stands on a different footing.

66. On the point of sentence for accused no. 1 Dnyaneshwar, Mr. Vijay Swant, Learned Spl. Public Prosecutor relied upon the observations of their Lordships in the matter of the State of Madhya Pradesh vs Ghansham Singh reported in 2003 (4) Crimes 6 (SC) which spell out the jurisprudence of punishment. It is submitted on his behalf that the Court will be failing in its duty if the appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. Punishment to be awarded for the crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, enormity of the crime rousing public abhorrence and it should respond to the Society's cry for justice against the criminal. Relying on the said case, it is submitted that the present case which exhibits pre-planning and murder of Rishikesh in a very cold-blooded manner without any reason for the murder and also after committing the

murder of Rishikesh , accused no.1 Dnyaneshwar continued to demand for ransom from his father , invite only the extreme penalty of death. Age of the offender is not relevant in this context. It is further argued that the fact that there is no repentance shown at any point of time by accused no.1 Dnyaneshwar for the act committed by him and further considering his abusive answers given during his statement recorded under section 313 of the Code and the stand taken by him in the statement which he filed at Exh.6A, and the response given by him to the question of sentence in which he confined himself to the statement Exh 6A; there appears absolutely no chance of any reformation in future as far as he is concerned. Therefore in the background of the facts of this case, the extreme penalty of death is the only proper punishment which the law demands.

67. To propagate his argument further, Mr. Vijay Sawant, learned Special Public Prosecutor, further relied upon the observations of their Lordships in the matter of Dayanidi Bisoi vs State of Orissa reported in 2003 (3) Crimes, 167 (SC) , as well as State of Maharashtra vs. Rahul @ Raosaheb Dashrath Bhongale , 2004 Vol. 106(1) Bom LR 841. In the matter of State of Maharashtra vs Rahul @ Raosaheb Dashrath Bhongale. After considering the facts of the case, wherein the prior planning of accused to commit the felony of murder was established , the clues to kill the victim in cold blooded and calculated manner and further considering the said act as too gruesome and enormity of the crime, death penalty awarded by the Sessions Court was approved and confirmed. Said judgement was delivered by Hon'ble Justice A.S. Agiyar for the Bench. His Lordship was also a member of the Bench delivering another judgement in Confirmation Case No. 3/03 with Criminal Appeal No. 294/04 at a later point of time on 31.8.04 in the matter of State of Maharashtra vs. Lahu @ Lakukumar s/o Ramchand Dhakne delivered by the Bench (coram :

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H.L.Gokhale and A.S.Agiyar JJ , (case of Lahu @ Lakukumar R.D .Hakne is distinguishable from the facts of the case before us in respect of nature of evidence that has emerged against accused no.1 Dnyaneshwar about his committing murder of Rishikesh.

5 68. The way the accused no.1 Dnyaneshwar committed this crime after meticulous planning with the sole motive to kidnap Rishikesh after gaining his confidence through the computer class ,to kill him and even after killing him to continue to demand ransom amount from father of deceased Rishikesh ,and his conduct throughout the trial, speaks for his criminal tendencies.The circumstances do not give 10 any hope that there is any possibility of reform in his case.Therefore balancing the circumstances both in favour of and against awarding of capital punishment, I find that it is a case ,rarest of rare in nature , which warrants extreme death penalty for the committing of murder of Rishikesh , to the accused no.1 Dnyaneshwar.This and no other penalty in the view of this Court would meet the ends of justice for this crime.

15 69. As far as offence punishable under Sec. 364 of the Indian Penal Code is concerned, for which accused no.1 Dnyaneshwar is also held guilty,the circumstances show that penalty of imprisonment for life coupled with some amount of fine would meet the ends of justice and for the other offence of concealing evidence in order to screen the offenders, term of imprisonment as spelled out in the final order,would 20 suffice.

70. Before parting with the Judgement I would like to spare a word of appreciation for the alertness and promptness shown by the Investigating Officer PW 41 PSI Kshirsagar to respond to the situation as soon as missing report Exh.122 was filed by Dr.Mainkar . He also took all the necessary steps with due care and

caution,during the investigation of this crime . At the same time, it would be proper to note the able assistance rendered by the Spl. Public Prosecutor Shri Vijay Sawant and both defence counsels vis. Adv.Shri P.S.Suryavanshi and Adv. Shri V.B. Pathare But for the same, it would not have been possible to ensure fair and proper trial and to decide on the complicated issues of question of facts and la

71. For the reasons stated above and findings recorded on points no.1 to 8, supra, I pass the following order:

ORDER

1. The accused no.1 Dnyaneshwar Suresh Borkar and accused no.2 Amit @ Bapu Nanasaheb Bhandwalkar are acquitted under section 235 of the Code of Criminal Procedure (referred hereinafter as the Code) of the offences punishable under sections 120B, Section 384, Section 384 r/w section 34, section 506, section 506 r/w section 34 , section 364A and section 364A r/w section 34 of the Indian Penal Code.

2. However accused no.1 Dnyaneshwar Suresh Borkar is found guilty of the offence punishable under section 302 of the Indian Penal Code and under section 235 of the Code,is sentenced to death. He be hanged till death.His sentence ofdeath shall be executed subject to confirmation by the Hon'ble High Court under section 366 of the Code.

3. Accused no.1 Dnyaneshwar Suresh Borkar is also found guilty for the offence punishable under section 364 of the Indian Penal Code and under section 235 of the Code is sentenced to imprisonment for life and to pay fine of Rs. 5000/-(five

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thousand) in default to suffer Rigorous imprisonment for six months.

4. Accused no.2 Amit @ Babu Nanasaheb Bhandwalkar is found guilty of the offence punishable under section 302 r/w section 34 of the Indian Penal Code and under section 235 of the Code is sentenced to imprisonment for life and to pay fine of Rs. 5000/- (five thousand) in default to suffer Rigorous Imprisonment for six months.

5. Accused no.1 Dnyaneshwar Suresh Borkar and accused no.2 Amit @ Babu Nanasaheb Bhandwalkar are further found guilty for the offences punishable under section 201 and section 201 r/w section 34 of the Indian Penal Code and under section 235 of the Code, each one of them is sentenced to suffer Rigorous imprisonment for five years and to pay fine of Rs. 5000/- (five thousand) in default to suffer Rigorous imprisonment for six months.

6. Further subject to the provisions of section 31 of the Code, substantive sentences of imprisonment (excluding the death sentence) shall run consecutively in the order they are given.

7. Property of note book, photographs, as well as conversation tape and record spoils, be preserved along with the record. The other property being of no value be destroyed.

Dated: 18th December, 2004.

(S.R.KHANZODE)

I/c Hrd Extra Joint District and
Sessions Judge, Pune.

ra/

236/04 (जेजेमेंट कॉपी मिटाई)

2) A.N. Bhandwalkar
29.11.08

3) जजेमेंट साह मिटाई

2. S. Borkar

29.12.04

नियंत्रण अधिकारी कोर्टात नोंदवून.

नियंत्रण अधिकारी
येरवडा मध्यम न्यायालय, पुणे-६

नियंत्रण अधिकारी
येरवडा मध्यम न्यायालय, पुणे-६

43, 45, 36, 48, 55, 63, 46, 82, 88, 87, 92, 96, 95,
97, 110, 113, 115, 121, 122,