

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1808 of 2019****With****R/CRIMINAL APPEAL NO. 1691 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No
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SHAH NIRAV @ RAVI MAHESHBHAI**Versus****STATE OF GUJARAT****Appearance:****MR.MRUDUL M BAROT(3750) for the Appellant(s) No. 1****MR ADITYA JADEJA, APP for the Opponent(s)/Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR.JUSTICE P. M. RAVAL****Date : 30/09/2025****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE P. M. RAVAL)****Factual matrix of the case :**

1. The prosecution's case in a nutshell is that on August 18, 2015, Hiteshkumar Chandulal Thakar – PW 1 –

the complainant, along with his wife Sonam and son Devang, were at their residence. As per their daily routine, Devang left for his college at 7:55 in the morning. The complainant left for his job at the bank at about 10:30. At that time, he received a call on his mobile from his son's number, 9638786669. An unknown person, speaking in Hindi, stated that his son had been kidnapped and instructed him to bring Rs. 40 lakhs to Unjha before disconnecting the phone. Thereafter, after 15 to 20 minutes, he again received a phone call from his son's mobile. An unknown person asked, "Have you informed the police?" He then threatened that if anyone was informed, his son would be murdered. The person further stated that he would call again at 2:00 P.M. and inform him where he had to deliver the money, and then disconnected the phone. Hearing this, the complainant left the bank and informed his wife, his relative Deviprasad Govindlal Thakar, and Avinashbhai K. Thakar and others. Fearing that the person who had kidnapped his son might murder him, he waited until 2:00 P.M. and did not inform anyone about the incident.

However, when he did not receive the phone call at 2:00 P.M., he started inquiring about his son at the college and through his friends. He was assured that his son was kidnapped from the pickup stand at Bindu Sarovar. They waited for a phone call, but the kidnapper did not contact them, and on calling back his son's mobile, it was found to be switched off. Thereafter, Hiteshkumar Chandulal Thakar (PW-1), the informant, lodged a written complaint with the Siddhpur Police Station. Based on this report, an FIR bearing CR No. I No. 137 of 2015 was filed under the provisions of Sections 363, 364A, and 502 of the IPC against unknown persons. The complaint was registered by Jayantiji Varvaji Thakor (PW-18). PW-19 Dr. Jigar Bharatkumar Pandit, Police Inspector at the Siddhpur Police Station, commenced an investigation after recording statements of various witnesses. Based on the statements of witnesses Kartikkumar Lakhirambhai Joshi (PW-9) and Mahipatsinh Bupatsinh Rajput (PW-10), he arrested the present accused persons. Based on their statements made to the police during remand, he recovered various articles,

blood-stained clothes, etc. Upon completion of the investigation, a chargesheet was submitted against the present appellants for the aforementioned offenses.

2. Since the case was exclusively sessions triable, learned Magistrate committed it before the concerned jurisdictional Sessions Court which came to be registered as Sessions Case No.99 of 2015, framed charges vide Exh.6, recorded plea of accused vide Exhs.7 and 8 respectively and having denied the charges prayed for trial, pursuant to which 21 witnesses came to be examined and the prosecution relied upon 65 documentary evidences to bring home to the charges. After recording the evidence and on closure of the prosecution evidence, statements of present appellants were recorded under section 313 of the Criminal Procedure Code, 1973. However, on being confronted with the allegations as appearing in the prosecution evidence, the accused denied and claimed innocence. After hearing the arguments advanced by the Public Prosecutor and the defence counsel and after appreciating both oral as well as

documentary evidences, the learned trial Court vide judgment and order dated 10.5.2019 held that the prosecution was able to prove the case against the accused beyond reasonable doubt and were convicted for offences as follows.

Sections	Punishment	Fine Rs.	Default
363	5 years	2000	4 months
364-A	Life Imprisonment	10000	6 months SI
302	Life Imprisonment	10000	6 months SI
201	3 years	2000	4 months SI
506(2)	3 years	2000	4 months SI

3. The learned trial Judge handed down the aforesaid sentences to be run concurrently and also gave benefit of set off under the provisions of Section 428 of CrPC. It is against the aforestated judgment and order dated 10.5.2019 passed by the learned 2nd Additional Sessions Judge, Patan in Sessions Case No.99 of 2015, that the appellants are before this Court by way of aforesaid two Appeals.

Submissions of learned advocates Mr.Maulin Pandya and Mr.Mrudul Barot for the appellants - accused :

4. Learned counsel appearing for the appellants would submit that :

(a) That the prosecution has failed to prove its case beyond reasonable doubt, more particularly, when the entire case is based on circumstantial evidences.

(b) That version of last seen together is false and fabricated as the prosecution has tried to establish the case based on an FIR registered at around 11:30 hours and thereafter during the course of investigation, statements of two witnesses alleged to have seen the deceased at Bindu Sarovar pick up stand, i.e. Kartikkumar Lakhirambhai Joshi and Mahipatsinh Bhupatsinh Rajput came to be recorded. Upon recording of the statements of these two witnesses, the Investigation Officer came to know about the theory of last seen together and based upon such

information, accused Nirav @ Ravi Maheshbhai Shah was arrested at around 1:45 hours on 19.8.2015 and on his statement made voluntarily, the place of occurrence where the dead body was exhumed was found. However, the statements of both these two witnesses were recorded on 19.8.2015 at about 10:30 in the morning. Therefore, there was no question of arrest of Nirav @ Ravi Maheshbhai Shah based upon the statement of the alleged two witnesses Kartikkumar Joshi and Mahipatsinh Bhupatsinh Rajput and thus the story of prosecution is falsified right from the inception.

(c) That there are material discrepancies in the depositions of said two witnesses, more particularly, when both the witnesses had informed the complainant, i.e. the father of the deceased, i.e. Hiteshkumar Thakar at 10.00 O'clock in the night with regard to the theory of last seen together, in such circumstances names of the present accused would certainly have reflected in the FIR. However, the complaint is filed against unknown persons. This again,

falsifies the theory of the prosecution which goes to the root of the case.

(d) That Kartikkumar Lakhirambhai Joshi - PW-9 in his examination-in-chief claims to be neighbour and friend of the deceased and were regularly meeting at the pick-up stand and thus they knew each other. However, in his cross-examination, this witness has admitted that in his statement before the police, he has not stated that this witness and the deceased used to go Bindu Sarovar pick-up stand at the same time in the morning on the daily basis. He further admits that he does not know the names of other students who also came to the pick-up stand along with them and who were travelling with deceased Devang. He further admits that despite coming to his knowledge about Devang being kidnapped, he did not inform his mother. However, he has clarified that he wanted to inform only to the complainant and thus went to the residence of the complainant at 7.00 am on 18.8.2015 but could not find the complainant. Thus, it is argued that he has not disclosed

the fact of last seen together to any of the relatives who were present and just left from the house of the complainant. This witness also admits that his statement was recorded on 19.8.2015 in presence of the complainant. The Investigation Officer also admits that on 19.8.2015, the involvement of the present accused surfaced on record and it is upon the basis of the statement of the present witness, arrested the accused. Thus, it is argued that the version of the prosecution arresting the accused based upon the information received from the witness Kartikkumar Lakhirambhai Joshi is incorrect and is got up.

(e) It is further argued that as per the prosecution case, the deceased was last seen with the accused at about 8.00 am on 18.8.2015 and dead body was recovered at 2:30 hours on 19.8.2015. Thus, there was a gap of about 18 ½ hours which is substantial enough to indicate that there was strong possibilities of someone else committing the offence. The Investigating Agency nor the prosecution has led any evidence to prove that the deceased on the day of

incident had not attended his college since very basis of the prosecution case is that the deceased left for his college at about 7:55 in morning from his residence. Thus, it is argued that the death of the deceased cannot be linked with the theory of last seen together.

(f) It is further submitted that the another so called last seen together witness - PW 10 Mahipatsinh Bhupatsinh Rajput who is a taxi driver has deposed that he regularly goes to Bindu Sarovar Park pick-up stand for getting passengers and on the day of alleged incident, he initially saw the deceased standing near the car of the accused persons after which the deceased boarded their car and went away. On the same day at about 21.00 hours at night, he came to know about kidnapping of Devang.

(g) It is further submitted that as per the deposition of the investigation officer, the statement of Mahipatsinh Bhupatsinh Rajput was recorded on 19.8.2015 during the investigation carried out at Bindu Sarovar pick-up point.

However, the Investigation Officer admits that 19.8.2015, the involvement of the present accused came on record upon the statement of the present witness. Thus, the version of prosecution arresting the accused based upon the information received from the present witness as well as Kartikkumar Joshi gets falsified.

(h) Drawing attention towards the deposition of Suraj Bharatbhai Rami - PW-11 before whom the extra judicial confession alleged to have been made by one of the accused i.e. Dhaval @ Jato Darji it is argued that the same is unbelievable as the said witness has never informed the police till 23.8.2015 when he was called by the investigation agency. This witness has also neither stated on 17.8.2015 after having knowledge that the accused were searching for the spray/medicine to make someone unconscious nor on 18.8.2015 when Dhaval @ Jato Darji confessed the crime nor on 19.8.2015 after reading the newspaper where the news of murder of Devang came to be printed. It is further argued that he even did not bother to approach the police to

offer himself for recording of statement nor has he informed the family members of the deceased coupled with the fact that this witness has admitted that Dhaval was not discussing his personal affairs with him. He also admits that he does not meet Dhaval on daily basis. He also admits that he often visited Dhaval shop nor he knew Nirav Shah. He also does not know in which medical shop the accused went to inquire about medicine on 17.8.2015. However, this entire extra judicial confession does not repose confidence, more particularly, when it is apparent from the evidence of this witness that he was not a close friend of accused Dhaval @ Jato Darji and thus confession by an accused before unknown person is highly improbable.

(i) It is also argued that it is absolutely unbelievable that when two accused persons were travelling on bike would talk regarding preparation of crime to be committed after allowing PW 11 – Suraj Bharatbhai Rami to accompany him on bike and thus would never give a lift to the passenger on route to create evidence against themselves.

(j) Thirdly, it is argued that this witness has remained silent on three occasions till 15.8.2015 until he is called by the investigation agency for recording the statement and thus veracity of this witness creates serious doubts.

(k) It is argued that as per the prosecution case, the motive of the crime to obtain ransom from the complainant by kidnapping his son (deceased) and following which, the offence of the murder was committed. However, the charge is totally contrary since it would indicate that after committing the crime the phone calls for ransom were made to the complainant. It is also the case of the prosecution that the charge indicates that one of the accused was in debt and other accused wanted money for his luxuries and hence the crime was committed. From the entire case of the prosecution, there is no iota of evidence to suggest that one of the accused was in debt or that the other wanted money for his luxuries.

(l) It is further argued that the prosecution has failed to prove prior meeting of mind or execution of the crime by preparing to commit the crime in furtherance of the said motive. Even, the mobile phone has not been recovered from which calls were made to the complainant threatening for ransom. Thus, the prosecution has failed to establish chain of circumstances and in absence of such completion of chain, the accused cannot be held guilty.

(m) The arrest panchnama of Nirav Shah was drawn on 19.8.2015 at about 1:30 to 2.00 hours which is at Exh.30. Thus, Nirav Shah was arrested first, who discloses where the dead body was exhumed for which discovery panchnama at Exh.34 was also relied upon by the prosecution. The arrest panchnama of Dhaval is dated 19.8.2015 and was arrested between 9:30 and 10.00 am. Thereafter, based on his statement, discovery panchnama on 23.8.2015 at about 11:45 to 12.00 am at Exh.54 was placed on record. However, as per the deposition of the

Investigation Officer Dr.Jigar Pandit - PW-19 accused Nirav Shah was arrested first in point of time at around 1:30 to 2.00 am and on the same day i.e. on 19.8.2015 accused Dhaval was arrested at about 9:30 to 10.00 am. But, contrary to this, PW-3 Ashokkumar Bhalchandra Raval has deposed to the effect that Dhaval was arrested first and subsequently in the afternoon hours, Nirav was arrested. Thus, the prosecution has failed to prove beyond reasonable doubt the aspect of arrest of two accused persons and hence subsequent discovery panchnama of dead body and recovery of article etc. does not repose confidence and reflects implanting by the investigating agency so as to rope the present appellants.

(n) That panchnama of discovery of weapon from Dhaval was drawn on 23.8.2015 between 11:45 and 12.00 hours which is at Exh.54. As per the said panchnama, knife, memory card and clothes of the accused worn on the day of incident came to be discovered and were sent to the FSI. The FSI report at Exh.126 indicates that the blood

found on the knife was undecided and the blood on the clothes worn by Dhaval was of Group 'B'. As far as memory card is concerned, it is the case of the prosecution that photograph of the deceased Devang were found from the said memory card. However, panch of the said discovery PW-8 i.e. Pareshkumar Thakar has categorically admitted in his cross-examination that the police has not gone to the residence of the accused Dhaval for discovery in his presence. He has also denied that discovery and seizure were made as mentioned in the panchnama. The prosecution has failed to prove discovery since at the time of carrying out the panchnama, the house of the accused was found locked. However, the keys were obtained from the third person whose statement is not recorded. Even, as per the deposition of panchas, the person from whom the keys were obtained was not examined or interrogated and thus the prosecution has failed to establish that the house was locked and the keys were provided by some third party and in absence of such evidence, the panchnama cannot be relied nor can it be believed.

(o) It is further argued that version of the prosecution that the accused had kept the clothes in his house which were worn by him while committing crime is also not believable since the house of Dhaval is situated in middle of the town and no prudent person would approach his residence wearing blood stained clothes and keep them in his house. Even otherwise, there is no evidence to the effect that no one has seen Dhaval coming to his residence.

(p) That the prosecution has tried to establish that the memory card was discovered at the instance of the accused Dhaval from which the photographs of deceased were taken out but none of the photographs form part of the chargesheet and thus relying on them at the time of trial has caused serious prejudice to the defence of the accused.

(q) It is further argued that as far as discovery of memory card is concerned, again it is not believable that the accused has thrown away his mobile, however, kept

memory card with him coupled with the fact that the prosecution has failed to prove that the said memory card belonged to the accused.

(r) That discovery panchnama at the instance of Nirav Shah was drawn on 20.8.2015 between 9.50 and 14.30 hours which is at Exh.39. During the said discovery, two night clothes worn by the accused while committing crime as well as the car used in commission of the crime were discovered from rented house where the accused Nirav used to live situated at Odhav, Ahmedabad. However, the prosecution has failed to establish the complete chain as to how and when the same articles came to be placed at the premises which is 120 kilometers away from the Siddhpur where the alleged crime was committed, more particularly, when the accused was arrested within 15.00 hours of the alleged incident.

(s) It is further argued that the owner of the premises i.e. Indiraben has not been examined and thus the

contents of the rent agreement at the Exh.71 are not proved in accordance with law. No independent witness to prove that the accused was residing at the rented premises and thus it cannot be believed that recovery of articles from the said premises were at the instance of Nirav Shah.

(t) It is further argued that ownership of the car also not proved since the registration is not in the name of accused or his family members nor it is proved that he was occupier of the vehicle. Even otherwise, agreement to sell on which the prosecution has relied at Exh.116 is executed by Hardikkumar Soni which is unregistered document and none of the executors of the said document have been examined to prove the same.

(u) That the prosecution has also not examined Deviprasad and Avinash Thakar who were acquaintance with the complainant and relevant witnesses to prove the version of the complainant regarding ransom call. Having not examined the said witnesses, the prosecution has failed

to prove the factum of ransom as alleged. Thus, it is argued that prosecution has failed to complete the chain of circumstances, the conviction recorded by learned trial Court convicting the appellants requires to be set aside.

Submissions of learned APP :

5. Per contra, learned APP Mr,Aditya Jadeja appearing for the State has vehemently opposed the submissions advanced by learned advocates for the appellants and has argued that

(a) That the prosecution has been able to prove the charges against the accused beyond reasonable doubt.

(b) That from the deposition of Kartikkumar Joshi - PW-9 and Mahipatsinh Bhupatsinh Rajput PW-10, it is proved that the accused was last seen together with the deceased and that there is no contradiction which shakes reliability of these witnesses.

(c) That the call details record (CDR) is also placed on record.

(d) That recovery of blood stained clothes and weapons used to commit crime by the accused have been discovered at the instance of the accused. The panchas have also proved the contents of panchnama beyond reasonable doubt. The accused travelling in the car on 18.8.2015 towards Abu Road from Palanpur is proved from the deposition of PW-12 – Gopalbhai Baldevbhai Sharma who has placed on record CCTV footage of toll plaza. The factum of recovery of articles of the deceased from the residence of the accused i.e. Nirav Shah from Ahmedabad and Dhaval is also proved beyond reasonable doubt. Thus, it is argued that the entire chain of circumstances is proved by cogent and reliable oral as well as documentary evidences and merely because the motive is not proved, it cannot be said that the prosecution has failed to prove its case beyond reasonable doubt and has thus argued to dismiss the present appeals.

Principles in a case based on circumstantial evidence :

6. The prosecution has projected four circumstances for proving the guilt of the appellants i.e. (i) last seen together, (ii) extra-judicial confession, (iii) recovery made at the instance of the appellants and (iv) motive. It is settled law that in a case based on circumstantial evidence the prosecution is obliged to prove each circumstances taken cumulatively to form a chain so complete that there is no escape from the conclusion that within all human probabilities, crime was committed by the accused and none else. Thus, the facts so proved should unerringly point towards the guilt of the accused. In this regard, a celebrated judgment in the case of **Sharad Birdhi Chand Sarda vs State of Maharashtra**, reported in **(1984) 4 SCC 116** has set down five golden rules where a case based on circumstantial evidence is to be proved by the prosecution. They are :

- (i) Chain of evidence is complete.

(ii) Circumstances relied upon by the prosecution should be conclusive in nature.

(iii) Facts established should be consistent only with the hypothesis of the guilt of accused.

(iv) Circumstances relied upon should only be consistent with the guilt of the accused.

(v) Circumstances relied upon should exclude every possible hypothesis except the one to be proved.

7. There is no dispute regarding the cause of death of deceased Devang Hiteshkumar Thakar. His dead body was subjected to autopsy by the Medical Officer Dr.Gangaram Sukhram - PW-2 who has been examined vide Exh.23 who has proved the nature of injuries and contents of the post mortem report in detail. During his testimony, nothing inconsistent destroying the case of the prosecution is brought on record by the defence counsel and thus we have no reason to doubt the opinion expressed by the said

Doctor that the death was homicidal and the injuries reflecting in column No.17 at serial Nos.1 to 3 are possible if a person is hit by stone on his head. He has further deposed that the injuries reflecting at serial Nos. 4 to 7 and 9 to 15 in column No.17 of postmortem report are possible with knife which was shown to him as Article No.23. He has also stated to the effect that injuries reflecting at serial No.8 in column No.17 of the PM note are possible if a person is strangled with hands or with hard substance and fracture of hyoid bone is possible and all the injuries stated with column No.17 of the PM note were sufficient in the ordinary course to cause the death. Though, the doctor has not opined on the time of death in his examination in chief but on the other hand no questions raising doubt with regards to the time of death is put to this witness by defence counsel in cross examination also.

Theory of last seen together :

8. The prosecution's theory of "last seen together" is substantiated by the testimony of PW-9, Kartikkumar

Lakhirambhai Joshi, and PW-10, Mahipatsinh Bhupatsinh Rajput. In his examination-in-chief at Exhibit 62, PW-9, Kartikkumar Lakhirambhai Joshi, stated that the deceased, Devang, was a friend who regularly came to the Bindu Sarovar pick-up stand at the same time as him to attend college. The witness further testified that on the day of the incident, August 18, 2015, at approximately 8:00 AM, he arrived at the pick-up stand and saw Devang talking with two individuals seated in a white Chevrolet Beat. This car was parked near the pick-up stand. The driver was identified as Nirav Shah from his society, and the passenger was his neighbor, Dhaval @ Jato Dharji, who was also from his society. Subsequently, Devang entered the vehicle. At that point, the witness's bus arrived, and he departed for his college. Upon returning in the evening, he learned of Devang's kidnapping. He then informed Hiteshbhai about what he had observed that morning. The following day, the police questioned him and recorded his statement.

8.1 While a few minor omissions in the cross-examination of the witness do not affect the core of the prosecution's case, the appellants have emphasized certain points. Specifically, they highlight that despite Kartikkumar Joshi having informed Hiteshbhai, the deceased's father and complainant in this case, about the last-seen details when he visited second time at 10:00 PM, Hiteshkumar Thakar did not disclose this information regarding the appellants when he lodged the complaint at 11:30 PM. The learned advocate for the appellants also stressed that Kartikkumar Joshi's statement was recorded on August 19, 2015, whereas Dhaval @ Jato Darji was arrested on August 19, 2015, between 9:30 AM and 10:00 AM, and Nirav @ Ravi Maheshbhai Shah was arrested on the same day between 1:30 AM and 2:00 AM. The argument, therefore, is that the Investigating officer could not have known about the involvement of Dhaval and Nirav before Kartikkumar Joshi's statement was recorded which is further supported by the fact that the First Information Report (FIR) did not name any accused persons, despite the father having been

informed on the night of August 18, 2015, prior to filing the complaint. This aspect at the best can be considered as lapse on the part of the investigating agency, the benefit of which will not enure to the accused.

8.2 It would be relevant to note that in the cross-examination of PW-1 Thakar Hiteshkumar Chandulal i.e. father of the deceased a specific defence has been put forth by the defence that after meeting Mahipatsinh Bhupatsinh Rajkpt and Kartikkumar Joshi, the complainant had suspicion towards the present accused. However, on his volition, this witness has stated that since both the accused persons were resident of his society, he did not give much importance to the said aspect.

9. In the case of ***Rahul Mishra Vs. State of Uttarakhand*** reported in ***AIR 2015 SC 3043*** Hon'ble Supreme Court has held that the investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the

investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions. Thus, applying the said principles in the facts of the present case, the argument of the appellant does not hold good.

10. It is also profitable to refer to the judgment in the case of State of **Uttar Pradesh Vs Satish**, reported in **(2005) 3 SCC 114** wherein it is held that :

"18. As regards delayed examination of certain witnesses, this Court in several decisions has held that unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would

depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. (See Ranbir v. State of Punjab [(1973) 2 SCC 444: 1973 SCC (Cri) 858: AIR 1973 SC 1409), Bodhraj v. State of J&K [(2002) 8 SCC 45: 2003 SCC (Cri) 201] and Banti v. State of M.P. [(2004) 1 SCC 414: 2004 SCC (Cri) 294])

Page 36 of 62

19. xxx xxx xxx

20. It is to be noted that the explanation when offered by the IO on being questioned on the aspect of delayed examination by the accused has to be tested by the court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the

factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses."

In view of the aforestated settled principles of law with regard to delay in examination of certain witnesses, the defence cannot gain any advantage therefrom. It is also required to be noted that the Investigation Officer is not being questioned on the aspect of delay examined by the defence counsel of the accused. Under the circumstances, the argument of the defence counsel requires to be rejected.

11. It is also required to be noted that in cross-examination of the Investigation Officer PW-19 at Exh.86 i.e. Dr.Jigar Bharatkumar Pandit, the defence has brought on record that the Investigation Officer had recorded the statement of Kartikkumar Lakhirambhai Joshi on 19.08.2015, after 00.00 hour. Thus, it is clear that statement of Kartikkumar Lakhirambhai Joshi was recorded

by the Investigation Officer on 19.08.2015 after 00.00 hours and as per the deposition of Kartikkumar Joshi in cross-examination, he has admitted that his statement was recorded on 19.08.2015 at 10:00 O'clock in the morning. However, specific question with regards to recording the statement of Kartikkumar belatedly has not been put to the Investigation Officer. Under the circumstances, merely because Kartikkumar has deposed that to the effect that his statement was recorded at 10:00 O'clock in the morning on next day, whereas, the Investigating Officer also agreed to the suggestion that he has recorded the statement of Kartikkumar on 19.08.2015, after 00.00 hours does not create any inconsistency with the arrest of Dhaval @ Jato Darji at 9:30 on 19.08.2015 because the Investigation Officer had also inquired with regard to the presence of the deceased at Bindu Sarovar pick-up stand and had proceeded to arrest the accused persons and had recorded the statement of Kartikkumar Joshi accordingly. Thus, the aspect of recording of statements of two so called witness of

last seen to gather theory at a later stage does not prove to be fatal to the case of prosecution.

12. The second witness of last seen together theory is Mahipatsinh Bhupatsinh Rajput - PW-10 who has been examined vide Exh.63. In nutshell, this witness, in examination-in-chief has stated that the incident had taken place on 18.8.2015 and on that day, he was plying his Ecco car on rental basis and as per his daily routine had reached at 8.00 O'clock in the morning at Bindu Sarovar pick-up stand and was to travel to Mehsana with passengers and while he was calling passengers to sit inside his car, at the time, he saw Devang coming and also saw white colour chevrolet beat car. Devang walked towards that car and inside the car Ravi Shah and on the next seat, Dhaval @ Jato Darji was sitting inside since Jato Darji was also plying Ecco car therefore, he knew him and he also knows Ravi Shah since he also residing in the same vicinity and Devang sat on the back seat and the car proceeded towards Santnagar. Thereafter, he went along with the passengers

for Mehsana and came back to Siddhpur at 9:00 O'clock in the night and while he was having his dinner, he came to know that Devang who is residing next to his society has been kidnapped.

12.1 In the cross-examination of this witness, no material inconsistency has been brought on record. This witness has also admitted that at 10:00 O'clock in the night, he had talked with the father of Devang. Thus, for the reasons stated with regard to the deposition of Kartikkumar Joshi, for the same reasons, there is no discrepancy in the depositions of these two witnesses and they corroborated with each other and thus, the theory of last seen together is proved by the prosecution beyond reasonable doubt.

Factum of kidnapping and ransom :

13. Before we proceed to appreciate evidence in this regards it would be profitable to refer to the provisions of Section 364A. Section 364-A of IPC has three distinct components viz. (i) the person concerned kidnaps or

abducts or keeps the victim in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forbear from doing something or to pay ransom. Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction Section 364-A cannot be sustained. On perusal of the deposition of the complainant namely Thaker Hiteshkumar Chandulal i.e. the father of the deceased PW-1 at Exh. 20, he has stated that:

“I am the complainant of the present case. The incident had taken place on 18.08.2015. The deceased Devang in the present case is my son. I have given the complaint on 18.08.2015. Devang’s date of

birth is 04.01.1998. Apart from Devang, I have one daughter named Radhika. At the time of incident and even as of today she is at Australia and since last 4 months she is at Surat at her in-laws' residence. On the date of incident, I along with my wife Sonal and deceased Devang are residing at Krishnanagar Society, Radhanpur. As on date, I am working at Siddhpur in Bank of Baroda and on the date of incident my son Devang was studying Computer Engineering in the Ganpat University at Kherva. My son used to leave at 07:55 in the morning for going to college and used to travel in the bus from Bindu Sarovar pick up stand. On the date of incident, as per daily routine, my son Devang left for college at 07:55 in the morning and I as per daily routine, left for bank. After reaching bank at about 10:30 in the morning. I received a phone call on my mobile from Devang's mobile and one unknown person speaking in Hindi language stated that his son had been kidnapped and asked to arrange for Rs.40 lakh and deliver at Unjha and

disconnected the phone. Thereafter, 15 to 20 minutes, I received a call on my mobile phone and call from my son's mobile and threatened me not to inform to police or anyone, else his son would be murdered and also informed that he will again call at 2:00 O'clock in the noon as to where Rs.40 lakh are to be delivered. On receiving such phone, I left from the bank and on reaching my residence, talked with my wife and my relative Deviprasad Govindlal Thakar and the President of the Caste i.e. Avinashbhai Thakar. We all started searching Devang in the village, college and in his friend circle, we waited till 2:00 O'clock so that my son is not murdered, however I did not receive the phone call and therefore, contacted on the mobile phone at my son which was found to be switched off. Even after that, we were searching for Devang. During the search, friend of Devang i.e. Kartikbhai Joshi and Mahesh, who were residing just near the society where we reside had informed that they had seen Devang in the morning at Bindu Sarovar pick-up stand. We

continued search of Devang and gave complaint to the police which is exhibited at Exh.21.”

The signature is also identified by this witness.

“After lodging the complaint and after reaching at my residence late in the night, police informed that one unknown dead body is found one kilometer away from village Hathidhara near Aadu at Banaskantha District. Therefore, on the next day in the morning at about 5:00 O’clock reached at the place, where the dead body was lying. The Police was present there and on seeing the dead body, it was of deceased Devang, injuries were found on the back and stomach and the face was smashed bleeding. I identified the dead body from the clothes, panchnama was also carried out, thereafter the dead body was taken for performing post mortem after which the last rites were performed.”

“Before calling me by the police on 20.08.2015, at Siddhpur Police Station, the police had informed me that they have arrested Nirav @ Ravi Maheshbhai Shah and Dhaval @ Jato Darji for

murdering my son Devang. On 20.08.2015, the police after calling me at the police station informed that they have seized muddamal from Nirav @ Ravi Maheshbhai Shah from his Ahmedabad residence and broke opened the seal in the presence and noted in the panchnama to that effect and on opening the seal, one black colour notebook, pen, calculator, silver chain, all these things which belong to Devang and used to keep with him while travelling to college were identified in presence of the panchas and police also identified the clothes of the deceased. At the time of incident, my son was minor and therefore on my identity a sim card was purchased which was utilized by Devang bearing mobile No.9638786669. Over and above the complaint, the police had also taken my statements on 19.08.2015 and 20.08.2015”.

13.1 This witness also identified the clothes worn by the deceased before the Court being Article No.4, 5 and 6 i.e. T-shirt, pant, underwear and banyan, respectively. This witness also identified Article 18 and 19 i.e. silver chain, 3 ball pen, 1 calculator, 1 black colour bag before the Court

and also identified both the accused persons before the Court.

13.2 This witness has been cross-examined in detail by the defence counsel. However, nothing inconsistent destroying the veracity of this witness has come on record. However, this witness has admitted that in the complaint, he has stated that Devang had left the resident from 7:55 in the morning. However, in the statement before the police on 19.08.2015 he stated that as per daily routine Devang left for his college from residence at 7:30 in the morning.

13.3 This witness has also admitted that Kartikbhai Joshi and Mahesh Vaghela met him at 10:00 O'clock and also had a talk with them and that the complaint was lodged at 11:30 PM. He has also admitted that he has not given name of any accused persons in his complaint. He has also stated the he had no suspicion towards anyone with regard to the kidnapping of his son.

13.4 Thus, from the entire deposition of the witness, the factum of the deceased using the mobile phone of his father and the factum of receiving call from his son's mobile is proved beyond reasonable doubt. Not a single question is put to this witness challenging the said factum. It is also required to be noted that PW-20 i.e Devendra Jayantilal Lariya, is examined vide Exh.137 and as per the customer application form the mobile No.9638786669, was of Hiteshkumar Chandulal Thakar bearing address near Bindu Sarovar Park, Siddhpur, which is placed on record vide Exh.138. The said customer agreement form and the documents submitted by the customer along with certificate under Section 65B (4) (C) is also placed on record vide Exh.145. Thus, the factum of deceased utilizing the mobile phone purchased in the name of complainant is proved. The factum of customer agreement is also proved in accordance with law by the deposition of Devendra Jayantilal Lariya, more particularly, by placing on record by submitting 65B certificate as per the Indian Evidence Act coupled with a fact that in the cross-examination of the complainant

Hiteshkumar Chandulal Thakar, the factum of his receiving call from the mobile utilized for kidnapping and threatening of his son is not challenged at all. Under the circumstances, the factum of threatening that they will murder Devang if complainant informed to police or anyone else is proved beyond reasonable doubt. This aspect is not challenged in cross-examination coupled with the fact that the bag of the deceased is also found from the rented premises where the accused Nirav is residing and at the instance of Nirav, the dead body was also found accordingly at instance of Nirav. Accused Dhaval also pointed out the place where the dead body was buried. Thus, it is proved beyond reasonable doubt that the deceased was kidnapped, ransom was demanded and the kidnapped person was murdered. Thus, the triple tests condition as required under Section 364A of the IPC is proved beyond reasonable doubt.

14. It is also required to be noted at this juncture that the complainant had no axe to grind against the present accused persons. Under the circumstances, when

the conduct of the complainant and his deposition is natural and in absence of any infirmity in the entire deposition, the testimony of this witness reposes confidence.

Extra Judicial Confession :

15. Adverting to the facts of extra judicial confession, at the outset, the principles laid down in the case of ***Kashmira Singh Vs. State of M.P.*** reported in **(1952) 1 SCC 275** are required to be considered wherein the Honourable Supreme Court observed as under :

"The confession of an accused person is not evidence in the ordinary sense of the term as defined in Section 3. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the

confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

Based on the aforestated principles and on reappréciation of evidence with regard to extra judicial confession, it would be relevant to advert to the deposition of PW-11 - Suraj Bharatbhai Rami who is examined vide Exh.65 before the learned trial Court. On going through his examination-in-chief, in nutshell, he has stated that he received a phone call on 24.8.2015 from Siddhpur Police Station and was asked with regard to the case of Dhaval Darji and at that time he was utilizing mobile bearing No.8866418195 and till today he is utilizing the same phone number. The police

informed that from the call details of Dhaval @ Jato Darji phone number of the present witness was found and therefore he was called for investigation. He stated that Dhaval was his friend and often used to meet him. On 17.8.2015 since this witness wanted to recharge his mobile connection of Docomo Company and was to go at Siddhpur, near Afin gate and as soon as he came out of his street, he found that Dhaval and Nirav were passing on a bike and therefore he also accompanied them, at that time Dhaval was riding motorcycle, Nirav was sitting in between and lastly he was sitting on the bike, at that time Dhaval and Nirav were talking of some medicine and spray with which they can make someone unconscious and on reaching Afin gate, he got down from the bike and Dhaval and Nirav went towards medical store. After getting the mobile recharge, he went towards the bike where it was parked, at that time, Dhaval and Nirav were also came there but empty handed since the medical store was closed, at that time, they asked where they will find a spray or medicine to make someone unconscious and since I knew nothing I denied of having

any knowledge after which Nirav Shah left from the Afin gate and Dhaval dropped this witness near the street on the bike. Thereafter, on 18.8.2015 he received a phone call on his mobile from Dhaval Darji at about 2:30 to 3:00 in the afternoon and asked where was this witness, to which, he replied that he was at his residence after which the mobile was disconnected. After having lunch, he went to the shop of Dhaval which is located at Vahervada, at that time Dhaval was sitting outside of his shop and was frightened, to which, this witness asked why was Dhaval so frightened, to which Dhaval replied that his friend Nirav and he himself has committed one wrong. On answering, this witness again asked what was that wrong. This question was put 2 to 3 times to which Dhaval replied that I and my friend Nirav Shah have committed one murder to which again witness asked of whom, to which he said you need not know or else you will disclose to everyone. On hearing this, he was frightened and he went to his house and on 19.8.2015 from the newspaper he came to know that police has arrested Dhaval @ Jato Darji and Nirav Shah in the

murder of Devang. All this information was given to the police on 24.8.2015 when he was called by the police at the police station.

15.1. This witness has been cross examined at length. He has admitted that before this he has no occasion to accompany Dhaval on his bike. However, after sometime on his own volition, he states that he has accompanied number of times on the motorcycle of Dhaval. He has stated in his cross examination that it is not true that Dhaval used to inform all his secrets to him. However, in the cross-examination by the defence counsel what has been brought on record is to the effect that "it is true that in the statement before the police on 24.08.2015 I have stated that these two persons were searching for some medicine or spray to kidnap some person and make him unconscious which came to my knowledge." The factum of Dhaval stating that we have committed wrong is also confirmed in the cross-examination by the defence. He has also admitted that on 17.05.2015, 18.08.2015, 19.08.2015 and up to

24.08.2015, this fact is not stated to anyone else except the police. In sum and substance, while cross-examining this witness, nothing inconsistent or material irregularity shaking the veracity of this witness is not brought on record by the defence counsel. Further, in view of the principles laid down in the case of Kashmira Singh (supra) it is settled proposition that extra judicial confession cannot be made foundation of conviction and can only be used in support of other evidence. Thus, the question which requires to be tested is after marshaling the evidence against the accused by excluding the confessional statement together from consideration, this Court has to first arrive at the finding that a conviction can safely be based on it. Therefore, for the time being keeping aside the factum of extra judicial confession aside, we will now venture into the other links which the prosecution has relied on.

CCTV Footage and toll paid at Toll Plaza :

16. On perusing the deposition of PW-12 – Gopalbhai Baldevbhai Sharma at Exh-67, he is the CCTV camera

operator serving at Kimana Toll Plaza office. Though, CCTV footage backup provided to the police is not accompanied by any certificate under the provisions of Section 65-B of the Indian Evidence Act. Despite this, what has been stated by this witness would be material since on 18.8.2015, this witness at the instance of the Investigation officer had run the CCTV footage recording and on 18.08.2015 at about 8:25 hours in lane No. 3, the vehicle number which was sought to be inquired and colour of the vehicle as stated by the Investigation Officer was seen going towards Abu Road Palanpur, at that time, clock of the system was 20 minutes behind and therefore the correct time of passing of the vehicle was 8:45 hours, the toll charges paid towards the said vehicle are also exhibited vide Exh.68 by which the said vehicle had paid Rs.50/- as toll tax.

16.1 In cross-examination this witness has stated that he has not submitted to the police any proof that on 18.8.2015 from 8:00 O'clock in the morning to 4:00 O'clock in the noon, he was present in the office. There is also

admission to the effect that as per the CCTV camera system, chevrolet car in lane No.3 was seen at 8:25. Thus, from the deposition of this witness, the vehicle chevrolet car was found to have passed said toll plaza towards Abu Road from Palanpur is proved beyond reasonable doubt even in absence of CCTV footage. The discrepancy with regards to time is also proved.

Presence of Accused persons on 18.08.2015 at Hotel Shahkar at Siddhpur with car :

17. PW-13 Shabbir Ali Rasulbhai Chaudhary has deposed vide Exh.69 to the effect that the police came on 28.8.2015 for investigation that during the period on 17.8.2015 this witness was serving at Hotel Shahkar situated at Siddhpur Khadi Cross Road since last 2 years. He had shown the footage to the police from the system of 17.8.2015. The footage was of 17.8.2015 from 4:25 to 4:31. It was regarding two persons who had come to the hotel for having cup of tea. The said footage was given in CD to the

police. Apart from the footage, as per the footage of the parking area of the said hotel, a car whose company name, this witness does not remember but was bearing registration No. GJ8 AE 9398 was parked. This witness also identified two accused persons which he had seen in the footage are the same persons which are present in the Court. He further stated that the said CCTV was working 26 hours late and thus, the correct date should be 18.08.2015 and the correct time should be 6:25 hours. He also stated that the statement was given by him to the police.

17.1 In the cross-examination, this witness has admitted that CCTV footage was running late and therefore correct time of accused persons arriving at the hotel was 6:15 on 18.08.2015. He has also admitted that as per the system, the time and date which he had informed was 17.08.2015, 4:25 to 4:31 hours. It is true that it came to my knowledge that the system is running 26 hours late came to his knowledge when the police asked for the footage. Though 65B certificate as required under the Indian

Evidence Act is not placed on record however, from the deposition of this witness also, it is proved beyond reasonable doubt that on 8th of August 2015 at 6:25, the two accused persons were present at Hotel Shahkar situated at Siddhpur Khadi Cross Road.

Recovery and Discovery at the instance of the Accused persons :

18. The next chain of circumstances would be the discovery at the behest of the accused persons. In this regard, deposition of PW 3 - Ashokkumar Bhalchandra Raval at Exh.27 who is the panch of the physical verification of accused Dhaval @ Jato Darji and Nirav Shah would be relevant to the effect that from Dhaval, one tablet of Penta Company with two sim cards, one of Vodafone and other of the Reliance were recovered and one Micro-max Company mobile having two Vodafone sim cards were also recovered. On the same day, the panchnama of Nirav was drawn and two mobile phones were recovered from him, one

of Samsung which was having sim card of BSNL and other mobile was also Samsung Company having 2 sim cards, one of Airtel and other is of Idea.

18.1 From the entire cross-examination, nothing has come on record shaking credibility of this witness. However, merely recovery of mobile phones is neither here nor there and thus it is not helpful to the prosecution.

19. PW-4 – Harkhabhai Laxmanbhai Chauhan who has been examined vide Exh.33 is the panch witness of panchnama at Exh.34 which was prepared at the behest of Nirav Shah and this witness has stated in his examination-in-chief as follows :

“That on 18.8.2015 in the early hours at 5:00 O'clock in the morning, he left for some business work and came back on 19.8.2015 at 1:45 hours in the morning and at that time, while getting down from a private vehicle on Siddhpur Highway whSection 8ile passing near Railway Station road and on reaching Maruti complex at Siddhpur

City, a police car came and stopped near him and asked where had this witness gone to which he informed the details and the police asked that they have got one accused and a panchnama is required to be prepared, whether he was ready to come with them as a panch and also informed that the accused wants to say something and also wants to show something and whether this witness is willing to accompany with the police at Siddhpur Police Station, at that time, one Manojbhai of his village was also sitting in police station and was also a panch, at that time, one accused was sitting in the police station and the police stated that this is Nirav to which this witness asked the name of the accused and the accused stated his name as Nirav @ Ravi Maheshbhai Shah, aged 28, resident of Bindu Sarovar, Krishnanagar society Siddhpur, at that time, the accused informed that he and his friend Dhaval @ Jato Darji were standing at 8:00 O'clock in the morning at Bindu Sarovar pick-up stand, at that time Devang came there and by alluring, they made him to sit into Chevrolet beat car bearing No.GJ 8E 9388 under the pretext that they may go for a ride and took him towards Palanpur and from there to Abu Road highway

and from there had exhumed under the mud in the hill of Balaram deceased Devang and want to point out the said place and to that effect, the panchnama was prepared and signature of this witness and Manojbhai were taken by Mr.Pandit. Thereafter, they travelled in the police jeep along with the panchas and the accused Nirav and Pandit Sahab and the staff persons and as per his directions which this witness has stated in details as his deposition point out the place by stating this is the place where Devang was murdered and exhumed and on digging the said place, a dead body lying upside down was found which was blood stained and was taken out after digging pit and on seeing the said dead body, injuries inflicted with sharp weapon on face was found smashed and on the clothes of the dead body mud and blood was found. The blood stained mud was also collected as sample and plain mud was also collected from the said place. A stone near the dead body weighing almost 3 kg with sharp which was found with mud and blood stick on it, all these things were collected and panch slips were also signed and placed inside and the plastic bags were sealed. The said panchnama is exhibited at Exh.34 and the panch slips

identifying the signature of both the panchnama are exhibited at Exh.35.”

After completion of the said panchnama, this witness and Manojbhai left in a private vehicle from Balaram to Chitrasani and were standing on the way to Abu Road from Chitrasani village and were waiting for vehicle. At that time, from Siddhpur a car came and stopped their vehicle and asked why we were standing there and therefore, he explained as to why he was standing there. Thereafter, this witness and Manojbhai were taken to Amirgadh Civil Hospital CHC where the dead body of Devang was brought for performing PM and panchnama of the clothes collected before performing the post mortem by the Doctor was prepared and the description of the clothes was also deposed by this witness in detail which is exhibited at Exh.36 and the panch slips collectively at Exh.37 were also proved in accordance with law.

20. In this context, we may usefully refer to the case of ***A.N. Venkatesh and another v. State of Karnataka*** reported in ***(2005)7 SCC 714***, wherein it has been ruled that :

“By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer the place where the dead body of the kidnapped person was found would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act or not.”

In the aforesaid decision, reliance was placed on the principle laid down in the case of *Prakash Chand V/s. State (Delhi Admin.)* reported in *(1979) 3 SCC 90*. It is worth

noting that in the said case, there was material on record that the accused had taken the Investigating Officer to the spot and pointed out the place where the dead body was buried and the Supreme Court treated the same as admissible piece of evidence under Section 8 as the conduct of the accused.

20.1 This witness is also cross-examined by the defence advocate at length. However, nothing destroying the deposition of this witness has come on record. Thus, the place from where the deceased was exhumed was found at the instance of accused Nirav.

21. Similarly, on 20.8.2015, the bag of the deceased, weapons from the car, the car and the clothes of the accused Nirav were recovered at the instance of Nirav @ Ravi Maheshbhai as deposed by PW-5 Sanjay Manuprasad Bhatt recorded at Exh.38. This witness has also deposed in detail with regard to asking of the name of the accused, his address and what he wanted to point out more particularly,

the car utilized in committing the crime for murdering Devang, the clothes he had worn and had also washed his clothes after committing crime and the bag which the deceased was carrying were lying at the rented house situated in at Ahmedabad in Odhav area. We are not reproducing what has been deposed in examination-in-chief but this witness has deposed in detail in the first part of the panchnama and also in the second part of the panchnama as to how at the instance of Nirav the car utilized in committing crime, clothes worn by Nirav while committing crime, washing of blood stained clothes after commission of crime, bag of the deceased and the weapons utilized to commit crime were recovered and the said fact is also proved beyond reasonable doubt as the panch witness had deposed in detail as to at whose instance and from where such recovery/discovery were made. Though, the law with regard to Section 27 of the Indian Evidence Act is clear and we are not considering the confession of the accused of having committed crime while preparing the said panchnama and the manner in which they have committed

the crime but certainly that part of the confession which leads to recovery of bag of the deceased, clothes of the accused, weapons utilized in committing the crime, car utilized in committing the crime are found at the instance of Accused can certainly be considered as per the provisions of Section 27 of the Indian Evidence Act. In this regards it would be profitable to refer to the judgment in the case of ***Bodhraj Vs. State of J & K*** reported in **(2002) 8 SCC 45** wherein the Honourable Supreme Court held as under.

"18.... It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or

voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so

recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kotayya v. King Emperor [Pulukuri Kotayya v. King Emperor, 1946 SCC OnLine PC 47: (1946-47) 74 IA 65 : AIR 1947 PC 67] is the most-quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which

the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu [State of Maharashtra v. Damu, (2000) 6 SCC 269: 2000 SCC (Cri) 1088].) No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given."

22. Thus, the condition necessary for applicability of Section 27 of the Indian Evidence Act broadly stated are as under :

- (1) Discovery of fact in consequence of an information received from accused;
- (2) Discovery of such fact to be deposed to;
- (3) The accused must be in police custody when he gave information; and
- (4) So much of information as relates distinctly to the fact thereby discovered is admissible.

Considering the aforestated principles and testing the deposition of PW-5 Sanjay Manuprasad Bhatt recorded at Exh.38 on the anvil of the said principles, it is established beyond reasonable doubt that discovery of a fact in consequences of information received from the accused is deposed by this witness while the accused was in police custody when such information was given to the police and such information distinctively relates to the fact of discovery of the aforestated articles at the instance of the accused. Under the circumstances, discovery by the prosecution has been proved beyond reasonable doubt.

23. Similarly, vide Exh.49 – Khatri Bhupendrakumar Raghuram who is a panch of Exh.50 panchnama prepared at the instance of Nirav @ Ravi Maheshbhai Shah at whose instance the knife utilized in committing the crime, mobile of Devang where it was disposed and the books of the deceased where they were thrown were to be recovered but could not since this accused stated that he could not remember as to which place exactly he threw all these things but had taken the police as well as the panchas to the place from where he had allegedly thrown these articles but no recovery/discovery could be affected. Thus, Nirav @ Ravi Maheshbhai Shah though wanted to point out the place where he had thrown the knife, mobile of the deceased, his books could not be recovered/discovered, however, the factum of knife utilized in the commission of crime, clothes worn by the accused Nirav at the time of committing crime, the car utilized in committing the crime, and the bag of the deceased were very much found at his instance for his rented premises at Ahmedabad.

24. Vide Exh.53 - Pareshkumar Mukundlal Thakar has been examined as PW-8. This witness has also stated in detail with regard to the factum of preparing of the panchnama at the instance of Dhaval @ Jato Darji and that he wanted to point out as to where he has kept the knife with which they had murdered the deceased and the clothes which were worn while committing the crime. Detailed deposition has been recorded before the Trial Court as to how and where the car was driven at the instance of this accused the weapon came to be discovered/recovered and also the clothes which were worn by this accused at the time of committing the crime. The said panchnama is proved vide Exh.54.

25. From the cross-examination of this witness also, nothing inconsistent destroying the case of the prosecution has come on record. However, in cross examination this witness is put a suggestion that the keys were brought by some unknown person at the instance of the accused to which this witness agreed. It is argued by the learned

advocate for the accused that the factum of non recording the name of this witness or non recording the name of the person who brought the keys in the panchnama and not closing the house after completion of panchnama is fatal to the prosecution. This argument needs to be rejected for the reasons that at the instance of the accused this unknown person had brought the keys. Under the circumstances non recording his statement or name in the panchnama or non closer of house after completion of panchnama does not affect the factum of discovery at the instance of the accused. Thus, discovery made in the instance of this accused i.e. Dhaval @ Jato Darji is also proved in accordance with law. Though, the factum of accused having committed crime cannot be looked into from the said panchnama or deposition of the panch still, what is required to be seen is whether the discovery at the instance of the accused is proved or not which in the case on hand is proved beyond reasonable doubt.

26. Similarly, vide Exh.51 Thakor Chiranjivi Kantiji is the panch of panchnama which was prepared at the behest of accused Dhaval @ Jato Darji where the body of the deceased was exhumed. However, in view of the fact that at the instance of Nirav when such panchnama is already drawn and that body also recovered, such panchnama does not pale into insignificance. However, as laid down in the case of A.N. Venketash (Supra) when the accused pointed out to the police officer the place where the dead body of the kidnapped person was found would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act or not. Thus, the conduct of accused Dhaval speaks volume. It is also required to be noted that the panchnama Exh.59 which is of the dead body of the deceased Devang is admitted to be read into evidence by the accused before the Trial Court and thus the recovery of the body at the instance of the accused and that the said dead body is of Devang is also proved.

Motive :

27. As far as motive is concerned, no iota of evidence has come on record from the deposition of the Investigating Officer that one of the accused was in debt and the other accused wanted money for luxuries. Under the circumstances, the motive as alleged by the prosecution is not proved. It is also required to be noted that merely because motive is not proved, it cannot be said that the case of the prosecution which rests on circumstantial evidence is not proved beyond reasonable doubt. In this regard, in the case of **Atley Vs. State of U.P.** reported in **AIR 1955 SC 807**, more particularly, at page 810, the Honourable Supreme Court has held that :

“where there is clear evidence that the person has committed the offence, it is immaterial where no motive for commission of the crime has been shown. Therefore, even in the case of circumstantial evidence, absence of motive which may be one of the

strongest links to connect the chain would not necessarily become fatal provided the other circumstances would complete the chain and connect the accused with the commission of the offence, leaving no room for reasonable doubt, even from the proved circumstances."

Thus, in a case based on circumstantial evidence also when the facts as alleged are proved beyond reasonable doubt, it is immaterial that the prosecution has not been able to prove the motive. A man does not act wholly without motive. Failure to discover the motive of an offence does not signify the non-acceptance of the crime. The failure to discover motive by appropriate clinching evidence may be a weakness in proving of prosecution case, but it is not necessarily fatal as a matter of law. Under the circumstances, non-proving of motive by the prosecution is not fatal.

Serological Report :

28. On perusal of serological report at Exh.126 it is evident that the blood group of deceased Devang at sample No. "E" is of "B" group. The sample at Nos. "B"- T-shirt, "B1" - Pant and "B2" - Handkerchief are that of Nirav found with blood stain of group "B" that of deceased whereas sample at Nos. "C" - Pant and "C2" - T-shirt are of Dhaval found with blood stain of group "B" that of the deceased. Thus, having found blood group of deceased from the clothes worn by accused while committing crime also proves the complicity of the accused and this incriminating circumstance also goes against the accused.

29. As far as the argument of ownership of the car being not proved and non examination of the owner where the accused was residing on rent is concerned these facts pale in to insignificance since the factum of accused having used the car is proved from the evidence of toll plaza computer operator as well as recovery at the instance of the accused and in similar fashion the recovery from the rented

house at the instance of the accused is also proved. Thus, this argument is required to be rejected.

30. As far as argument by the learned advocate for the accused regarding recovery/discovery of car, bag of the deceased, clothes of the accused and weapons at the instance of Nirav at about 120 Kms. away from Sidhpur is not possible since accused Nirav came to be arrested within 15 hours of lodging of the complaint is concerned, it is required to be noted that it hardly takes two to two and a half hours to travel from Sidhpur to Ahmedabad and thus in all during 15 hours at least one can travel three times between Sidhpur to Ahmedabad back and forth. This argument is thus rejected at the threshold.

31. It is also argued that no person would proceed at his residence with blood stained clothes more particularly when the residence is in middle of the city in Ahmedabad namely at Odhav and thus blood stained clothes recovered at the instance of Nirav from his rented house cannot be

believed. This argument is also required to be rejected since the accused had travel from Sidhpur to Ahmedabd in car and at his instance the car as well as the clothes and weapons and the bag of the deceased was found from the rented premises in Ahmedabad at Odhav.

32. It is also argued that the prosecution has also not examined Deviprasad and Avinash Thakar who were acquaintance with the complainant and relevant witnesses to prove the version of the complainant regarding ransom call. However, as per settled principle of law and as per Section 134 of the Indian Evidence Act what is important is not the number of witness to prove a case but the quality of the witnesses who depose before the court. Thus, non examination of these witness is not fatal to the prosecution since from the deposition of the complainant it is proved beyond reasonable doubt that his son was kidnapped and ransom was also asked and that if the complainant informed the police or any one his son will be murdered. Thus, when the complainant's evidence is clinching on the

aspect of kidnapping and ransom and threat of murdering his son if the information is given to police or any one else, the prosecution is not under obligation to examine other witnesses.

33. Thus, Considering overall facts and circumstances of the case, the manner in which the crime is committed, the manner in which the prosecution has proved its case based on last seen together theory, extra judicial confession, presence of car utilized in committing crime at the toll plaza, presence of accused persons at Hotel Shahkar, discovery made at the instance of both the accused persons and the factum of deceased having been kidnapped from pick-up stand at Bindu Sarovar Park, calling from the mobile of the deceased which was of the father of the deceased Hiteshkumar Thakar and initially informing the father of the deceased of his son having been kidnapped and subsequently informing that his son would be murdered if the complainant informed police or anyone and ultimately murdering the deceased by the accused is proved beyond reasonable doubt. Even, both the accused

persons have merely denied the evidence against them in the statements recorded under the provisions of Section 313 of the Cr.P.C. by stating that it is not true or stating that it is not correct or that they are not aware or that they do not have any knowledge and on asking them whether they want to state anything to which both the accused have stated that they have not committed any crime and wrong complaint has been lodged against them, no explanation worth the name for the evidence against them is coming on record from the statements under Section 313 of CrPC.

34. Thus, even if the extra judicial confession is not taken into consideration, the prosecution has proved its case namely :

- (i) Both the accused seen last together with the deceased at around 8:00 A.M. on the date of incident Bindu Park pick up stand.
- (ii) Both the accused seen at Hotel Shahkar along with the car utilized in committing crime.

- (iii) Car utilized by the accused in committing the crime found traveling towards Abu road from Sidhpur at toll plaza.
- (iv) Accused having called from mobile of the complainant which was used by the deceased at the time of incidence and informing that his son is kidnapped and asking for ransom and further threatening not to inform police or any one, else his son will be murdered.
- (v) Body of the deceased discovered at the instance of the accused.
- (vi) Bag of the deceased, car utilized in committing crime, clothes wore by both the accused persons while committing crime and weapons discovered at the instance of the accused.
- (vii) Non explanation of evidence put before both the accused under Section 313 of C.R.P.C.
- (viii) Conduct of both the accused being relevant by virtue of Section 8 of the Indian Evidence Act.
- (ix) Extra judicial confession comes to the aid of other evidence which is proved beyond reasonable doubt since

even if the extra judicial confession is not considered the entire chain of circumstances is proved without break independently and collectively beyond reasonable doubt pointing finger of guilt only towards the accused.

35. Section 7 of the Indian Evidence Act recognizes facts that are related to the cause, occasion, or effect of relevant events. If the presence of the accused with the victim is established, it becomes a relevant fact. In the present case, the presence of both the accused with victim before the murder is proved. Section 106 of the Indian Evidence Act shifts the burden of proof to the accused when certain facts are exclusively within their knowledge. If the accused were last seen with the deceased, they must provide an explanation for their whereabouts afterward. No explanation in this regards is coming forth from the accused persons. Explanation in 313 Cr.P.C. statement is also silent on this aspect as well as for each and every circumstances and the entire evidence against them. Section 114 of the Indian Evidence Act permits courts to presume the

existence of certain facts based on natural human conduct and common occurrences. When the accused was last seen with the victim, and no alternative explanation is provided by the accused persons, we infer their involvement in the crime for the reasons stated hereinabove. As per Section 8 of the Indian Evidence Act the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. In the case on hand the evidence of the circumstance, that the accused pointed out to the police officer the place where the dead body of the kidnapped person was found would be admissible as conduct under Section 8. Thus, the prosecution has proved that the chain of evidence is complete, the proof is conclusive in nature which establishes guilt of the accused only and we see no hypothesis except the one that the accused have committed the crime.

36. Learned advocates for the accused have relied on following decisions :

- (1) Gambhir Singh Vs. State of Uttar Pradesh, reported in 2025 INSC 164;
- (2) Padman Bibhar Vs. State of Section 8 Odisha, reported in 2025 INSC 751;
- (3) Shanti Devi Vs. State of Haryana, reported in 2025 (0) AIJEL-SC 75738;
- (4) Shail Kumari Vs. State of Chhattisgarh, reported in 2025 (0) AIJEL-SC 75681;
- (5) Suresh Chandra and Another Vs. State of Uttar Pradesh, reported in 2025 (0) AIJEL-SC 74693;
- (6) Pintoo Somabhai Bariya Vs. State of Gujarat, reported in 2022 (0) AIJEL-SC 244378;
- (7) Ashish Jain Vs. Makrand Singh, reported in 2019 (0) AIJEL-SC 63366 and
- (8) Jagdishbhai Mohanbhai Vasava Vs. State of Gujarat, reported in 2013 (0) AIJEL-HC 203408.

36.1 We have perused all the judgments relied upon by the learned advocates for the accused and have also kept in mind the principles laid down in the said judgments.

However, it is required to be noted that in the case of ***Manager Vs. Pawan Kumar Dubey***, reported in **1976 AIR 1766** wherein the Honourable Supreme Court has stated that :

“It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.”

36.2 Thus, considering the aforestated principles, we have not dealt with each and every cases relied upon by the learned advocates for the appellants. However, as stated hereinabove we have kept in mind the principles while deciding the present case since all the cited cases are on different facts.

37. Thus, for the reasons stated herein above, both the appeals stand rejected. The judgment and order of conviction dated 10.5.2019 passed by the learned 2nd Additional Sessions Judge, Patan in Sessions Case No.99 of 2015 is upheld. The appellants – original accused, if on bail, shall surrender before the jail authority within a period of four weeks from today.

R & P be sent back forthwith.

(ILESH J. VORA, J)

(P. M. RAVAL, J)

H.M. PATHAN