

MHTH060011962016 	Presented on	28.03.2016
	Registered on	28.03.2016
	Decided on	05.08.2026
	Duration	10Yrs. 04 Ms. 07 Ds.

	IN THE COURT OF ADDITIONAL SESSION JUDGE, KALYAN (Presided by R.V. Tamhanekar) Judgment delivered on : 05.08.2026
MHTH060011962016	Sessions Case No.113/2016 Exh. 105 Crime No. I-363/2015
Prosecution	The State of Maharashtra Through Central Police Station Officer.
Represented by	Learned A.P.P. for State – Smt. K.M. Khandagale
Accused	Husen Harun Shaikh Age : 30 years, Occupation : Labour R/at : Hiraghat, behind Shivsena Shakha Panchashil Nagar, Ulhasnagar-3.
Represented by	Learned Advocate for accused – Shri. U.Z. Kazi

Part 'B'**[Para 44(ii) Chapter VI of Criminal Manual]**

Date of Offence	From 25.07.2015 to 01.08.2015
Date of FIR	02.08.2015
Date of Charge-sheet	03.11.2015
Date of Framing of Charges	16.01.2020
Date of commencement of evidence	18.07.2022
Date on which judgment is reserved	31.07.2026

Date of the Judgment	05.08.2026
Date of the Sentencing Order, if any	05.08.2026

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428 Code of Criminal Procedure
1.	Husen Harun Shaikh	06.08.2015	Under trial prisoner	u/s. 302, 364, 201, 507 of the IPC	Convicted	Sentenced to suffer life imprisonment and to pay fine of Rs.10,000/-, in default to suffer further R.I. of 3 months for the offence punishable under Section 302 of the Indian Penal Code, sentenced to suffer R.I for 10 years and to pay fine of Rs.5,000/-, in default to suffer further R.I. of two months for the offence	Since 06.08.2015 till date

					punishable under Section 364 of the Indian Penal Code, sentenced to suffer R.I. for 5 years and to pay fine of Rs.3,000/-, in default to suffer further R.I. of one month under Section 201 of the Indian Penal Code, sentenced to suffer R.I. for 1 year and to pay fine of Rs.2,000/-, in default to suffer further R.I. of 15 days under Section 507 of the Indian Penal Code.	
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Part 'C'**[Para 44(iii) Chapter VI of Criminal Manual]****LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****Prosecution Witnesses.**

Rank	Name	Exh.	Nature of evidence
PW-1	Noorjaha Alimohammad Shaikh	19	Informant
PW-2	Rashid Budari Saha	24	Witness - brother-in-law of the deceased
PW-3	Ganesh Narayan Shinde	25	Panch of Memorandum panchanama
PW-4	Anil Bhimrao Patil	27	Panch of voice sample

			panchanama of accused
PW-5	Dr. Mahesh Bhaurao Bhadange	36	Medical Officer who conducted postmortem on dead body of victim
PW-6	Haresh Suresh Salunkhe	53	Panch of personal search panchanama of accused
PW-7	Anil Ramchandra Bhise	58	Second Investigating officer
PW-8	Mohan Baburao Kadam	86	First Investigating Officer
PW-9	Bapuram Damodar Pal	95	Panch of seizure of memory card
PW-10	Jeetu Chhatrumal Ahuja	98	Witness-Photographer

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**A: Prosecution :**

Sr. No.	Exhibit Number	Description
01	Exh.P-19 Admitted by defence	Seizure panchanama of clothes of accused dated 10.08.2015.
02	Exh.P-20/PW-1	Missing report dated 27.07.2015
03	Exh.P-21/PW-1	First information report dated 02.08.2015
04	Exh.P-26/PW-3	Memorandum of accused dated 10.08.2015
05	Exh.P-26A/PW-3	Recovery panchanama of blade dated 10.08.2015
06	Exh.P-28/PW-4	Panchanama dated 15.08.2015 in respect to voice recording of accused
07	Exh.P-31/Exhibited as C.A. report	Chemical Analysis Report dated 31.12.2015
08	Exh.P-37/PW-5	Requisition letter dated 01.08.2015 issued by the investigating officer to J.J.

		Hospital, Mumbai
09	Exh.P-38/Admitted by defence	Inquest panchanama dated 01.08.2015
10	Exh.P-39/PW-5	Referral letter dated 01.08.2015 by Rukminibai Hospital to J.J. Hospital, Mumbai
11	Exh.P-40/PW-5	Postmortem Report dated 01.08.2015
12	Exh.P-54/ PW-6	Arrest panchanama dated 06.08.2015
13	Exh.P-59/PW-7	Letter to learned Judicial Magistrate, First Class Ulhasnagar for recording statements of witnesses under Section 164 of Code of Criminal Procedure
14	Exh.P-60/PW-7	Statement of witness No.1 Noorjaha Shaikh under Section 164 of Code of Criminal Procedure
15	Exh.P-61/PW-7	Statement of witness Najira Shaikh under Section 164 of Code of Criminal Procedure
16	Exh.P-62/PW-7	Statement of witness Sakira Shaha under Section 164 of Code of Criminal Procedure
17	Exh.P-63/PW-7	Statement of witness Rashid Shaha under Section 164 of Code of Criminal Procedure
18	Exh.P-64/PW-7	Muddemal Receipt dated 10.08.2015
19	Exh.P-65/PW-7	Seizure panchnama dated 03.08.2015 of Memory card produced by person namely Mohammadali Kasam Shaikh
20	Exh.P-66/PW-7	Muddemal receipt of Memory card
21	Exh.P-67/PW-7	Muddemal receipt of clothes of accused
22	Exh.P-68/PW-7	Muddemal receipt in respect to memory card of voice recording
23	Exh.P-69 to Exh.73/PW-7	Letters issued by investigating officer to Forensic Science Laboratory dated 04.08.2015, 20.08.2015, 21.08.2015, 04.09.2015
24	Exh.P-74/PW-7	Extract of Station diary dated 10.08.2015

25	Exh.P-75/PW-7	Extract of log book dated 10.08.2015
26	Exh.P-76/PW-7	Letter dated 27.08.2015 for opinion as regard to weapon seized
27	Exh.P-87/PW-8	Dead body form dated 01.08.2015
28	Exh.P-88/PW-8	Request letter issued by investigating officer to Rukminibai Hospital dated 01.08.2015 for obtaining advance death certificate
29	Exh.P-89/PW-8	Letter dated 01.08.2015 given by investigating officer to Police Head Constable Bhalerao for producing advance death certificate, P.M. Notes and other articles of the deceased.
30	Exh.P-90/PW-8	Waras receipt dated 01.08.2015 given by relative of the deceased
31	Exh.P-91/PW-8	Spot panchanama dated 01.08.2015
32	Exh.P-92/PW-8	Muddemal receipts of clothes of deceased
33	Exh.P-96/PW-9	Memory card seizure panchanama dated 03.08.2015
34.	Exh.P-99/PW-10	Certificate under Section 65(B)(4) of Indian Evidence Act

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES
Defence Witnesses.

Rank	Name	Exh.	Nature of evidence
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LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

B. Defence :

Sr. No.	Exhibit Number	Description
1.	Exh.P-29/	Photographs of deceased from spot
2.	Exh.77/ referred during cross-examination of	Clothes seizure panchanama of the deceased dated 02.08.2015

	P.W.No.7	
3.	Exh.78/ referred during cross-examination of P.W.No.7	Information dated 01.08.2015 given by informant at Mahatma Phule Chowk Police Station

Material Objects :

Sr. No.	Exhibit Number	Description
1	Article-A/P.W. No.1 and P.W. No.8	Shirt of deceased
2	Article-A/P.W. No.1 and P.W. No.8	Pant of deceased
3	Article-C/P.W.No.3	Blade of Super-max company
4	Article-D/P.W. No.4	Memory card of Sand-disk company
5	Article-H/P.W.No.6	Memory card of Sand-disk company
6	Article-I/P.W.No.6	Envelope of Memory Card at Article-H
7	Article-J/P.W.No.6	Envelope of Memory Card at Article-D

J U D G M E N T

(Delivered on 05.08.2026)

01. The accused is prosecuted for the offence punishable under Sections 302, 364, 201, 507 of the Indian Penal Code.

02. The brief facts of the prosecution case are as under:-

The informant is the sister of deceased Ramjan whereas accused is maternal brother (son of maternal uncle) of the informant. According to informant the deceased and accused were residing in same locality and there used to be quarrel between them on account of liquor drinking habit of the accused. It has been contended on behalf of informant that the

accused was addicted to ganja and liquor whereby he used to demand money from her brother Ramjan. As per informant 3 to 4 years ago there was quarrel in between the deceased and accused and then assault on the reason of drinking liquor, there used to be regular quarrels between them whereby accused used to deliver threat to kill Ramjan.

03. As per informant on 22.07.2015 her brother Ramjan told her that accused was demanding money for drinking liquor and on his refusal to pay amount, the accused has delivered threat to see him. According to informant she has given some sort of understanding to her brother Ramjan and thereby he went away. As per informant on 25.07.2015 at about 9.00 p.m. her mother Najira Shahavali Shaikh had been at her house and informed that Ramjan left the house at about 8.00 a.m. stating that he proceeded towards work, but he did not return back. According to informant she and her mother have traced about Ramjan in nearby locality, but he did not trace and thereby she and her mother had been at Central Police Station, Ulhasnagar on 27.07.2015 to give missing report; which has been recorded bearing No. 72/2015.

04. According to informant on 28.07.2015 at about 7.00 p.m. when she was inquiring about her brother Ramjan in the vicinity at Hira Ghat Petrol Pump she noticed one person on motorcycle near Samarpan building and thereby she inquired with him about Ramjan by showing photograph and that person

told that two days ago he has seen Ramjan along with other person, quarrel was going on between them and other person by catching the collar of Ramjan was forcibly taking him away. As per informant she shown the photograph of accused Husen to that person and he identified him stating that said person is nothing but who was dragging her brother Ramjan. As per informant she has traced about Ramjan and told the narration of that motorcycle rider at Central Police Station.

05. As per informant when they were searching for Ramjan, her brother-in-law namely Rashid (sister's husband) received phone call on his mobile number 9850876633 from mobile number 9222430307 and the person speaking from front side has inquired about Ramjan and told that there are so many enemies of Ramjan and thereby they should give complaint. As per informant said person disconnected phone and they thought that somebody has made phone call to harass them, they did not narrate about the same to anybody.

06. According to informant on 01.08.2015 at about 8.00 a.m. her brother-in-law Rashid has received call on his mobile No. 9850876633 from mobile No. 9699870373 stating that accused is nothing but Husen i.e. present accused and accused asked him to give phone call to the mother of Ramjan. As per informant when mobile has been given with the mother of Ramjan, Husen told that he know whereabouts of her son, they should proceed towards said direction and furthermore told that

Ramjan is laying near Shahad Bridge in one Nala (drainage channel) and then he disconnected phone call. According to informant they had been at Central Police Station, told about telephonic communication and at about 10.00 a.m. they proceeded towards Shahad bridge, but meanwhile Husen again made call from mobile No. 9699870373 and inquired as to whether Ramjan found to them and when they told that yet they have not traced Ramjan, Husen advised them to proceed further inside the Nala. As per informant later on they noticed dead body inside the Nala and thereby her brother-in-law Rashid told accused that they find Ramjan whereby accused Husen told that already he done the work of Ramjan, next number is of Rashid and then of Noora. According to informant by giving such kind of threatening the accused has disconnected phone call. The informant claimed that they have given information regarding the incident at Mahatma Phule Chowk Police Station, police came on spot and by taking aid of fire Brigade they have removed dead body which is in decomposed state having mud around body. As per informant they have identified the dead body of brother Ramjan. Initially Accidental Death Report has been registered at Mahatma Phule Chowk Police Station, then postmortem conducted at J.J. Hospital, later on they performed cremation on dead body and subsequently the informant has given report at Mahatma Phule Chowk Police Station on 02.08.2015. It was registered vide C.R. No. I-00/2015 for the offence punishable under Sections 302, 507, 364, 201 of the Indian Penal Code. Since the alleged incident

took place within the jurisdiction of Central Police Station, first information report has been transferred and thereby it has been registered vide C.R. No. I-363/2015 at Central Police Station, Ulhasnagar for the offence punishable under Sections 302, 364, 201, 507 of the Indian Penal Code.

07. As per the investigating officer he has recorded the statements of witnesses, collected necessary documents from the inquiry under Section 174 of the Code of Criminal Procedure, seized the clothes of deceased and accused as well as prepared seizure panchanama in respect to communication in between accused and Mohammed Ali Ksam Shaikh, taken voice sample of accused. According to the investigating officer accused has given voluntary statement and thereby the weapon i.e. blade of Super Max company has been recovered at the instance of accused. After completion of investigation charge-sheet has been submitted against accused for the offence punishable under Sections 302, 364, 201, 507 of the Indian Penal Code.

08. Since the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class after compliance of Section 207 of the Code of Criminal Procedure has committed the matter for trial.

09. The contents of charge were read over and explained

vide Exh.14 on 16.01.2020 by my learned Predecessor to the accused for the offence punishable under Sections 302, 364, 201, 507 of the Indian Penal Code. Accused pleaded not guilty and claimed to be tried. His defence is of total denial.

10. In support of case, the prosecution has examined in all ten witnesses of whose details have been given in above referred Part-C [Para 44(iii) Chapter VI of Criminal Manual]. So also the prosecution has placed reliance on the documents of whose details have been given in above referred Part C. My learned Predecessor has recorded the statement of accused under Section 313 of the Code of Criminal Procedure vide Exh.101 on 27.03.2026. According to accused he has been falsely implicated in present case even though he has not committed any crime. Heard the learned Additional Public Prosecutor and the learned Advocate for accused. The learned advocate for accused has submitted written notes of argument at Exh.102 and placed reliance on citations which produced along with list at Exh.104.

11. After going through the charge on record and rival submissions, following points arise for my determination and I have recorded my findings and reasons thereon as under :

Sr.No	Points	Findings
1.	Whether the prosecution proved that the death of deceased Ramjan Shahavali Shaikh is Homicidal ?	Affirmative.
2.	Whether the prosecution proved that	Affirmative.

	in between 8.00 a.m. of 25.07.2015 to 10.00 a.m. of 01.08.2015 behind Hira Ghat Petrol Pump, beside Samarpan building, Ulhasnagar-3 the accused committed murder of Ramjan Shahavali Shaikh intending or knowing by cut throat injuries with the aid of blade ?	
3.	Whether the prosecution proved that in between aforesaid date, time and place the accused kidnapped or abducted above named deceased in order that said Ramjan might be murdered ?	Affirmative.
4.	Whether the prosecution proved that in between aforesaid period, time and place the accused knowing that the offence under Section 302 of the Indian Penal Code punishable with life or death has been committed, caused certain evidence connected with said offence to disappear with intention to screen himself from legal punishment ?	Affirmative.
5.	Whether the prosecution proved that in between aforesaid period, time and place the accused committed criminal intimidation by sending an anonymous correspondence threatening to informant and her brother-in-law through different mobile numbers ?	Affirmative.
6.	What order ?	As per final order.

REASONS

12. After perusal of line of investigation and claim of

prosecution it is crystal clear that the prosecution is claiming that this is nothing but culpable homicide as contemplated under Section 299 of the Indian Penal Code. The essential ingredients of offence are nothing but (1) a person causes death and (2) he does so by doing an act (i) with the intention of causing death or (ii) with intention of causing such bodily injury as is likely to cause death or (iii) with the knowledge that he is likely by such an act to cause death. So there are two basic factors i.e. death and either intention or knowledge to cause death. So by keeping in mind these basic requirements it is necessary to scrutinize the evidence on record.

POINT NO. 1 :

13. So far as the nature of offence is concerned, it was necessary for prosecution to prove that the death of Ramjan Shahavali Shaikh is nothing but homicidal death and therefore, let us scrutinize the evidence come on record. So far as totality of evidence is concerned, prosecution has examined in all ten witnesses. P.W. No.1 is informant, P.W.No.2 is brother-in-law of informant, P.W. No.3, P.W.No.4, P.W.No.6, P.W.No.9 are panchas, P.W.No.5 is medical officer who conducted postmortem, P.W.No.10 is photographer, P.W.No.8 is first investigating officer whereas P.W. No.7 is investigating officer who has submitted charge-sheet against the accused after completing investigation. It is the claim of prosecution that accused has committed murder of Ramjan intentionally or knowingly by way of cut throat injury and therefore let us see

the evidence placed on record to ascertain whether it is natural death or homicidal death.

14. So far as evidence adduced by the prosecution is concerned, basically prosecution has placed reliance on the testimonies of P.W.No.1 and P.W.No.2 by referring the name and conduct of present accused Husen. Resultantly it is necessary to verify testimonies of these two witnesses at first point of time to ascertain whether death of Ramjan is natural death or homicidal death. After perusal of version of P.W.No.1 it reveals that she claims that initially she has filed missing report at Exh.20 on 27.07.2015 and later on on 01.08.2015 when they received phone call of present accused, they proceeded towards Shahad and noticed the dead body of her brother inside the Nala beneath Shahad bridge. It has been added by P.W.No.1 that police came there and they have removed the dead body of Ramjan to whom she identified. As per P.W. No.1 Ramjan was having head injury and his dead boy has been forwarded for postmortem report. Similar kind of evidence adduced by prosecution from the mouth of P.W.No.2. After perusal of the testimony of P.W.No.2 Rashid it reveals that he has referred mobile communication from accused on his mobile claiming that on the basis of information provided by accused they succeeded to remove dead body of Ramjan from the Nala with the help of fire brigade and dead body has been forwarded for postmortem. So from perusal of evidence of P.W.Nos.1 and 2 it reveals that the prosecution has succeeded

to bring on record evidence that death of Ramjan is nothing but homicidal death.

15. Prosecution has placed reliance on testimony of P.W.No.8 who being police official had been on spot for preparation of panchanama. It is come on record during the evidence of P.W.No.8 that after registration of accidental death report on 01.08.2015 on the basis of information provided by P.W.No.1 he had been on spot situated at backside of Shahad Bridge inside Nala and with the help of fire brigade they have removed the dead body of Ramjan. As per P.W.No.8 there were two injuries on the head of deceased whereas other injuries were there on the person of Ramjan. So the testimony of P.W.No.8 support the claim of informant that the death of Ramjan is homicide.

16. So far as evidence as regard to death is concerned, the prosecution has examined medical officer i.e. P.W.No.5. After minute scrutiny of the evidence of medical officer it reveals that on receipt of dead body of Ramjan Shaikh along with letter at Exh.37 from Rukminibai Hospital, Kalyan he commenced postmortem on said dead body having of 35 years old male. The P.W.No.5 has referred the injuries found on the person of deceased noted in postmortem report at Exh.40. After perusal of injuries noted in postmortem report it reveals that three injuries have been shown; out of which injury No.1 is ante-mortem whereas injury Nos.2 and 3 are postmortem. First injury is

nothing but cut throat injury over anterior part of neck extending from right mastoid region to left mastoid region measuring around 16 c.m. in length and 5 c.m. in breadth with irregular margins. It has been observed that margins are infiltrated with blood, underlying right sternocleidomastoid muscles lacerated with infiltration of blood on the muscle margins, bilateral neck vessels are transected. So from perusal of evidence of P.W. No.5 it reveals that the testimonies of P.W.No.1, P.W.No.2 and P.W. No.8 have been supported by medical evidence showing that the death of Ramjan is not natural death but it is homicidal death.

17. The learned advocate for accused has referred the Judgment in the case of **Shri Nazir Pathyekhanvar V/s. State of Goa through Quepem Police Station, Quepem, Goa** decided by the Hon'ble Bombay High Court at Goa Bench in **Criminal Appeal No. 63/2018 on 06.09.2019** and submitted that identification of dead body is under cloud as different clothes have been produced before the court. It is relevant point to be noted that the prosecution itself claimed that the dead body found in Nala in decomposed state and thereby naturally there may be minor change of colour of clothes and at the same time the informant being the real sister of deceased has identified her brother. So also PW-2 being close relative has stated the identification of deceased. Resultantly, I do not find force in the submission that identity of dead body is not proved being of Ramjan. After collective reading of evidence of P.W.No.1,

P.W.No.2, P.W.No.5, P.W.No.8 along with inquest panchanama at Exh.38 and postmortem report at Exh.40 it is crystal clear that the death of Ramjan is nothing but homicidal death. So, I have answered this Point No.1 in the affirmative.

POINT NOS.2 TO 5 :

18. It is the case of prosecution that the accused has abducted deceased in order to commit his murder and thereafter between the period 25.07.2015 to 01.08.2015 he did the murder of deceased Ramjan. As mentioned supra, the prosecution has examined in all ten witnesses. Admittedly the incident took place at unknown time without having any eye witness and therefore the case of prosecution is based on circumstances. After perusal of oral as well as documentary evidence it reveals that admittedly there is no eye witness and therefore definitely the claim of prosecution is based on circumstances. The learned advocate for accused by referring the Judgment of the Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda Vs State Of Maharashtra** reported in (1984)4 SCC 116 has submitted that we need to see that the conditions mentioned in para No.153 of said Judgment are fulfilled by the prosecution. The learned advocate for accused has submitted that it is very much necessary for the prosecution that circumstance concerned must or should be established and the principle "may be" cannot be made applicable. It appears that the Hon'ble Apex Court in above referred Judgment has narrated various principles including that (i) Various links in the

chain of evidence led by the prosecution have to be satisfactorily proved, (ii) The said circumstance point to the guilt of the accused with reasonable definiteness and (iii) The circumstance is in proximity to the time and situation. So when the claim of prosecution is based on circumstantial evidence, the facts so established should be consistent with the hypothesis of guilt, the circumstances should be of conclusive nature and there may be a chain of evidence so complete as not to leave any reasonable ground, for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. So by keeping in mind these basic principles as regard to the circumstantial evidence, let us scrutinize the circumstances claimed by the prosecution one by one.

Missing Report

19. After perusal of charge-sheet and evidence led by the prosecution it is crystal clear that the criminal law set in motion on the basis of report given by the sister of deceased and therefore the material witness is nothing but informant (P.W.No.1). After perusal of the version of informant it reveals that she deposed before court that on 25.07.2015 in between 9.00 p.m. to 10.00 p.m. her mother Najira has informed that her brother Ramjan did not return back and thereby they should trace out his whereabouts. As per P.W.No.1 they traced Ramjan and then visited Police Station where police told to trace out more, but did not found. So far as missing report is concerned,

P.W.No.1 has referred the same which is marked at Exh. 20 dated 27.07.2015. So far as evidence of P.W.No.2 is concerned, he has referred the information given by his mother-in-law to sister-in-law that brother-in-law Ramjan did not return back and thereby on next day they have given missing report at police station. As per P.W.No.2 he had given photograph of Ramjan at police station. It is relevant point to be noted that the prosecution has placed reliance on the testimony of the investigating officer (P.W.No.7). After perusal of testimony of P.W.No.7 it reveals that he deposed that on 03.08.2015 the investigation of C.R. No. 363/2015 from Central Police Station has been handed over to him and he perused missing report, first information report and printed first information report. Furthermore P.W.No.7 claimed that he had given letter at Exh.59 to the learned Judicial Magistrate, First Class, Ulhasnagar for recording the statements of witnesses under Section 164 of the Code of Criminal Procedure. So from collective reading of the testimonies of P.W.No.1, P.W.No.2, P.W.No.7 and missing report at Exh.20 it is crystal clear that the sister of deceased initially given missing report on 27.07.2015 informing that her brother is missing since 25.07.2015.

Last seen together

20. As stated supra, the criminal law set in motion on the basis of report given by P.W.No.1. It is material point to be noted that initially report has been given at Mahatma Phule police station on 02.08.2015 and it has been registered vide

C.R. No. I-00/2015 for the offence punishable under Sections 302, 507, 364, 201 of the Indian Penal Code and since the spot of incident is coming under the territorial jurisdiction of Central Police Station said first information report has been transferred to said police station whereby C.R. No. I-363/2015 has been registered on 03.08.2015. In the circumstances let us scrutinize the report at Exh.21 and testimony of P.W.No.1.

21. After minute perusal of evidence of informant it reveals that in para No.4 of her chief examination she deposed that when they were searching whereabouts of Ramjan at the vicinity of Samarpan building, backside of Kajal petrol pump, she saw one motorcyclist standing there to whom she shown photograph of her brother Ramjan and he told that he noticed that one person was dragging Ramjan. As per P.W.No.1 when she shown photograph of accused Hussain to that person he identified him stating that accused was dragging Ramjan. So far as corroboration to the testimony of P.W.No.1 is concerned, on one hand P.W.No.7 has referred the statement of witnesses namely Noorjahan Shaikh, Najira Shaikh and Shakira Saha and on other hand claimed that he has given letter to the learned Judicial Magistrate, First Class for recording the statements of those witnesses under Section 164 of the Code of Criminal Procedure. The P.W.No.7 has referred those statements at Exh.60 to Exh.63. It is true that the learned advocate for accused while recording the evidence of P.W. No.7 has raised objection for giving exhibit numbers to those statements, but

when testimonies of P.W.No.1 and P.W.No.2 have been recorded before the court, their statements recorded under Section 164 of the Code of Criminal Procedure at Exh.60 and Exh.63 respectively can be looked into. So from perusal of the evidence of P.W.No.1 it reveals that she has tried to raise next circumstance regarding last seen together. It is true that the investigating officer has neither traced out that person who told P.W.No.1 that the accused was dragging the deceased nor prosecution has examined that person before court. In the circumstances the learned advocate for accused has submitted that the testimony of P.W.No.1 is not sufficient to conclude that the second circumstance regarding last seen together is proved beyond reasonable doubt. But that does not mean that said piece of evidence should be discarded from the version of P.W.No.1. In other words the piece of evidence come on record on the circumstance of last seen together can be consider along with other circumstances proved by prosecution by adducing cogent and convincing evidence.

22. The learned advocate for accused has placed reliance on the Judgment in the case of **Malleshappa V/s. State of Karnataka** reported in **2007 AIR SCW 6100** and submitted that in case of circumstance about “last seen together” there should be proximity of time and place between last seen evidence and recovery of dead body. So far as referred citation is concerned, even though there was allegation regarding illicit relations between deceased and wife of accused, the evidence of mother

of deceased found with full of contradictions and there is no evidence about alleged illicit relations. In instant case P.W.No.1 has deposed that one person who met her has identified the photographs of deceased and accused stating that accused has dragged the deceased. It is true that the date and time is not come on record as regard to disclosure by said person to P.W.No.1, but here admittedly singular circumstance of “last seen together” is not sufficient to base conviction. As I have already made it clear that other circumstances are there along with corroborative evidence of P.W.No.1 and P.W.No.2 about extra judicial confession and so even though there is no conclusive evidence on last seen principle, other evidence can be taken into consideration.

23. The learned advocate for accused has referred the Judgment in the case of **Anjan Kumar Sarma and Ors. V/s. State of Assam** reported in **AIR 2017 Supreme Court 2617** and submitted that the circumstance of “last seen together” cannot by itself form basis of holding accused guilty of offence. As I have already made it clear that the prosecution has not placed reliance on single circumstance of last seen theory, but there are other circumstances which are discussed at appropriate place and thereby even though principles narrated in referred Judgment are helpful to the accused, the incriminating evidence against accused is also other circumstance and therefore the court has to see totality of evidence.

24. The learned advocate for accused has referred the Judgment in the case of **Ravi and Anr. V/s. State of Karnataka** reported in **AIR 2018 Supreme Court 2744** and submitted that even though PW-1 and PW-2 have deposed about theory of last seen together, their evidence is doubtful as so-called motorcyclist not examined. It is true that the investigating officer neither recorded the statement of the person with whom PW-1 has allegedly made inquiry by showing the photographs of the deceased and accused nor the prosecution has examined said person before court. However on minute perusal of contents of first information report and the evidence of PW-1 it reveals that there is material consonance as regard to circumstances stated by prosecution. As observed earlier, that singular circumstance of last seen together is not sufficient in present case, but the prosecution has succeeded to led other evidence on different circumstances.

25. The learned advocate for accused has submitted that even though the prosecution has referred the circumstance regarding last seen together, there is no cogent evidence as to on what date and time the accused and deceased were last seen together. Furthermore he has submitted that the investigating officer has not recorded the statement of so called person who saw that accused was dragging the deceased and at the same time prosecution has failed to examine said person. It is true that the name of said motorcyclist never came on record and prosecution has not examined said person. But that does not

mean that the testimony of P.W.No.1 which is found otherwise reliable can be thrown away at the behest. In other words the supportive material come on record from the mouth of P.W.No.1 which is having some sort of corroboration through the mouth of P.W.No.7 and the contents of statement at Exh.60 recorded under Section 164 of the Code of Criminal Procedure can be relied upon for referring the theory of last seen together. It is true that the evidence of last seen together is a weak piece of evidence and has to be proved beyond reasonable doubt. But it does not mean that the other evidence come on record connecting to said circumstance cannot be considered at all. So some sort of evidence placed on record by prosecution on the circumstance of last seen together can be taken into consideration while assessing the entire evidence come on record as regard to the claim of prosecution that the accused has committed murder of Ramjan by doing his act intentionally.

Mobile Communication/ Conversation

26. As per informant when she and her brother-in-law (husband of sister) namely Rashid Shah were searching whereabouts of her brother Ramjan, said Rashid has received call on his mobile No. 9850876633 from mobile No. 9222430307 and the person talking told that the deceased has number of enemies and therefore they should lodge police complaint. It is the case of prosecution that on 01.08.2015 at about 8.00 a.m. the accused called P.W.No.2 on above numbered mobile from mobile No. 9699870373 asking him to hand over the phone to

the mother of deceased and when he handed over said phone to the mother of deceased namely Najira Shahavali Shaikh the accused told that if she want to see her son, then he is laying in gutter at Shahad. According to informant when P.W.No.2 has received again phone call from above numbered mobile, the accused told that she must be remembering her brother and thereby she should go below Shahad bridge as he has killed the deceased and thrown him in nala. After perusal of evidence of P.W.No.1 it reveals that similar kind of narration has been reproduced by her and at the same time P.W.No.2 i.e. Rashid has supported the testimony of P.W.No.1 regarding mobile communication in between above numbered two mobiles. So far as evidence P.W.No.7 is concerned, he has referred the statement of P.W.No.2 recorded under Section 164 of the Code of Criminal Procedure, which is marked at Exh.63. So this is nothing but one of the circumstance disclosing mobile communication in between the accused on one hand and P.W.No.1 and P.W.No.2 along with the mother of deceased on other hand.

27. The learned advocate for accused has referred the Judgment in the case of **Roopsena Khatun V/s. State of W.B** reported in **2011 Cri.L.J. 3597** and tried to convince the court that exact words of accused have not been uttered by any of the witness and therefore so called extra judicial confession cannot be relied upon. So far as evidence of PW-1 and PW-2 is concerned, there is corroboration on material particulars as

regard to extra judicial confession given by accused through phone and therefore said piece of evidence can be very well relied upon. The learned advocate for accused has placed reliance on same Judgment and tried to submit that proximity of time is material to prove last seen together theory. There may not be any controversy as regard to legal submission. However in instant case the prosecution has not only relied upon single circumstance of last seen together, but referred other circumstances and therefore court has to see totality of circumstances and evidence adduced to that effect.

28. The learned advocate for accused has submitted that even though prosecution has referred circumstance regarding extra judicial confession, neither CDR nor SDR have been called to establish the communication in between above numbered two mobiles. So also, the learned advocate for accused has submitted that when the prosecution is not proving any phone call between P.W.No.2 and accused, no reliance can be placed on the bare words of P.W.No.1 and P.W.No.2. It is relevant point to be noted that even though there is no documentary evidence establishing that there was mobile communication in between above numbered two mobiles, the testimonies of P.W.No.1 and P.W.No.2 found reliable and therefore their versions cannot be entirely washed out. It is significant to note that P.W.No.1 and P.W.No.2 in clear terms have stated about the conversation in between accused and them whereby the exact spot noticed about the existence of dead body. That

means the mobile communication took them up to the spot at where dead body found. So the evidence of P.W.No.1 and P.W.No.2 can be relied upon as regard to communication between the accused and them. It is true that the learned advocate for accused has submitted that there is variance of words in the alleged extra judicial confession in the testimonies of P.W.No.1 and P.W.No.2 and since those witnesses are interested such kind of evidence cannot be relied upon. It is true that P.W.No.1 and P.W.No.2 are sister and brother-in-law of deceased, but admittedly accused is also their close relative i.e. the son of maternal uncle. In the circumstances unless there is cogent defence as to why the accused has been falsely implicated at the instance of maternal sister i.e. P.W.No.1, the testimonies of P.W.No.1 and P.W.No.2 cannot be termed as interested witnesses. So even though there is no documentary corroboration to the circumstance of mobile communication, the piece of evidence come on record from the mouth of P.W.No.1 and P.W.No.2 can be relied upon for ascertaining what role has been played by the accused.

Extra Judicial Confession

29. The prosecution has referred other circumstance as regard to extra judicial confession made by accused with person namely Mohammad Ali Kasam Shaikh. It is the claim of prosecution that during the course of investigation P.W.No.7 has recorded the statement of Mohammad Ali Kasam Shaikh who claimed that on 01.08.2015 the accused has informed him

by making phone call that he has committed murder of the deceased. To prove said circumstance the prosecution has placed reliance on seizure panchnama at Exh.65. After perusal of evidence of P.W.No.7 it reveals that he deposed that the accused by making phone call to relative namely Mohammad Ali Kasam Shaikh has informed that he has committed murder of Ramjan by cut throat and dead body thrown in Nala. As per P.W.No.7 the memory card containing conversation has been seized on 03.08.2015 by preparing panchnama at Exh.65. So from perusal of evidence of the investigating officer it reveals that he has referred panchnama at Exh.65 and memory card at M.O.- H along with envelope at M.O.-I and muddemal receipt at Exh.67. The learned advocate for accused has submitted that as per statement of said witness under Section 161 of the Code of Criminal Procedure he has produced C.D. before police whereas the investigating officer has claimed that it is memory card and so having such kind of ambiguity, it was necessary for prosecution to examine said witness namely Mohammad Ali Kasam Shaikh. Furthermore the learned advocate for accused has submitted that when independent panch not examined to prove the contents of panchnama at Exh.65, vague proposition of the prosecution cannot be relied upon. So also the learned advocate for accused has submitted that when certificate under Section 65B of the Evidence Act which is mandatory in nature is not produced along with memory card, such kind of evidence cannot be relied upon. It is true that even though script has been prepared regarding said extra judicial confession in

between accused and Mohammad Ali Kasam Shaikh, the author to prepare script is not come forward and at the same time the certificate under Section 65B of the Evidence Act is missing. So said circumstance cannot be termed as conclusively proved. As a result it is necessary to verify further evidence as regard to next circumstance.

Voice Recording

30. The prosecution has examined P.W.No.4 claiming that the voice sample of accused has been taken in his presence by preparing panchanama at Exh.28. It is come on record in the evidence of P.W.No.4 that voice sample recorded through videographer Jeetu Ahuja. The prosecution has examined said witness at Exh.98 being P.W.No.10. After perusal of the evidence of P.W.No.10 it reveals that on 15.08.2015 he has been called by police and he recorded and saved video shooting in memory card. P.W.No.10 has referred certificate under Section 65B(4) of the Evidence Act, 1872 at Exh.99. So prima facie it reveals that the contents of panchanama at Exh.28 proved from the mouth of P.W.No.4 and P.W.No.10. After perusal of evidence of the investigating officer (P.W.No.7) it reveals that in his version he claims that on 15.08.2015 after starting voice recorder the voice sample of accused has been taken in memory card of Sand-disk company vide panchanama at Exh.28. Said memory card is marked at M.O.-D. The P.W.No.7 has added that he prepared muddemal receipt at Exh.68 and forwarded muddemal for analysis. It appears that

the prosecution has placed on record examination report dated 10.08.2018 wherein it has been observed that “ the auditory analysis of the recorded questioned voice exhibit of speaker marked Ex-1 and the specimen voice exhibit of speaker marked Ex-2 and the subsequent spectrographic analysis revealed that, the questioned voice exhibit of speaker marked Ex-1 is found similar with the specimen voice exhibit of speaker marked Ex-2 (said to Mr. Hussain Harun Shaikh)”. It appears that said examination report is not exhibited, but it can be read in evidence as said report is given by expert and there is no contrary material placed on record by the defence. So in the circumstances let us see the stand taken by defence through written notes of argument at Exh.102.

31. The learned advocate for accused has placed reliance on the Judgment in case of **Rakesh Bisht etc. V/s. Central Bureau of Investigation** reported in **2007 Cri.L.J. 1530** and submitted that at the stage of investigation the accused cannot be compelled to give his voice sample. It is true that there should not be compulsion on accused to give voice sample. However in instant case no material come on record that voice sample of accused has been recorded by putting pressure on him. On the contrary there is no specific suggestion during cross-examination of P.W.No.4 or of P.W.No.7 that force was used for recording voice sample of the accused. In the circumstances referred citation is not helpful to the accused.

32. The learned advocate for accused has submitted that the evidence of P.W.No.4 is not inspiring confidence and it is contrary to what is stated in panchanama at Exh.28. So also the learned advocate for accused has submitted that the certificate under Section 65B of the Indian Evidence Act, 1872 produced after lapse of 10 years which is nothing but attempt on the part of prosecution to fulfill lacuna in its case which is not permissible in the eyes of law. Furthermore, the learned advocate for accused has submitted that the evidence of P.W.No.10 does not inspire any confidence even about the certificate at Exh.99 and therefore, no reliance can be placed on such kind of evidence. It is true that the prosecution has failed to examine person namely Mohammad Ali Kasam Shaikh with whom alleged conversation took place in the form of extra judicial confession and CDR/SDR of mobile numbers of said witness and accused not placed on record. But at the same time the versions of P.W.No.1 and P.W.No.2 about extra judicial confession is on record and therefore, even though the circumstance about voice recording is not conclusively proved, by taking help of evidence of P.W.No.4, P.W.No.10. The panchanama at Exh.28 can be relied upon for referring voice analysis report. So even though the prosecution has not conclusively proved the circumstance about voice recording, the testimonies of P.W.No.1, P.W.No.2, P.W.No.4 and P.W.No.10 can be relied upon as regard to other circumstances claimed by prosecution.

Spot visit

33. It is relevant point to be noted that the informant has claimed that on the basis of information provided by accused they had been at Shahad bridge near Jakat Naka and with the help of fire brigade police have taken out dead body of deceased from Nala. It appears that the testimony of P.W.No.2 is supportive to the version of informant. It is come on record in the evidence of P.W.No.2 that accused Husen made phone call informing that they should proceed towards Nala and thereafter they succeeded to remove dead body of Ramjan which was laying in Nala. So far as evidence of P.W.No.8 is concerned, in his version he has stated that as per directions of superior he had been on spot along with police officials and they have noticed dead body in Nala. Furthermore P.W.No.8 has deposed that with the help of fire brigade team they have removed dead body from Nala and then he prepared inquest panchanama at Exh.38. P.W.No.8 has referred letter given to Rukminibai Hospital at Exh.88 and then letter issued to Sir. J.J. Hospital, Mumbai for the purpose of postmortem on dead body. As per P.W.No.8 he has prepared spot panchanama at Exh.91 as shown by P.W.No.2 Rashid Khan. So from perusal of evidence of P.W.No.1, P.W.No.2, P.W.No.8 it reveals that the prosecution has succeeded to prove the spot panchanama as well as the location at site when they had removed dead body of Ramjan.

34. The learned advocate for accused vehemently argued that admittedly swollen decomposed body having insects all

over it was recovered by the police and as per prosecution dead body has been identified by P.W.No.1 on the basis of clothes. It has been argued on part of accused that admittedly no biological sample of deceased along with biological sample of his relatives are forwarded for DNA analysis in order to confirm the identify of dead body and therefore the case of prosecution is based on identification of dead body only on the basis of clothes. The learned advocate for accused by referring inquest panchanama at Exh.38, the evidence of P.W.No.1, P.W.No.2, P.W.No.5, P.W.No.8 has tried to submit that there is discrepancy as regard to colour of clothes actually wore by the deceased and found on the dead body. The learned advocate for accused has referred photographs which are collectively marked at Exh.29 and submitted that as per those photographs the deceased is not seen wearing a pink colour shirt as alleged, the colour of pant on the dead body is also in dispute since as per inquest panchanama at Exh. 38 the deceased was having black colour pant whereas in missing report at Exh.20 the deceased was wearing pant of chocolaty colour. After comparison of documents placed on record and photographs at Exh.29 it reveals that some discrepancy appearing as regard to colour of clothes, but fact cannot be forgotten that swollen decomposed body having insects all over it was recovered from Nala having mud and for more than 4 to 5 days dead body was laying in Nala. At the same time the photographs placed on record are not properly maintained. It is relevant point to be noted that P.W.No.1 is nothing but blood relative of deceased and thereby

her version is very much relevant while deciding identity of the deceased. After perusal of evidence of PW-1 it reveals that she has specifically deposed that she identified her brother Ramjan. So also there is corroborative piece of evidence from the mouth of P.W.No.2 as regard to identity of Ramjan who is also close relative of deceased. It is relevant point to be noted that during cross-examination of P.W.No.1 and P.W.No.2 no such kind of defence has been raised that dead body is not of deceased Ramjan and therefore after thought argument by raising dispute about the identity of deceased cannot be considered at fag end of trial. Resultantly, from perusal of circumstances on spot it is crystal clear that the prosecution has succeeded to prove the location of site including the fact that dead body of Ramjan found in Nala in decomposed state.

Registration of First Information Report

35. After perusal of charge-sheet it reveals that initially missing report at Exh.20 had been given on 27.07.2025, thereafter information that dead body found in Nala had been given by informant at Mahatma Phule Chowk Police Station on 01.08.2015 whereby ADR No. 00/2015 under Section 174 of the Code of Criminal Procedure has been registered and subsequently on 02.08.2015 P.W.No.1 has given report by naming present accused. It appears that initially report has been given at Mahatma Phule Chowk Police Station and it has been registered vide C.R. No. I-00/2015 for the offence punishable under Sections 302, 507, 364, 201 of the Indian

Penal Code. It is matter of record that since the spot of incident is situated within the territorial jurisdiction of Central Police Station, said first information report transferred from Mahatma Phule Chowk Police Station to Central Police Station where C.R. No. I-363/2015 has been registered which is marked at Exh.21. So from perusal of evidence available it reveals that the prosecution has placed on record documentary evidence about registration of first information report. After perusal of the evidence of PW-1 it reveals that she has referred first information report at Exh.21 dated 02.08.2015. So also PW-7 has referred the statement of PW-1 recorded under Section 164 of the Code of Criminal Procedure. So from the evidence come on record it reveals that on the basis of first information report given by P.W.No.1, the criminal law set in motion.

36. The learned advocate for accused by placing reliance on the Judgment in the case of **Ramji Suriya and another V/s. State of Maharashtra** reported in **AIR 1983 Supreme Court 810** has submitted that there is extraordinary delay in lodging the first information report and there is failure of prosecution to explain the same and so first information report should be viewed with suspicion. So far as referred citation is concerned, it has been observed that there is inordinate delay involved in giving first information report to the police and it has been prepared after some deliberation. So far as present case is concerned, initially missing report has been given on 27.07.2015 (Exh.20), thereafter Khabar has been given on

01.08.2015 by the informant herself whereby investigation under Section 174 of the Code of Criminal Procedure commenced and then the informant has given report at Mahatma Phule Chowk Police Station on 02.08.2015 which recorded at 3.45 p.m. bearing C.R. No. I-00/2015 and since the incident took place within the territorial jurisdiction of Central Police Station, after transfer of papers C.R. No. I-363/2015 registered at Central Police Station at 00.10 a.m. of 03.08.2015. So from perusal of above noted events and explanation given in first information report it is crystal clear that there is no unexplained and inordinate delay by which prosecution failed to prove its case.

Seizure of clothes of deceased

37. The prosecution has examined informant who being the sister of deceased. P.W.No.1 in her evidence has deposed that her brother wore pink colour shirt and chocolaty colour pant. Two clothes have been shown to P.W.No.1 and she has identified the same being the clothes of deceased which wore by him at the time of incident. As mentioned supra, some sort of discrepancy has been noticed and argued as regard to colour of two clothes. But at the same time fact is that the incident took place in the year 2015, evidence of P.W.No.1 recorded in the month of July-2022 and admittedly the dead body found in decomposed state in one Nala which was laying there for about 4 to 5 days inside mud. In the circumstances when there is evidence from the mouth of P.W.No.1 regarding identification

of clothes, identity of dead body cannot be doubted. The prosecution has produced panchanama at Exh.77. It is true that the prosecution has not examined panch witnesses, but at the same time the defence himself shown said panchanama to P.W.No.7 and thereby marked at Exh.77. The learned advocate for accused tried to submit that there is discrepancy as regard to colour and as per inquest panchanama clothes have been removed and handed over to police whereas as per panchanama at Exh.77 those clothes have been seized on 02.08.2015 in between 11.05 to 11.50 a.m. and so there is doubt about in said period at where those clothes have been kept. It is come on record from the evidence of P.W.No.1 and P.W.No.2 that clothes have been seen by them and when panchanama at Exh.77 referred by defence, there is no question to raise objection about seizure of clothes of the deceased.

Seizure of clothes of accused

38. The investigating officer in his evidence has claimed that he has seized clothes of accused by preparing panchanama at Exh.19. It is relevant point to be noted that the defence has admitted said panchanama at Exh.19 dated 10.08.2015 and therefore no further evidence is necessary to prove the seizure of clothes of accused.

Recovery of Weapon

39. It is the case of prosecution that the accused has given voluntary statement and thereby weapon used while

commission of offence has been recovered at his instance as per Section 27 of the Evidence Act. To prove said circumstance the prosecution has examined P.W.No.3 and P.W.No.7. After perusal of evidence of P.W.No.3 it reveals that during chief examination he has referred memorandum at Exh.26 stating that accused gave disclosure that the blade which was used while making assault is hidden at Shahad. Furthermore P.W.No.3 by referring blade at Article-C claims that as per directions of accused they had been at Shahad by road running from furniture market, Chopda court and reached near Nala as per instructions of accused and thereafter accused removed blade which was hidden below stone situated at Shahad Nala. The P.W.No.3 has referred recovery panchanama at Exh.26A along with blade at Article-C.

40. The learned advocate for accused has referred the Judgment in the case of **Roopsena Khatun V/s. State of W.B** (referred supra) and submitted that the object which can be seen by anybody cannot be treated as recovery under Section 27 of the Evidence Act. It is true that when the object is accessible to public, it cannot be treated as recovery under Section 27 of the Evidence Act. However, as mentioned earlier, PW-3 and PW-7 have specifically stated that accused has removed blade from Nala which was hidden below stone. In the circumstances said recovery can be relied upon.

41. So far as corroboration to the testimony of P.W.No.3

the prosecution has placed reliance on the testimony of the investigating officer (P.W.No.7). After perusal of evidence of P.W.No.7 it reveals that he deposed that the accused has given voluntary statement showing his willingness to produce Super-max blade which used while commission of offence and accordingly memorandum at Exh.26 recorded. The investigating officer has deposed that he, police staff, accused, two panchas proceeded as per directions of accused towards Shahad from Kalyan Murbad road and after the end of bridge accused has taken them near Nala. As per P.W.No.7 the accused took them towards Nala and removed Super-max blade at Article-C which was hidden below stone. The P.W.No.7 has referred recovery panchanama at Exh.26A, envelope at Article-E and muddemal receipt at Exh.64. So from perusal of evidence of P.W.No.3 and P.W.No.7 it reveals that there is disclosure of fact and recovery of object at the instance of present accused.

42. The learned advocate for accused has submitted that identity of the person whose name is appearing in Exh.26 and Exh.26A is altogether different and this ambiguity is not explained by the prosecution either by producing identity card of said witness or by leading any requirement to clear said identity. It is true that name of P.W.No.3 written as Dinesh Narayan Shinde on Exh.26 whereas before court his name has been typed as Ganesh Narayan Shinde. During cross-examination P.W.No.3 has deposed that he has shown his identity card of name Dinesh Narayan Shinde to the police and

while giving evidence he stated name Ganesh Narayan Shinde and thereby the learned advocate for accused tried to convince the court that there is ambiguity as regard to name of this witness. However on perusal of totality of evidence it reveals that the evidence of the investigating officer is convincing to the effect that the accused has given disclosure statement and produced blade at Article-C in presence of two panchas. There may be typographical mistake while recording the name of P.W.No.3 either by employee of the court or by police. But that single ambiguity is not sufficient to washed out corroborative evidence of P.W.No.3.

43. The learned advocate for accused has submitted that the recovery of alleged weapon effected from open place accessible to general public and therefore the evidence regarding recovery of weapon is not helpful to the prosecution. It is relevant point to be noted that even though recovery of blade is from Nala, P.W.No.3, P.W.No.7 have specifically deposed that the accused has removed blade which was kept below stone and therefore even though Nala is accessible to general public, the said recovery cannot be doubted when there is specific corroboration in between P.W.No.3 and P.W.No.7. The learned advocate for accused has deposed that prosecution neither sought opinion of the Medical Officer as to whether same can be a weapon of assault nor alleged blade shown to the Medical Officer during his substantive evidence. It is true that there is no opinion of the Medical Officer, but at the same time

P.W.No.5 who conducted postmortem on the dead body of 34 years old male has described injuries found on the person of deceased; which are mentioned in column No.15 to 18 of postmortem report at Exh.40. Furthermore the Medical Officer has clarified that injury No.1 is ante-mortem. It is come on record from the testimony of P.W.No.5 that cause of death is cut throat injury as mentioned in Column No.17(i) of the postmortem report at Exh.40. The injury described in Column No.17(ii) of postmortem report is nothing but “cut throat injury seen over anterior part of neck extending from right mastoid region to left mastoid region measuring around 16 c.m. in length and 5 c.m. in breadth with irregular margins. Margins are infiltrated with blood. Underlying right sternocleidomastoid muscles lacerated with infiltration of blood at the muscle margins. Bilateral neck vessels are transected”. So even though there is no opinion of other Medical Officer as to whether weapon at Article-C can be a weapon of assault, the oral evidence of P.W. No.5 is sufficient to refer weapon at Article-C.

Motive/intention

44. After perusal of first information report it reveals that the informant has specifically stated inter-se relations in between her brother Ramjan and accused on account of dispute due to habit of accused to drink liquor. After perusal of version of informant it reveals that in para No.1 of her chief examination she deposed that on 22.07.2015 her brother Ramjan told her that the accused was demanding money to

drink liquor and since he told that he do not have money, accused delivered threat to see him. It is relevant point to be noted that during cross-examination similar kind of question had been put to PW-1 that three to four years ago of the incident there was quarrel in between Ramjan and accused on account of drinking of liquor and thereby report has been given at Vitthalwadi Police Station. It appears that during cross-examination PW-2 has stated consonance version as like PW-1 that on 22.07.2015 the deceased told him that accused was demanding money for drinking liquor and due to failure to pay money the accused has delivered threat to kill him. So from perusal of evidence of PW-1 and PW-2 it is crystal clear that there was intention and motive of accused to cause the death of Ramjan.

45. The learned advocate for accused has submitted that being case is based on circumstantial evidence, the prosecution was required to prove motive on the part of accused to commit alleged offence. Furthermore the learned advocate for accused has submitted that non-existence and non-proving of motive at the instance of prosecution is fatal and therefore no reliance can be placed on the evidence of prosecution to suggest that the accused committed any offence as alleged by the prosecution. As discussed supra, there is corroborative piece of evidence from the mouth of PW-1 and PW-2; which is also supported during their cross-examinations by giving answers put on behalf of accused regarding motive and intention and therefore I do

not find force in the submission that the prosecution has failed to prove motive of the accused to commit offence.

46. The learned advocate for accused has placed reliance on the Judgment in the case of **Raju s/o. Babulal Dange & Anr. V/s. State of Maharashtra** reported in **2017 ALL MR (Cri) 1718** and submitted that the prosecution has failed to establish incriminating circumstances against accused beyond reasonable doubt and therefore the accused cannot be held guilty. He has referred the Judgment which is mentioned in Para No.6 of said Judgment and submitted that the court should see the principles observed by the Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda V/s. State of Maharashtra** (referred supra). There are five well settled principles while assessing the case of prosecution which is based on circumstantial evidence and thereby court has to assess the evidence by referring those principles.

47. It is the case of prosecution that initially the accused has abducted deceased and then committed murder being cut throat injury and then caused certain acts to disappear the evidence having intention to screen himself from the legal punishment. Furthermore the prosecution has claimed that the accused caused criminal intimidation by sending threatening to the informant. PW-1 during her version has deposed that when Rashid told accused that Ramjan found, the accused uttered that now he is in queue and then there is number of Noora

(P.W.No.1). So it is nothing but delivering threat for causing criminal intimidation.

48. So far as totality of evidence is concerned, the prosecution has examined in all ten witnesses. As mentioned supra, the prosecution has referred number of circumstances for reaching up to the involvement of present accused. It is true that even though prosecution has examined ten witnesses, certain circumstances claimed by prosecution not proved on the basis of substantive evidence. But other circumstances proved beyond reasonable doubt through the versions of P.W.No.1 to P.W.No.6 on one hand and P.W.No.7 to P.W.No.10 on other hand. There is corroborative piece of evidence from the mouth of P.W.No.1, P.W.No.2 and the line of investigation placed on record through the testimonies of P.W.No.7 and P.W.No.8.

49. As mentioned supra, the prosecution has examined in all ten witnesses. Admittedly there was no eye witness to the incident and thereby the case of prosecution is based on circumstantial evidence. As stated supra, the prosecution has referred various circumstances. It is true that on some circumstances the prosecution could not place on record the concrete evidence, but at the same time the versions of P.W.No.1, P.W.No.2 along with the line of investigation of P.W.No.7, P.W.No.8 is sufficient to conclude that the present accused is the author to cause murder of Ramjan by abducting him and he caused certain acts to disappear evidence with

intention to screen himself from legal punishment. So also there is evidence for concluding that the accused has committed criminal intimidation by sending anonymous correspondence threatening informant and her brother-in-law. It is true that there were some irregularities on the part of investigating machinery. But that does not itself mean that the evidence of reliable witnesses should be thrown away. So from perusal of totality of evidence it reveals that on one hand the prosecution has proved that the death of deceased Ramjan is homicidal and on other hand proved that the present accused is nothing but author to commit murder of Ramjan with having intention and knowledge. So I have no hesitation to conclude the guilt of the accused for the offence punishable under Sections 302, 364, 201, 507 of the Indian Penal Code.

(Judgment is suspended to hear the accused on the point of sentence.)

Date : 05.08.2026

(R.V. Tamhanekar)
Additional Sessions Judge,
Kalyan.

50. It has been submitted on behalf accused that even though court has concluded that the prosecution has proved the offence, it is not rarest of rare case. The learned advocate for accused has submitted that accused is already in jail for more than 10 years and therefore the lenient view may be taken while awarding sentence.

51. The learned Assistant Public Prosecutor has submitted that the offence proved is serious in nature and therefore maximum punishment may be awarded.

52. There is no record to show that the accused is habitual offender or previously convicted. But at the same time the offence proved is under Sections 302, 364, 201, 507 of the Indian Penal Code and out of it the offence under Section 302 of the Indian Penal Code provides punishment of either imprisonment for life or death penalty. However, this is not rarest of rare case and therefore imposing punishment of life imprisonment would suffice the purpose in such kind of serious offence.

53. It is material point to be noted that due to murder of the deceased his family members suffered mental as well as economic pain. It is significant to note that wife, children and parents of deceased are actual sufferer in the crime and thereby they should not be left out without compensating them. It is apparent from the face of record that the wife, children and parents of the deceased were depending on his earning. Due to his death they suffered huge loss and so in the circumstances, they should be compensated. But, in present case, the economic condition of accused appears to be poor and thereby compensation amount cannot be sufficiently recovered from fine amount. So necessary directions require to be given to the

District Legal Services Authority, Thane for granting compensation under Section 357-A of the Code of Criminal Procedure.

54. So by considering above noted submissions at bar, legal provisions, nature of crime, motive and intention to commit the crime, I am of the opinion that the following sentence would meet the ends of justice. Hence, I proceed to pass the following order.

ORDER

1. Accused Husen Harun Shaikh is convicted for the offence punishable under Section 302 of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to suffer life imprisonment and to pay fine of Rs.10,000/-, in default to suffer further rigorous imprisonment of three months.
2. Accused Husen Harun Shaikh is convicted for the offence punishable under Section 364 of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,000/-, in default to suffer further rigorous imprisonment of two months.
3. Accused Husen Harun Shaikh is convicted for the offence punishable under Section 201 of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.3,000/-, in default to suffer further rigorous imprisonment of one month.
4. Accused Husen Harun Shaikh is convicted for the offence punishable under Section 507 of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous

imprisonment for one year and to pay fine of Rs.2,000/-, in default to suffer further rigorous imprisonment of 15 days.

5. Substantive sentence shall run concurrently.
6. Accused is entitled for set-off of the period which he has already undergone i.e. from 06.08.2015.
7. Muddemal properties at Article A to Article-J now being worthless, be destroyed as per provisions of Law after appeal period is over.
8. The amount of fine recovered from accused be paid to the dependents of deceased Ramjan Shahavali Shaikh.
9. The copy of Judgment be forwarded to the District Legal Services Authority, Thane for passing appropriate order for granting compensation to the dependents i.e. wife, children, parents of deceased under Section 357-A of the Code of Criminal Procedure.
10. The accused has been informed that he has right to prefer appeal against present Judgment before the Hon'ble High Court.
11. The copy of Judgment free of cost be given to the accused.
12. The copy of Judgment be forwarded to the District Collector, Thane for information.

(Judgment delivered and pronounced in open Court)

Date : 05.08.2026

(R.V. Tamhanekar)
Additional Sessions Judge,
Kalyan.

CERTIFICATE

I affirm that the contents of this PDF file Judgment are same word to word, as per the original Order /Judgment.

Name of Stenographer	:	S.V.Sawant (Stenographer Grade-1)
Court	:	Additional Sessions Judge, Kalyan.
Dated	:	05.08.2026
Judgment signed by the Presiding Officer on	:	05.08.2026
Judgment uploaded on	:	05.08.2026