

Mahesh Dhanaji Shinde vs State Of Maharashtra on 27 February, 2014

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Bench: Shiva Kirti Singh, Ranjan Gogoi, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 1210-1213 OF 2012

MAHESH DHANAJI SHINDE

... APPELLANT (S)

VERSUS

STATE OF MAHARASHTRA

... RESPONDENT (S)

With
CRIMINAL APPEAL NOS. 2089-2091 OF 2012
CRIMINAL APPEAL NOS. 1238-1239 OF 2012
CRIMINAL APPEAL NOS. 1240-1241 OF 2012

J U D G M E N T

RANJAN GOGOI, J.

1. The appellants, Santosh Manohar Chavan, Amit Ashok Shinde, Yogesh Madhukar Chavan and Mahesh Dhanaji Shinde who were tried as accused Nos. 1, 2, 3 and 6 (hereinafter referred to as A-1, A-2, A-3 and A-6) in Sessions Case Nos. 3/2005, 4/2005 and 5/2005 have assailed the impugned common judgment and order of the High Court of Bombay dated 17.10.2011 whereby their conviction in Sessions Case Nos. 3/2005 and 5/2005, inter alia, under Section 302/120B of the IPC and for offences under the Arms Act have been upheld by the High Court. The death penalty

imposed on the appellants by the learned Trial Judge has been confirmed by the High Court by the order under appeal apart from the punishment imposed under different Sections of the Penal Code as well as the Arms Act. Insofar as Sessions Case No. 4/2005 is concerned, the learned Trial Judge had acquitted accused 1, 2 and 3 of the offence under Section 302/120B IPC. In the appeal by the State, the High Court has reversed the acquittal and convicted the aforesaid three accused of the aforesaid offence and has sentenced them to undergo RI for life. The accused No. 6, i.e., appellant Mahesh Dhanaji Shinde is not an accused in Sessions Case No. 4/2005. It is the common order of the High Court rendered in the aforesaid cases convicting and sentencing the accused- appellants, as aforementioned, which has been challenged in the present appeals. It may also be mentioned at the outset that in all the cases the accused-appellants have been exonerated of the charge under Section 364A of the IPC by the order under appeal.

2. The case of the prosecution in short is that on 20.12.2003 the Superintendent of Police, Sindhudurg received anonymous letters and phone calls to the effect that some unidentified dead bodies were lying dumped on the hillocks of village Nandos, Taluk Malvan, District Sindhudurg. A search operation was organised on the very day i.e. 20.12.2003 in the course of which 7 dead bodies were recovered. Two more dead bodies were recovered on the next day i.e. 21.12.2003 and one dead body was recovered on 29.12.2003. Alongwith the dead bodies, articles like clothes, trouser hooks, broken brief case etc. alongwith two blood stained diaries were also recovered. Though all the dead bodies were sent for post-mortem examination the high level of decomposition rendered any post-autopsy opinion impossible. The dead bodies were therefore sent to Medical College, Miraj and a team of doctors was constituted who performed forensic chemical tests on the dead bodies. Some of the organs from the dead bodies were sent to the Centre for DNA Fingerprinting and Diagnostics, Hyderabad (CDFD) for DNA test and the skulls sent to the Forensic Laboratory, Kalina, Bombay for super-imposition tests.

3. In the two diaries recovered by the police from the spot some names and addresses were found. It is from these persons that the names and particulars of the persons to whom the diaries belonged could be ascertained. Having traced the initial identity of some of the deceased in the above manner, enquiries from such friends and relatives revealed the names and identities of other persons who were in the company of the deceased persons. Information lodged in different police stations with regard to missing persons around the relevant time were collected and co- related. The opinion of handwriting experts were obtained which showed that the diaries belonged to one Dada Saheb Chavan and Kerubhai Mali. Blood samples of the relatives were sent to the CDFD, Hyderabad for DNA test. Some of the dead bodies were also identified by the relatives and friends of the deceased on the basis of articles recovered from the spot which were seized in the course of the investigation. The investigation which proceeded on the aforesaid lines, prima facie indicated the involvement of the accused-appellants. Accordingly, accused Santosh Manohar Chavan (A-1) was arrested on 22.12.2003 and from the information obtained during the course of his interrogation, accused Nos. 2 to 7 were arrested. The disclosures made by the accused led to recovery of gold articles, bank passbooks etc. from the house of A-7 as well as incriminating weapons like iron rods, cut bars of guns, one muzzle loader gun etc. Test Identification Parade was held where A-1, A-2 and A-3 were identified by witnesses. The assets acquired by the aforesaid persons around that time including motor bikes, a Tata Sumo jeep etc. were seized alongwith bank statements of the accused, their

wives and relatives. The bank statements revealed that cash deposits well beyond the income of the accused were made around the time of the incidents. The accounts also showed purchase of Tata Sumo by A-1 at a cost of Rs. 2.6 lakhs on 24.08.2003 and purchase of motorcycles by A-2 and A-3 on 20.11.2003 and 25.11.2003 respectively.

4. According to the prosecution, investigation further disclosed that A- 1 Santosh Manohar Chavan who plied an auto rickshaw in Mumbai claimed super natural powers to bring about “money showers” i.e. to multiply cash money. According to the prosecution while A-2 was a LIC agent, A-3 was employed in a private institution and A-6 was running a ration shop. All the aforesaid accused used to spread and circulate amongst innocent and unsuspecting persons the magical powers claimed by A1 to multiply money by creating “money showers”. They would ask the victims to come to Malvan with currency notes of higher denominations alongwith empty gunny sacks (ostensibly to collect the proceeds of the money shower). In Malvan they were put up in lodges and hotels. From those lodges and hotels the victims would be ferried to the Nandos plateau by auto rickshaw. The vehicle will halt near the village Panchayat Office from where the victims were asked to travel by foot to the plateau. The prosecution alleged that the accused ensured that the victims did not bring their own vehicles to Malvan and that they did not leave any personal effects in the hotel or lodge. All this was done to avoid any trace of the victims. The registers of lodges and hotels where the deceased persons and some of the accused had, according to the prosecution, stayed on different dates during the relevant period were also seized in the course of investigation.

5. According to the prosecution, the investigations carried out had also revealed that one Shankar Sarage and one Hemant Thakre were done to death by the accused persons on 24.9.2003. Dead bodies number 1 and 10 (DB-1 and DB-10) were claimed to be of the aforesaid two persons who, according to the prosecution, were killed on 24.9.2003. The accused were charged of the offence of kidnapping and murder of the aforesaid two persons and were put to trial in the proceeding registered as Sessions Case No. 4/2005. On the basis of the report of the forensic team of the Miraj Medical College the prosecution alleged that the aforesaid two persons were killed by gun shots, swords, rods and revolver and that they have been robbed of a sum of Rs. 1,55,000/-. While the Trial Court acquitted the accused A-1, A-2 and A- 3 on the ground that the dead bodies DB-1 and DB-10 could not be identified to be that of deceased Shankar Sarage and Hemant Thakre, the High Court reversed the said finding insofar as deceased Shankar Sarage is concerned and held accused 1, 2 and 3 to be guilty of murder of Shankar Sarage. They have been accordingly sentenced to undergo RI for life.

6. The prosecution had further alleged that the second incident involved four persons i.e. Vijaysinha Dude, Dadasaheb Chavan, Sanjay Garware and Vinayak Pisal and that the same had occurred on 30.10.2003. It is the further case of the prosecution that Dead Bodies i.e. DB-2, DB-3, DB-4 and DB-5 were that of the four deceased persons mentioned above who were killed and robbed of Rs. 3,10,000/-. Such identification was claimed on the basis of super-imposition tests carried out at the Forensic Laboratory, Kalina, Bombay. Sessions Case No. 5/2005 was registered in respect of the said incident wherein the accused A-1, A-2, A-3 and A-6 were tried and convicted under Section 302/120B IPC and other provisions of the Code as well as under different provisions of the Arms Act. They have been awarded the death sentence by the learned Trial Court which has been

confirmed by the High Court by the order under challenge in the present appeals.

7. The prosecution has further alleged that the third incident occurred on 14.11.2003 and involved four persons of a family who were identified to be Kerubhai Mali, Anita Mali, Sanjay Mali and Rajesh Mali. On the basis of the report of DNA analysis, the prosecution alleged that dead bodies DB-8, DB-7, DB-6 and DB-9, respectively, belonged to the aforesaid persons in seriatim and that they had been killed and robbed of Rs. 3,10,000/-. Sessions Case No. 3/2005 was registered against accused A-1, A-2, A-3 and A- 6 in respect of the incident in question. All the four accused persons have been convicted by the learned Trial Court inter alia under Section 302/120B IPC and other provisions of the Code as well as different provisions of the Arms Act and have been sentenced, inter alia, to death. The conviction and sentence has been maintained by the High Court.

8. Though separate chargesheets in respect of the three incidents of alleged murder on the three different dates were filed in Court and separate sessions cases were registered wherein separate charges had been framed against the accused persons, evidence in all the cases was led in the trial of Sessions Case No. 3/2005.

9. 128 witnesses including 38 panch witnesses; 22 persons acquainted with the accused and the victims; 9 relatives of the victims; 13 medical officers; 5 witnesses connected with the mobile phone calls made by the accused; 29 police witnesses; two executive magistrates; 5 bank officers and 5 DNA experts, super-imposition experts, handwriting experts and ballistic experts were examined by the prosecution. The accused persons denied their involvement in any of the offences alleged against them but did not adduce any evidence.

10. A broad overview of the core evidence brought by the prosecution to bring home the charges against the accused may now be made.

On the basis of the report of the Forensic Expert Committee (Exhibit

419) proved by PW-76, Dr. Anil Jinturkar, the prosecution has tried to prove that the death of all the 10 deceased (DB-1 to DB-10) was homicidal in nature. The findings of the forensic tests, as deposed to by PW-76, may be set out below:-

- DB 1 was of a human male aged between 25 to 45 years. Time of death was 6 months prior to examination. Probable cause of death was opined as single hole firearm injury to the thoracic region, although the exit wound was not found. Other injuries to the mandible and vertebrae were caused by a hard, blunt object. Although the appearance of these injuries were similar to those caused by iron bars, PW-76 could not affirm that iron bars alone caused the injuries due to the non-availability of brain matter. Analysis of brain and brain matter would reflect the impact of blows from an iron bar, in the absence of which, PW-76 could not rule out the possibility of the injuries due to fall.

- DB 2 was of human male aged between 25 to 45 years and the person died 6 months before the examination. He stated that all injuries except the gnawing marks were ante mortem & the probable cause of death was the head injuries resulting into the fracture of the skull & these injuries could have been caused by a sharp cutting object.
- DB 3 was of human male aged between 25 to 45 years and the person died 6 months before the examination. He stated that all injuries were found ante mortem & the probable cause of death was fire arm injury to chest & fracture of skull leading to head injury. Two injuries of circular holes on posterior parts were caused by fire arm & rest of the injuries by hard & blunt object.
- DB 4 was of human male aged between 25 to 45 years and the person died 6 months before the examination. He stated that all injuries except the gnawing marks were found ante mortem & the probable cause of death was the head injury due to fracture of the skull bone with blunt thoracic trauma associated with multiple ante mortem fracture. It was stated that all ante mortem injuries could be caused by hard & blunt object.
- DB 5 was of human male aged between 25 to 45 years and the person died 6 months before the examination. He stated that all injuries could have been caused by hard & blunt object & the cause of death was head injury due to fracture of skull bone with blunt thoracic trauma associated with multiple ante mortem fracture.
- DB 6 was of human male aged between 12 to 18 years and the person died 6 months before the examination. An ante mortem injury of linear fracture over the left aspect of frontal bone was found & two post mortem injuries of broken styloid processes (points of attachment for muscles) & gnawing marks at left & right hands were found. The cause of death was stated to be head injury as a result of linear fracture of bone of left side.
- DB 7 was of human female aged between 25 to 45 years & could have died 6 months before the examination. All the injuries found were ante mortem & the probable cause of death was fire arm injuries to abdomen and pelvis with evidence of multiple fracture of skull leading to head injury.
- DB 8 was of human male aged between 25 to 45 years & could have died 6 months before the examination. All injuries of fracture of right frontal bone were found ante mortem caused probably by a hard & blunt object & some gnawing injuries were found post-mortem. The probable cause of death was stated to be head injury resulting into fracture of vault & anterior cranial fossa at the base of the skull.
- DB 9 was of human male aged between 18 to 20 years & could have died 6 months before the examination. All injuries were found ante mortem & were caused by hard & blunt object. The cause of injury was stated to be head injury resulting into

depressed communicated fracture of skull bone.

- DB 10 was of human male aged between 25 to 45 years & could have died 6 months before the examination. He opined that like DB 1 and 3, DB 10 had also suffered fire arm injuries, but he could not opine as to what type of fire arm was used in as much as it was a shot gun or rifle, but at the same time it was noticed that no exit wound was found on the skeleton.

11. The prosecution has laid evidence to show that blood samples of the relatives of some of the deceased persons were collected as per prescribed guidelines and alongwith some parts of the organs of the deceased were sent to the CDFD at Hyderabad for DNA analysis. The report of Dr. S. Pandurang Prasad, Senior Technical Examiner in the laboratory (PW-107) to the effect that dead bodies 1, 2, 6, 7, 8 and 9 were found to be that of deceased Shankar Sarage, Vijaysinha Dudhe, Sanjay Mali, Anita Mali, Kerubha Mali and Rajesh Mali was brought on record by the prosecution. In so far as DB- 2 to 5 are concerned, the identity thereof could not be established by DNA analysis as the specimens sent were found not to be fit for a conclusive determination of the question. However, the skulls of the DB-2 to 5 were sent for superimposition tests which were carried out by PW-108, Ratna Prabha Gujarati. The aforesaid witness had testified that the probability of her finding being correct is almost 99% and the reliability of the superimposition test technique is 91%. PW-108 had testified, on the basis of superimposition tests, that DB-2 to 5 were of deceased, Vijaysinha Dudhe, Dadasaheb Chavan, Sanjay Gavare, and Bala Pisal respectively.

12. The prosecution has sought to establish the identity of the dead bodies, additionally, on the basis of oral evidence. In this regard, PW- 66, Mohan Doke, brother of deceased Anita Mali, (DB-7) had identified the mobile phones, pieces of saree, hair clips, brief case, wrist watch, gold rings, earrings along with mangal sutra belonging to members of the Mali family which were either recovered from the spot/place of occurrence or from other persons who had come into possession of the same through the accused. In respect of DB-2 to 5, the identification of the personal effects of the deceased were made by close relations. Specifically, PW-97, Pradip Pisal, brother of deceased Vinayak Pisal (DB-5) had identified the clothes worn by the deceased whereas PW-98, Vinayak Dinkar Chavan, brother of deceased Dadasaheb Chavan (DB-3) had identified the clothes and chappals worn by the deceased as well as the diary belonging to him. Similarly, PW- 80, Smt. Jyoti Gavare, wife of deceased Sanjay Gavare (DB-4) identified the clothes recovered from the dead body as well as the rubber ring of the deceased worn by him around the waist. Similarly, DB-2 was identified by PW- 63-Fatehsingh Dudhe to be the dead body of Vijaysinha Dudhe on the basis of the gaps in the central teeth of the dead body and the personal effects of the deceased like clothes, shoes, wrist watch etc. Similarly, the DB-1 was identified to be the dead body of Shankar Sarage by PW-119 Parvati Shankar, the widow of the deceased. Such identification was made on the basis of the clothes that the deceased was wearing at the time he had left his home.

13. On the basis of the above evidence brought by the prosecution there can be no manner of doubt, whatsoever, that the death of all the deceased persons except Hemant Thakre (DB-10 - whose dead body could not be identified) was homicidal and that DB-1 to 9 were of the deceased, (excluding Hemant Thakre) as claimed by the prosecution.

14. The evidence of the relevant witnesses examined by the prosecution in all the three cases to establish a possible link and show a live nexus between the crime(s) committed and the persons responsible therefor may now be taken note of.

(a) PW- 1, Ashok Nemalekar used to ply his auto-rickshaw in Malvan. He has deposed that on 14.11.2003 he ferried five passengers from Mayur Lodge to the Village Panchayat Office at about 11.00-11.30 am. On the basis of the photographs shown to him by the investigating team he had identified four members of the Mali family i.e. Sanjay Mali (DB-6), Anita Mali (DB-7), Kerubhai Mali (DB-8), Rajesh Mali (DB-9) and the accused No.2 Amit Ashok Shinde as his passengers.

(b) PW-4 Smita is the wife of A-7. She had testified that A-1 had lived in her house since his childhood until he moved to Mumbai to ply auto- rickshaw. Though he would visit her only once in a year during Ganpati Festival (usually held in the calendar month of August). A-1 had visited her in May, 2003 and stayed with her for 15 days. Thereafter, again in September, 2003 A-1, A-2 and A-3 stayed at her home for 10 days. According to PW-4 during this visit she could notice that the three accused would go to the plateau (Nandos) ostensibly for hunting though they never returned with any prey. This witness had further deposed that A-1 and A-3 unexpectedly arrived at her house on 24.9.2003 at about 1.30 a.m. and when A-7 (husband of PW-

4) had asked them why they had come at such an odd hour A-1 replied that they had some urgent work. According to PW-4 at about 9.30 a.m. in the morning, A-1's mobile phone started ringing and A-3 answered the same by saying "Bol Amit" (Amit speak). Thereafter within half an hour A-1 and A-3 left for Katta in the Tata Sumo jeep by which they had come. According to PW-4, her daughter Deepika had informed her that she had seen A-3, lurking around her school, which is near the Nandos Village Panchayat. A-3, on being asked what he was doing in the vicinity of the school had informed Deepika that she must have seen somebody else as he had not gone near the school. PW-4 further deposed that A-3 left her house at about 6.00 p.m. on 24.9.2003 followed by A-1 (around 7.00-7.15 pm) and they had returned at about 9.00 -9.30 p.m. thoroughly drenched though it was not raining. PW-4 had further testified that the accused had asked her to wash their clothes which she refused to do at night.

PW-4 in her deposition had further stated that on 22.10.2003, A- 1, his second wife Sonali, A-3 and a friend of A-1, one Jeetu, visited her and stayed for two days. On both the dates A-1 and A-3 had visited Katta. According to this witness about 5 to 6 days thereafter and two days after Diwali day of Bhaubeej A-1, Sonali, A-3 and A-6 came to her house where they were joined by A-2. Next day, she saw A- 1, A-2, A-3 and A-6 bathing near the well and in the rear side of her house. She has further testified that A-6 was suffering from a cut injury on his index finger for which he had to be taken to a doctor who had put a bandage on the injured index finger.

PW-4 has further testified that on 12.11.2003 A-1, A-3, A-6 and Sonali had come to her house. On the next day the accused persons left her house in the morning for Katta and returned in the evening. On 14.11.2003 A-1, A-3, A-6 left her house at about 10.00- 10.30 A.M. and returned around 3.00 P.M. with A2. Before entering the house they had bathed near the well. Thereafter the accused left her house on different dates.

(c) PW-5 Sachin, who is the younger brother of A-1 had testified that he had transported some of the victims in his auto-rickshaw at the request of A-1. His testimony was, however, rejected by the learned Trial Court on the ground that the same appeared to be incredible.

(d) PW-8 Vinod Deorukhkar is an employee of Mayur Lodge, Malvan. He had testified that on 14.11.2003, at about 7.00-7.30 am, one man, aged about 40-45 years, one woman, aged about 30-35 years, two boys, aged between 8 to 10 years, and one man, aged about 28-30 years, reached Mayur Lodge. They were allotted room no.6. When they were asked their names, the man aged 28-30 years came forward and introduced himself as Anil Jadhav; thus, the entry "Anil Jadhav and family" was made in the register. They left their room at 9.00 am that day for a walk and returned at 11.00 am. Shortly thereafter, they informed that they would be leaving the hotel. At that time, PW-8 noticed that the man, aged about 45 years, was carrying a medium sized, grey suitcase/briefcase. He identified Karubhai Mali's briefcase as the one carried by the man, before the Court. PW-8 also identified A2 as the man who disclosed his name as Anil Jadhav. He identified the Mali family from photographs shown to him in Court.

(e) PW-9 Appa is the Manager of Pallavi Lodge at Kankavli. The lodge register which was exhibited (Exh.-89) showed that on 29.10.2003 five persons including one Amit Shenoy occupied room No. 5 of the lodge. This witness recognized A-2 as the person who called himself as Amit Shenoy. This witness identified the other four persons from the photographs shown to him and deposed that they had left the room on the next day i.e. 30.10.2003 at about 9.00 a.m. The persons identified by him from the photographs are the deceased Vijaysinh Dudhe (DB-2), Dadasaheb Chavan (DB-3), Sanjay Gavare (DB-4) and Bala Pisal (DB-5).

(f) PW-10 Yogesh Dhake had testified that deceased Dadasaheb Chavan, whose diary was found by the police, and Vijaysinh Dudhe (DB-3 and DB-

2) had insisted on their being given a sum of Rs. 3,00,000/- promising that they would return Rs. 6,00,000/-. According to this witness on 28.10.2003 he gave a sum of Rs. 3,10,000/- (which he had collected from another customer for investment purpose) to the aforesaid two persons and one Sanjay Gavare (DB-4) who was also known to him. This witness has also testified that he was introduced to Vinayak Pisal (DB-5) and Accused No. 2. All the aforesaid persons told him that they would leave for Kankavli at 11.30 p.m. According to this witness on the next day deceased Dadasaheb Chavan called to inform him that they had reached Pallavi Lodge and that he could be reached on a different mobile number which turned out to be that of A-2.

(g) PW-12 – Dipak Kumar who was working as a Booking Clerk of Sarvottam Tours and Travels had deposed that A-2 whom he knew by name had booked 5 tickets for the journey on 13.11.2003 from Borovili to Malwan and that at Varshi one male person, one female and two children along with A-2 had boarded the bus.

(h) PW-14- Jagan Patil, was a friend of Bala @ Vinayak Pisal (DB-5).

PW-14's evidence shows how, under the guise of "money shower" he was duped Rs 3 lakhs. He had gone with another sum of Rs.3 lakhs for 'money shower' for the second time but he was sent back by the accused. This was due to the fact that he had gone to Nandos in a private vehicle instead of using public transport as advised by the accused.

(i) PW-15 Amit Patel is the son of the owner of the Konkan Plaza Hotel at Kankavli. He testified that he used to maintain the hotel register. The hotel register which was exhibited (Exh-120) indicated that deceased Shankar Sarage (DB-1) and Hemant Thakre (DB-10) and one Samir Sonavane had arrived at the lodge on 25.09.2003 (1.00 A.M.) and stayed in room No. 5. The evidence of PW-104 Dipak Wagle (handwriting expert) is to the effect that the handwriting in the register was in the hand of A-2. (From the above it is evident that A-2 had used a fake name i.e. Samir Sonavane to sign the register)

(j) PW-17 Subhash Chalke testified that he had given Rs.

1,55,000/- to his friend deceased Shankar Sarage (DB-1) on 22.09.2003 for the purpose of money shower. He also testified that he had met A-1, A-2 and A-3 in the presence of deceased Shankar Sarage a couple of days before the money was handed over to the deceased. He further stated that after he had handed over the money, the deceased had contacted A-1 from a PCO and informed him that the money had been arranged. Further PW-17 had stated that on 23.09.2003 he received a phone call from the deceased that he along with deceased Hemant Thakre (DB-10) and A-1 & A-3 were proceeding to Malwan.

(k) PW-22 Anil Kisan Garate, a gold smith, testified that on 21.11.2003 a gold ring was sold to him by A-6 claiming the same to be of his grandmother. The said ring has been identified by PW-66, Mohan Dhoke, brother of deceased Anita Mali, to be belonging to his sister.

(l) PW-18 – Aijaz had deposed as to how he had been cheated by A-1 of Rs.1,20,000/- on two different occasions (Rs.60,000/- on each occasion) by promise of money shower.

(m) PW-30 Dr. Rajendra Rane had testified that on 30.10.2003 he treated A-

6 for a cut injury on the right index finger. (knife was recovered at the instance of A-6)

(n) PW-34 Satish is elder brother of A-7 and another uncle of A-1. He has deposed with regard to purchase of Tata Sumo vehicle by A-1 in the name of A-2 and payment of Rs.10,000/- on 24.8.2003 and thereafter payment of Rs.85,000/- in connection with the aforesaid. This witness has also deposed with regard to the nervousness and apprehension shown by A-1 after the dead bodies were recovered.

(o) PW-47 Chetan Bhagwan Rawoot, a classmate of A-6, testified that on 6.12.2003 A-6 had handed over a Rado watch to him for safe keeping claiming that it belonged to one of his customers who had not paid his dues. PW-66 (brother of deceased Anita Mali) had identified the said watch as belonging to deceased Kerubhai Mali.

(p) PW-49 Hariram Patil had testified that he had agreed to sell his shop in Eksar, Borivali to the father of A-6, one Dhanaji Shinde. According to PW-49 he had received part payments in cash on 15.6.2003 and 25.8.2003 and on 1.12.2003 he had received a cheque for Rs. 50,000/- drawn on Maratha Cooperative Bank from A-6. On 30.12.2003, the police accompanied by A-6, arrived at his shop and he handed over Rs.50,000/- cash, which A-6 had paid to him earlier.

(q) PW-65 Vimal was engaged in the business of sale and purchase of second-hand vehicles. He had deposed regarding the sale of a Tata Sumo vehicle to A-1, in the name of A-2 and receipt of Rs.95,000/- in cash from A-1 in two instalments.

(r) PW-70 – Harjeet Singh Kochar, used to run a garage and also used to deal with sale and purchase of second-hand two wheelers.

This witness has deposed that on 20.11.2003, A-2 and A-3
(he had identified them) had visited his garage for

purchase of second-hand motor bikes. PW-70 has also deposed that while on 22.11.2003 he sold one motorcycle to A-2 who paid to him Rs.17,500/-, on 25.11.2003 A-2 and A-3 visited his garage again and A-3 purchased another motorcycle for Rs.20,500/-. Both these amounts were paid to him by the accused in cash.

(s) PW-75 Santosh Yadav is another relative of A-1. This witness has corroborated the evidence of PW-4 with regard to the visit of A-1 to A-3 to the house of PW-4 on 5 occasions between October and December, 2003 and that A-6 had accompanied the other accused persons on 2 or 3 occasions. He had also testified that he had seen the accused bringing guns and swords to the house of PW-4 who was aware that the accused persons were in possession of fire arms and other weapons.

(t) PW-76 Dr. Jinturkar was the head of the team of Forensic Experts of Miraj Medical College, Mumbai constituted for forensic examination of the remains of the deceased persons. This witness had testified that DB-1 to DB-7 were received in the Medical College, Miraj on 23.12.2003 and DB-8 and DB-9 on 26.12.2003 and DB-10 on 5.1.2004. (The findings of the committee proved by this witness have already been extracted above.) (u) PW-107 Dr. S. Pandurang Prasad was, at the relevant time, working as a Senior Technical Examiner in the laboratory of DNA and Finger Printing Services, CDFD, Hyderabad. This witness has testified that upon the workable bone and blood samples, he found that DB-1 was the biological relative of Mr. D.B. Sarge, D-8 was biological father of DB-6 & DB-7 was biological mother of DB-6. DB-6 & DB-9 were also found biologically related. DB-7 was found biological relative of Ratnakar & Mohan Tukaram Doke. DB-8 was found biological son of Mrs. Yamunabhai Nanaji Mali and biological father of DB-9. DB-2 was found biological son of Mr. Vinayak Anandrao Dudhe, aged 80 years and biological relative of Mr. Ranjitsing Vinayak aged 40 years.

(v) PW-100, Babaji s/o Bhaskarrao Pavade, Branch Manager of Mahanagar Cooperative Bank, Turbhe Branch, New Mumbai, PW-109, Anand Vishnu Banodkar, Officer attached to Bank of Maharashtra, Dahisar Branch, PW-110-Vijaykumar Sangodkar, Branch Manager, State Bank of India, Dahisar Branch, PW-111, Krishna Dattaram Parab, Branch Manager of the Greater Bombay

Cooperative Bank, Borivali Branch and PW-112, Vidhyadhar Rawool, Branch Manager of Maratha Sahakari Bank Ltd., Borivali Branch have proved the deposit of several cash amounts in the bank accounts of the accused, their wives or their immediate relatives. All such deposits were made in and around the relevant time.

15. Ms. Aparna Jha, learned counsel has very elaborately argued the case of the appellants contending that in the absence of any direct evidence the prosecution not only has to prove that circumstances incriminating to the accused had been laid before the Court but further that the sum total of such evidence unerringly points to the commission of the alleged offence by the accused leaving no room for any other view. Learned counsel has taken us through the relevant parts of the evidence of the material witnesses to contend that the same are not free from doubt and ambiguity and are tainted on account of embellishments and improvements. No circumstance that implicates the accused-appellants, much less a chain of circumstances which admits of no other possibility except the guilt of the accused, has been established by the prosecution, in the present case, contends the learned counsel. In particular, learned counsel has pointed out that the identity of the dead bodies recovered will always remain in doubt in view of the extreme decomposition of the dead bodies when recovered. It is urged that DNA matching and super-imposition tests cannot lead to firm and conclusive results, beyond all reasonable doubt, as regards the identity of dead bodies. That apart, learned counsel has pointed out that some of the registers of the lodges and hotels where the victims were allegedly put up by the accused contain over-writings, additions and deletions which would make the same highly unreliable and unsafe in order to arrive at any conclusion with regard to the involvement of the accused.

16. Shri Sushil Karanjakar, learned State counsel, in reply, has submitted that in a case of the present nature where events had occurred as a result of a meticulous planning made by the accused persons, absence of any eye witness or direct evidence is, but, natural. Learned State counsel has however pointed out that the prosecution has systematically laid before the Court one adverse/incriminating circumstance after the other, the cumulative effect of which satisfies the test which circumstantial evidence has to pass through before acceptance by the Court. According to learned counsel, in the present case, not only highly incriminating and material circumstances have been established beyond doubt by the prosecution, the cumulative effect of such circumstances points to only one conclusion i.e. that the accused and no one else who had committed the crime alleged. In this regard learned State counsel has drawn the attention of the Court to paragraph 96 of the judgment of the High Court wherein the circumstances held to be proved and established by the prosecution has been set out in seriatim.

17. We may now proceed to analyse the substratum of the evidence adduced by the prosecution as noted above. As already held, the homicidal nature of death of the concerned persons and their identities (except DB-10 Hemant Thakre) has been conclusively established by the prosecution. In so far as the alleged involvement of the accused in the crimes alleged against them is concerned, the evidence and other materials on record makes it clear that A-1, A-2, A-3 and A-6 were known to each other and they were residing in Mumbai. It was deliberately circulated and spread by the accused that A-1 was gifted with super-natural powers of causing money showers i.e. multiplying money. The evidence on record also establishes that the accused had been persuading people, including the

victims, to arrange for cash money and bring the same to them at Malvan or Kankavli so that the same can be multiplied. Accordingly, the victims, including the deceased persons, after obtaining cash money from different sources, had come to Malvan or Kankavli and they were put up in different lodges/hotels by the accused. The prosecution had also established that while staying in the hotels/lodges the victims and the accused did not use their real names. Specifically, the prosecution evidence shows that A-2 arranged for conveyance and stay of the victims whereas A-3 had assisted A-2 in shifting the victims from the lodges to the place where the crimes were committed. The evidence adduced also shows that the victims had left in the mornings of the days of incident for the Nandos plateau alongwith some of the accused. A-1 was the money spinner and A-6 was in the company of the other accused with full knowledge of what was going on and with active participation therein. The victims were missing for days and their relatives had lodged complaints in different police stations. From the place of occurrence articles like wearing apparels, brief case, diaries etc. were recovered which have been proved to be belonging to some of the deceased persons whereas articles like wrist watch, jewellery items etc. also belonging to the deceased had been recovered from persons who were in such possession through the accused. All such articles have been identified by the close relatives of the deceased to be belonging to the respective deceased person(s). Around the time of the incidents, the accused persons had made unaccounted cash deposits in their Bank accounts or in the accounts of their close relatives and A-1, A-2 and A-3 had purchased automobiles/motorcycles on cash payment. The sources of such receipts have not been explained. The above conclusions which we have thought proper to draw on a consideration of the evidence of the prosecution appears to be more or less in conformity with what has been found by the High Court to have been proved by the prosecution (para 96 of the impugned judgment). In the light of the above facts, we do not entertain any doubt, whatsoever, that in the present case the prosecution has succeeded in proving a series of highly incriminating circumstances involving the accused all of which, if pieced together, can point only to one direction, namely, that it is the accused-appellants and nobody else who had committed the crimes in question. We, therefore, have no hesitation in affirming the impugned common judgment and order of the High Court holding the accused A-1, A-2, A-3 and A-6 in Sessions Case No. 3/2005 and 5/2005 guilty of commission of the offences alleged including the offence under Section 302 IPC read with Section 120-B IPC. We also agree with the finding of the High Court that the accused A-1, A-2 and A-3 in Sessions Case No. 4/2005 are guilty of commission of the offence under Section 302 IPC read with Section 120-B IPC, insofar as the death of Shankar Sarage (DB-1) is concerned.

18. Having held that the accused-appellants are liable to be convicted for the offences, inter alia, under Section 302/120B IPC, the next question, and perhaps a question of equal if not greater significance, that would require consideration is the measure of punishment that would be just, adequate and complete. It has already been noted that in two of the cases the accused-appellants have been awarded death penalty whereas in the third case the sentence of life imprisonment has been imposed in reversal of the verdict of acquittal rendered by the learned Trial Court.

19. Shri Colin Gonsalves, who has argued the case on behalf of the appellants in so far as sentence is concerned, has submitted that all the accused persons are young and at the time of commission of the offence they were between 23-29 years of age. None of the accused-appellants have any previous criminal record; they have spent 10 years in jail custody and the jail record amply demonstrates that

while in custody they have been educating themselves and have passed or have partly completed the graduate course under the Yashahantrao Chavan Maharashtra Open University. The accused-appellants have reformed themselves and, if rehabilitated in society, they can prove to be assets to Society, it is submitted. The prospects of their committing any further crime, according to the learned counsel, is remote. It has also been submitted by Shri Colin Gonsalves that the accused come from the lowest strata of society and had committed the crime due to poverty. All these, according to the learned counsel, are mitigating circumstances which if balanced against the incriminating circumstances of the case would tilt the scales in favour of commutation of the sentences of death into that of life imprisonment. Stressing the principle laid down in *Bachan Singh Vs. State of Punjab*[1], Shri Colin Gonsalves has submitted that the legislative policy under Section 354(3) Cr.PC is that life imprisonment is the rule and death sentence is an exception. It is submitted by Shri Gonsalves that in the present case the option of life imprisonment does not stand “unquestionably foreclosed” so as to justify the death penalty imposed. Reliance has been placed on the decision in *Santosh Kumar Satishbhushan Bariyar Vs. State of Maharashtra*[2] to contend that the circumstances set out above are all mitigating circumstances that ought to be taken into account at the time of consideration of the sentence to be imposed. Particular stress has been laid on the observations in para 159 of the report that emphasis that must be laid on the possibility of reform and rehabilitation of the accused even to the extent of requiring the State to prove that the same would not be possible. Shri Gonsalves has also drawn attention of this Court to the decision of this Court in *Mulla & Anr. Vs. State of Uttar Pradesh*[3] (authored by the learned Chief Justice). In particular, the observations in para 81 of the report has been placed to show that the state of poverty of the accused is a mitigating circumstance that should be taken into account and that the initial shock of the circumstances in which the crime is committed needs to be balanced with the possibility of reform of the accused over a period of time. We were also reminded that the long period of custody that a death convict has endured has been held to be a mitigating circumstance in *Ramesh & Ors. Vs. State of Rajasthan*[4] (Para

76). The decision of this Court in *Shankar Kisanrao Khade Vs. State of Maharashtra*[5] (para 52) has been relied upon to contend that “to award the death sentence, the “crime test” has to be fully satisfied, that is, 100% and “criminal test” 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the “criminal test” may favour the accused to avoid the capital punishment”.

20. On the other hand, learned counsel appearing for the State has submitted that the accused-appellants have committed not one but a series of heinous, depraved and diabolical crimes resulting in the death of innocent and unsuspecting victims. The crimes have been committed to satisfy the greed for money. The criminal acts committed by the accused are the result of a carefully planned and meticulously executed conspiracy. Societal needs would justify the upholding of the sentence of death awarded in the present case to the accused-appellants. The cry for justice by the families of the victims cannot fall on deaf ears, it is contended.

21. Death penalty jurisprudence in India has been widely debated and differently perceived. To us, the essential principles in this sphere of jurisprudence has been laid down by two Constitution

Benches of this Court in Jagmohan Singh Vs. The State of U.P.[6] which dealt with the law after deletion of Section 367(5) of the old Code but prior to the enactment of Section 354(3) of the present Code and the decision in Bachan Singh (supra). Subsequent opinions on the subject indicate attempts to elaborate the principles of law laid down in the aforesaid two decisions and to discern an objective basis to guide sentencing decisions so as to ensure that the same do not become judge centric.

22. The impossibility of laying down standards to administer the sentencing law in India was noted in Jagmohan Singh (supra) in the following terms:

“The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the judge with a very wide discretion in the manner of fixing the degree of punishment. ... The exercise of judicial discretion on well-recognized principles is, in the final analysis, the safest possible safeguards for the accused.” (Para 26)

23. Bachan Singh (supra) contained a reiteration of the aforesaid principle which is to be found in para 197 of the report. The same was made in the context of the need, expressed in the opinion of the Constitution Bench, to balance the aggravating and mitigating circumstances in any given case, an illustrative reference of which circumstances are to be found in the report. Bachan Singh (supra), it may be noted, saw a shift; from balancing the aggravating and mitigating circumstances of the crime as laid down in Jagmohan Singh (supra) to consideration of all relevant circumstances relating to the crime as well as the criminal. The expanse of the death penalty jurisprudence was clearly but firmly laid down in Bachan Singh (supra) which can be summarized by culling out the following which appear to be the core principles emerging therefrom.

(1) Life imprisonment is the rule and death penalty is the exception. (para 209) (2) Death sentence must be imposed only in the gravest cases of extreme culpability, namely, in the “rarest of rare” where the alternative option of life imprisonment is “unquestionably foreclosed”. (para 209) (3) The sentence is a matter of judicial discretion to be exercised by giving due consideration to the circumstances of the crime as well as the offender. (para 197)

24. A reference to several other pronouncements made by this Court at different points of time with regard to what could be considered as mitigating and aggravating circumstances and how they are to be reconciled has already been detailed hereinabove. All that would be necessary to say is that the Constitution Bench in Bachan Singh (supra) had sounded a note of caution against treating the aggravating and mitigating circumstances in separate water-tight compartments as in many situations it may be impossible to isolate them and both sets of circumstances will have to be considered to cull out the cumulative effect thereof. Viewed in the aforesaid context the observations contained in para 52 of Shankar Kisanrao Khade (supra) noted above, namely, 100% crime test and 0% criminal test may create situations which may well go beyond what was laid down in Bachan Singh (supra).

25. We may also take note of the separate but concurring judgment in Shankar Kisanrao Khade (supra) enumerating the circumstances that had weighed in favour of commutation (Para 106) as well as the principal reasons for confirming the death penalty (Para 122).

In para 123 of the aforesaid concurring opinion the cases/instances where the principles earlier applied to the sentencing decision have been departed from are also noticed. Though such departures may appear to give the sentencing jurisprudence in the country a subjective colour it is necessary to note that standardisation of cases for the purposes of imposition of sentence was disapproved in Bachan Singh (supra) holding that “it is neither practicable nor desirable to imprison the sentencing discretion of a judge or jury in the strait-jacket of exhaustive and rigid standards”.(Para 195) In this regard, the observations with regard to the impossibility of laying down standards to regulate the exercise of the very wide discretion in matters of sentencing made in Jagmohan Singh (supra), (Para 22 hereinabove) may also be usefully recalled. In fact, the absence of any discretion in the matter of sentencing has been the prime reason for the indictment of Section 303 IPC in Mithu Vs. State of Punjab[7]. The view of Justice Chinnappa Reddy in para 25 of the report would be apt for reproduction hereinbelow:-

“25. Judged in the light shed by Maneka Gandhi and Bachan Singh, it is impossible to uphold Section 303 as valid. Section 303 excludes judicial discretion. The scales of justice are removed from the hands of the Judge so soon as he pronounces the accused guilty of the offence. So final, so irrevocable and so irrestitutable is the sentence of death that no law which provides for it without involvement of the judicial mind can be said to be fair, just and reasonable. Such a law must necessarily be stigmatised as arbitrary and oppressive. Section 303 is such a law and it must go the way of all bad laws. I agree with my Lord Chief Justice that Section 303, Indian Penal Code, must be struck down as unconstitutional.”

26. In a recent pronouncement in Sunil Dutt Sharma vs. State (Govt. of NCT of Delhi)[8] it has been observed by this Court that the principles of sentencing in our country are fairly well settled – the difficulty is not in identifying such principles but lies in the application thereof. Such application, we may respectfully add, is a matter of judicial expertise and experience where judicial wisdom must search for an answer to the vexed question –whether the option of life sentence is unquestionably foreclosed? The unbiased and trained judicial mind free from all prejudices and notions is the only asset which would guide the judge to reach the ‘truth’.

27. Before proceeding to examine the relevant circumstances for adjudging the sentence that would be proper in the facts of the present case, we may take notice of a recent pronouncement of this Court in Sushil Sharma Vs. The State of NCT of Delhi[9] wherein in paras 79, 80, and 81 this Court, once again, had the occasion to take notice of the circumstances which had weighed in commutation of the death sentence as well as those which have formed the basis for upholding such sentences. Thereafter in para 81 of the report it has been held that the core of a criminal case lies in its facts and facts differ from case to case. The relevant paragraphs mentioned above may now be recalled.

“79. We notice from the above judgments that mere brutality of the murder or the number of persons killed or the manner in which the body is disposed of has not always persuaded this Court to impose death penalty. Similarly, at times, in the peculiar factual matrix, this Court has not thought it fit to award death penalty in cases, which rested on circumstantial evidence or solely on approver’s evidence. Where murder, though brutal, is committed driven by extreme emotional disturbance and it does not have enormous proportion, the option of life imprisonment has been exercised in certain cases. Extreme poverty and social status has also been taken into account amongst other circumstances for not awarding death sentence. In few cases, time spent by the accused in death cell has been taken into consideration along with other circumstances, to commute death sentence into life imprisonment. Where the accused had no criminal antecedents; where the State had not led any evidence to show that the accused is beyond reformation and rehabilitation or that he would revert to similar crimes in future, this Court has leaned in favour of life imprisonment. In such cases, doctrine of proportionality and the theory of deterrence have taken a back seat. The theory of reformation and rehabilitation has prevailed over the idea of retribution.

80. On the other hand, rape followed by a cold-blooded murder of a minor girl and further followed by disrespect to the body of the victim has been often held to be an offence attracting death penalty. At times, cases exhibiting premeditation and meticulous execution of the plan to murder by leveling a calculated attack on the victim to annihilate him, have been held to be fit cases for imposing death penalty. Where innocent minor children, unarmed persons, hapless women and old and infirm persons have been killed in a brutal manner by persons in dominating position, and where after ghastly murder displaying depraved mentality, the accused have shown no remorse, death penalty has been imposed. Where it is established that the accused is a confirmed criminal and has committed murder in a diabolic manner and where it is felt that reformation and rehabilitation of such a person is impossible and if let free, he would be a menace to the society, this Court has not hesitated to confirm death sentence. Many a time, in cases of brutal murder, exhibiting depravity and sick mind, this Court has acknowledged the need to send a deterrent message to those who may embark on such crimes in future. In some cases involving brutal murders, society’s cry for justice has been taken note of by this court, amongst other relevant factors. But, one thing is certain that while deciding whether death penalty should be awarded or not, this Court has in each case realizing the irreversible nature of the sentence, pondered over the issue many times over. This Court has always kept in mind the caution sounded by the Constitution Bench in Bachan Singh that judges should never be bloodthirsty but has wherever necessary in the interest of society located the rarest of rare case and exercised the tougher option of death penalty.

81. In the nature of things, there can be no hard and fast rules which the court can follow while considering whether an accused should be awarded death sentence or not. The core of a criminal case is its facts and, the facts differ from case to case. Therefore, the various factors like the age of the criminal, his social status, his background, whether he is a confirmed criminal or not, whether he had any antecedents, whether there is any possibility of his reformation and rehabilitation or whether it is a case where the reformation is impossible and the accused is likely to revert to such crimes in future and become a threat to the society are factors which the criminal court will have to examine independently in each case. Decision whether to impose death penalty or not must be taken in light of guiding principles laid down in several authoritative pronouncements of this Court in the

facts and attendant circumstances of each case.” (Underlining is ours)

28. In the present case, there is no manner of doubt that the accused appellants have committed the murder of as many as 9 innocent and unsuspecting victims who were led to believe that A-1 had magical powers to multiply money. The deceased, after being killed, were robbed of the cash amounts that they had brought with them for the purpose of “money shower”. The criminal acts of the accused were actuated by greed for money and such acts were the result of a carefully planned scheme. The crimes were committed over a period of nearly two months in three different episodes. The assaults on some of the victims were merciless and gruesome. Some of the victims were young and hapless children i.e. Sanjay Mali and Rajesh Mali.

29. At the same time, all the four accused were young in age at the time of commission of the offence i.e. 23-29 years. They belong to the economically, socially and educationally deprived section of the population. They were living in acute poverty. It is possible that, being young, they had a yearning for quick money and it is these circumstances that had led to the commission of the crimes in question. Materials have been laid before this Court to show that while in custody all the accused had enrolled themselves in Yashahantrao Chavan Maharashtra Open University and had either completed the B.A. Examination or are on the verge of acquiring the degree. At least three of the appellants (A-2, A-3 and A-6) have, at different points of time, participated in different programmes of Gandhian thoughts and have been awarded certificates of such participation. In prison, A-2 has written a book titled “Resheemganth” and A-3 has been associated with the said work. There is no material or information to show any condemnable or reprehensible conduct on the part of any of the appellants during their period of custody. All the circumstances point to the possibility of the accused-appellants being reformed and living a meaningful and constructive life if they are to be given a second chance. In any case, it is not the stand of the State that the accused-appellants, are beyond reformation or are not capable of living a changed life if they are to be rehabilitated in society. Each of the accused have spent over 10 years in incarceration. Though it must not be understood in any other manner the entire case against the accused is built on circumstantial evidence.

30. Balancing the two sets of circumstances i.e. one favouring commutation and the other favouring upholding the death penalty, we are of the view that in the present case the option of life sentence is not “unquestionably foreclosed”. Therefore, the sentence of death awarded to the accused should be commuted to life imprisonment. We order, accordingly, and direct that each of the accused-appellants, namely, Santosh Manohar Chavan, Amit Ashok Shinde, Yogesh Madhukar Chavan and Mahesh Dhanaji Shinde shall undergo imprisonment for life for commission of the offence under Section 302/120B IPC. The sentences awarded to the accused-appellants by the High Court for commission of all other offences under the IPC and the Arms Act are affirmed to run concurrently. We also make it clear that the custody of the appellants for the rest of their lives will be subject to remissions if any, which will be strictly subject to the provisions of the Sections 432 and 433-A of the Cr.PC.

31. We accordingly dispose of all the appeals with the modification of the sentence as above.

.....CJI.

[P. SATHASIVAM]J. [RANJAN GOGOI]J. [SHIVA KIRTI
SINGH] NEW DELHI, FEBRUARY 27, 2014.

- [1] (1980) 2 SCC 684
- [2] (2009) 6 SCC 498
- [3] (2010) 3 SCC 508
- [4] (2011) 3 SCC 685
- [5] (2013) 5 SCC 546
- [6] (1973) 1 SCC 20
- [7] AIR 1983 SC 473
- [8] 2013 (12) SCALE 473
- [9] 2013 (12) SCALE 622
