

(2009) 08 BOM CK 0035
In the Bombay High Court
Case No : Criminal Appeal No. 1129 of 2002

Ashok Hiralal Yadav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 428
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2
Penal Code, 1860 (IPC) — Section 120A, 120B, 302, 394, 449

Citation : (2009) 08 BOM CK 0035

Hon'ble Judges : Roshan S. Dalvi, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : D.G. Khamkar, in Cri. Appeal No. 1129 of 2002, Abhaykumar Apte, in Cri. Appeal No. 350 of 2003 and Sharmila Kaushik, in Cri. Appeal No. 385 of 2007, for the Appellant; V.R. Bhosale, APP, for the Respondent

Judgement

B.H. Marlapalle, J.—All these appeals arise from the order of conviction and sentence dated 18th and 20th February 2002 passed by the learned Addl. Sessions Judge, Greater Mumbai in Sessions Case No. 239 of 2000. Appeal No. 1129 of 2002 has been filed by Ashok Hiralal Yadav -original accused No. 4 whereas Appeal No. 350 of 2003 has been filed by the original accused No. 2 Satyanarayan @ Raju Sunderlal Jangare and Criminal Appeal No. 385 of 2007 has been filed by accused No. 1 Manisha @ Sanju Lalji Chavan and accused No. 3 Pooja @ Pappi Ramesh Yadav. Accused Nos. 1, 3 and 4 are the residents of Indore whereas accused No. 2 is the resident of Halda, Madhya Pradesh. They have been convicted and sentenced for the offences punishable u/s 120B, Section 449 read with Section 120B, Section 302 read with Section 120B and Section 394 read with Section 120B of IPC and the highest sentence awarded is life imprisonment u/s 302 read with Section 120-B of IPC.

2. As per the prosecution case Vinodchandra Solanki aged about 55 to 60 years was residing in Flat No. 1001, Vikas Towers, New Amboli Crossing, Andheri (East), Mumbai. Though he was a married man and had a son by name Jignesh

PW 1, he was staying away from the family from the year 1989 onwards and PW 17 Smt. Renuka Rameshchandra Modi started staying with him from the year 1990. Initially they were staying at Panchsheel Apartment and in the year 1995 Vinodchandra Solanki shifted to Flat No. 1001, Vikas Towers, 10th floor. However, sometimes in the year 1997 PW 17 Renuka left his company and started staying at J.B. Nagar in her own house. But, they used to meet each other from time to time. On 23/9/1999 PW 18 -Madhukar Nikam, PW 19 Bhimrao Indalkar and PW 20 -Jaywant Sarmokadam were the police officers on duty at the Andheri Police Station and at about 11.30 p.m. PW 1 Jignesh, the son of Vinodchandra Solanki went to the Andheri Police Station along with three other persons and informed the officers on duty that his father who was residing in Flat No. 1001 of Vikas Tower Building did not open the flat door and it was latched from inside. He further stated that despite his knocking on the door for sometime, none opened the door and some pungent smell was coming from inside the flat. Police Officers team, therefore, accompanied the complainant and went to Flat No. 1001 of Vikas Towers. They tried to press the bell so that somebody from within would open the door but there was no response and, therefore, the Chairman and Secretary of the Society were called and in their presence the flat door was broken open. After entering into the flat it was noticed that a dead body was lying in the bedroom which was identified by PW 1 Jignesh as that of his father. The clothes on the body were stained with blood and one cloth was found gagged in the mouth of the deceased. On phone running CR number was called and it was recorded as CR No. 393 of 1999 against unknown persons on recording complaint (Exhibit 10) of PW 1. Two panch witnesses were called in the flat and the Inquest panchanama at Exhibit 26 was drawn and the dead body was sent to Cooper Hospital for post mortem along with PC Buckle No. 9684 and PC Buckle No. 1935. On 24/9/1999 the post mortem was conducted and report was received at Exhibit 27 A. Statements of Chandrakant Kawle PW 2, Tilambekar watchman / liftman PW 5, and Rahima Begum Mohd. Hassanuddin -PW 6 who was working as the maid servant for the deceased were recorded. Some articles lying at the spot were also recovered and brought to the police station and blood sample was also drawn at about 5.15 a.m. on 24/9/1999. On the basis of the complaint at Exhibit 10, C.R. No. 393 of 1999 was registered with the police station for the offence punishable u/s 302 read with Section 394 of IPC against unknown persons. During the course of investigation API Pathan arrested one female accused by name Sanju @ Manisha Chavan (accused No. 1) from Indore on 27/10/1999, in connection with C.R. No. 393/1999 and she was brought to the Andheri Police Station. During her interrogation on 3rd November 1999 she made voluntary statement which was recorded at Exhibit 44 and she had shown her willingness to accompany the police team to Indore. PW 19 along with other police personnel left for Indore in the early hours of 6th November 1999 and reached Halda at about 11.30 p.m. by road. At the instance of accused No. 1, the police team with the help of the Halda Police Station personnel took accused non.2 in custody at about 00.30 hours, recovered some articles belonging to the deceased from the house of accused No. 2 and recovery panchanama at Exhibit

25 was drawn for which PW 10 Shri Mohammed Khan Guljar Khan was the panch witness. Thereafter the police team of Andheri Police Station left for Indore by road and reached at about 9 a.m. on 7/11/2009 along with accused Nos. 1 and 2. They went to Chatripura Police Station at Indore and requested for police constables to be provided. They proceeded for Sai Baba Mandir Road and at the instance of accused No. 1, accused No. 3 was apprehended near Nidhi Apartment. Accused No. 3 showed her willingness to make a statement which was recorded in the presence of two witnesses (Exhibit 73) and some articles were recovered at her instance. Then the police team proceeded towards Dravid Nagar area of Indore city and apprehended accused No. 4 at the instance of accused No. 1. He had also shown his willingness to make voluntary statement which was reduced in writing in the presence of Shri Sanjay Jain PW 14 and Shri Madan Astol. Some articles in addition to Rs. 5000/- were claimed to have been recovered from a jewellery shop belonging to Vishnuprasad Jaiswal. As per the police they also recovered a knife concealed in the backyard of accused No. 4 (Exhibit 77). With all the accused in their custody, the police team returned to Mumbai i.e. Andheri Police Station on 8th November 1999 at about 10 a.m. by road. Test Identification parade was held on 18th November 1999 by Smt. Alka Paralkar PW 3 and SEO, wherein PW 2 Chandrakant Kawle, PW 5 Sitaram Tilambekar and PW 6 -Rahima Begum Mohd. Hassanuddin participated and identified all the four accused as per the memorandum of identification at Exhibits 14 and 15. During the course of further investigation PW 20 deputed PW 19 to visit Akola on 27/11/1999. He interrogated PW 4 Shri Nilkanth Kore and his brother as well as father. It is the case of the prosecution that this witness had admitted about the visit of all the four accused to his house and overnight stay prior to the date of the offence. His statement was recorded at Exhibit 86 and he was asked to visit Mumbai and as per the same he visited Andheri Police Station on 29/11/1999. In the mean while on 3rd November 1999 the clothes of the deceased were sent for CA and CA report was received at Exhibit 29. On completion of investigation, charge-sheet was filed on 25th January 2000 (Exhibit 96) before the 10th Court of Metropolitan Magistrate at Andheri. Committal order was passed on 16th February 2000 u/s 209 of Cr.P.C. and the charge was framed on 18/12/2001.

3. As per the prosecution the deceased Vinodchandra Solanki was running a business along with his brother Dilip Solanki and he also had another brother by name Nitin Solanki. Dilip was staying with his wife Sudha and Nitin was staying with his wife Madhavi in their own homes. Accused No. 1 was staying as a paying guest for some time with Nitin and Madhavi Solanki and, therefore, she was known to the deceased. It is further claimed that accused No. 1 while staying as paying guest with Madhavi, had also visited the house of the deceased on some occasions and thus was known to the deceased. After accused No. 1 left Mumbai, she went back to her native place Indore and she was also aware that PW 17 Renuka Modi had stopped staying with the deceased and, therefore, she hatched a conspiracy at Indore involving the other three accused so as to rob and murder

the deceased. As part of this conspiracy, all the four accused left from Indore, halted at Akola overnight in the house of PW 4, the brother-in-law of accused No. 4 and on the next day they proceeded to Mumbai. Accused No. 4 remained at the railway station in Mumbai and accused Nos. 1 to 3 came to Vikas Towers around 9 a.m. on 22/9/1999. The watchman on duty PW 2 Chandrakant Kawale did not allow the accused Nos. 1 to 3 to go to the house of the deceased i.e. Flat No. 1001 on 10th floor and hence accused No. 1 contacted the deceased on intercom. After some time the watchman, on the instructions of the deceased, allowed all the three accused to go to the flat of the deceased and PW 5 Tilambekar was the watchman-cum-liftman who reached the accused to the 10th floor. The accused entered the flat of the deceased and at about 9.30 a.m. PW 6 Rahimabi, maid servant reported for her work. At the instructions of the deceased, PW 6 prepared tea for the accused and the lady guests entered the kitchen and carried the tea to be served to all the accused. PW 6 left the house of the deceased around 10.30 a.m. on 22/9/1999. The accused came down from the flat of the deceased at about 1.30 p.m. and this was seen by PW 2 as well as PW 5. While going to the flat as well as returning from the flat of the deceased, accused No. 2 was carrying a suitcase and accused Nos. 1 and 3 had their lady's purse. Around 2 p.m. on 22/9/1999 a courier boy entered Vikas Towers and he came down to the watchman PW 5 and stated that he wanted to deliver a letter addressed to the deceased but there was no response to open the flat despite his multiple attempts to press the bell and, therefore, the said mail was received by PW 5. It was only on the next day i.e. on 23/9/1999 when PW 1 along with three or four persons came to visit the house of the deceased, he did not get any response and, therefore, went to Andheri Police Station.

4. The case of the prosecution is based entirely on circumstantial evidence and in the process the prosecution examined twenty witnesses. The statements of the accused u/s 313 of Cr.P.C. were recorded in which they denied their involvement in the crime and did not examine any witnesses in defence. However, in their respective statements recorded u/s 313 of Cr.P.C., the accused No. 1 admitted that she was arrested at Indore on 27/10/1999 and that she was staying as a paying guest with Madhavi Solanki for some time. Other accused also admitted about their arrest at Halda and Indore, as the case may be. The prosecution also claimed that on the arrest of the accused, certain recoveries were made. It was claimed that the knife was recovered from accused No. 4 and gold chain and Wrist watches along with Government Currency notes of Rs. 100/-(50 notes) were also recovered from the accused. In support of these recoveries the prosecution examined PW 12 Deepak Jain, PW 14 Sanjay Jain, PW 7 Ramesh Ghogare and all these witnesses turned hostile. The prosecution relies upon the testimony of PW 10 Mohd. Khan and the panchanama at Exhibit 25 to which he was a witness in support of the recovery from accused No. 2 and one wrist watch and one gold ring. The prosecution claims that all the recovered articles were brought to Mumbai along with the arrested accused and at Andheri Police Station they were unpacked in the presence of PW 15 Rafiq Hanif Shaikh. The said

panchanama is at Exhibit 51.

5. Though the post mortem report at Exhibit 27-A and death Certificate at Exhibit 35 was admitted by the defence, the prosecution examined PW 11 Dr. Ramrao Kendre for two more reasons viz. (a) to establish the condition of the dead body when it was sent for post mortem and (b) to determine the time of death. Dr. Kendre in his depositions stated that from the decomposed condition of the body, the death could have occurred approximately about 36 hours before the autopsy and the cause of death was asphyxia with suffocation (unnatural). He also pointed to the external and internal injuries recorded in Column No. 17 and column No. 20, 20(a), 20(c) and 21 in the PM Report. The lower three teeth of the deceased were fractured and dislocated and injury Nos. (i) and (ii) in column No. 17 were in the nature of grievous injuries. Internal injuries mentioned in column 20 indicated that injury No. 1 in column 17 was deep upto the ribs and the external injuries noted were as under

1. Incised wound oblique 2 cm. below clavicle lateral aspect. Size 5 cm x 1 cm x ribs deep.
2. Incised wound over central part of neck, transverse slightly oblique 3 cm x 1 cm
3. Abression on Rt. Cheek, lateral angle of mouth 1 x 0.8 cm.
4. Contused black coloured wound over Lt. Cheek 2 x 1 cm
5. Small scratches linear right side chin 2 cm Right side face laterally near nose 2 cm. over right cheek 1 cm.
6. Small scratches marks on right lateral of mandible 2 cm and over the anterior triangle of neck four in numbers sub mental area to neck 1 cm, 1 cm, 2 cm.
7. Abression right side neck 3 cm in length i.e. sratchings mark. Black blue coloured.

Injury Nos. (iii) to (vii) of Column No. 17, as per the doctor, were developed while forcefully closing the mouth and the deceased was resisting, as the injuries were of nail marks. He disagreed with the suggestion in his cross-examination that if the medical aid was provided to the deceased within a reasonable period, there were chances to save his life. Exhibit 26 (the spot panchanama) recorded on 24/9/1999 describes the condition of the dead body as well as the articles in the house. It went to show that the house was ransacked. There is no dispute that Vinodchandra died a homicidal death.

6. As per the defence the prosecution failed to connect the accused with the homicidal death of Vinodchandra and the case of the prosecution right from the stage of TI parade as well as arrest of the accused and they have stayed at Akola etc. is unreliable. Number of deficiencies were sought to be argued in the process of TI parade conducted by PW 3 Alka Paralkar at Exhibits 14 and 15. The learned Counsel for the accused also submitted that the identification of accused Nos. 1

to 3 as allegedly made by PW 2, PW 5 and PW 6 during the TI parade is unreliable and suffered from various deficiencies. It was submitted that as per the prosecution accused Nos. 1 to 3 had visited the house of the deceased between 9.30 a.m. to 1.30 p.m. on 22/9/1999 and the dead body of the deceased was seen in the midnight of 23rd September 1999 and in between there could have been other visitors to the house of the deceased which aspect was not examined by the prosecution. It was further submitted that last seen theory of the prosecution was unreliable in view of the time gap of more than 24 hours, pointing out that the brother of the deceased as well as PW 1, son of the deceased had admittedly visited Vikas Towers on 23/9/1999 before PW 1 approached the Andheri Police Station. In support of these submissions it was also pointed out that some of the close relations of the deceased like Madhavi and others were also taken in custody and they were released only after the TI parade was held on 18/11/1999.

7. We have gone through the depositions of PW 3 SEO as well as PW 2, PW 5 and PW 6. We have also perused the TI parade memos at Exhibits 14 and 15. PW 3 has, in our opinion, followed the due procedure laid down for conducting the TI parade including selection of panch witnesses, dummies, hall for taking the TI parade, separate halls for waiting of the identifying witnesses before and after the TI parade and keeping the police away in the TI parade. For every accused, the SEO had selected six dummies and of comparable age group. It was submitted by Ms. Kaushik, the learned Counsel for the accused No. 1 that SEO failed to have comparable dummies for accused No. 1 who looked like a male. In fact in the evidence of PW 2, PW 5 and PW 6 it is noticed that some of them have referred to accused No. 1 as the male like looking female. We had, therefore, directed the learned APP to ensure that accused No. 1 remained present before us and we had the occasion to see her. There is no reason to disagree with the description given to her by these witnesses and it was natural for some of them to believe that she looked like a male. In the evidence of PW 2, PW 5 and PW 6 it has been clearly established that accused Nos. 1 to 3 reached Vikas Towers at about 9 a.m. and they were first seen by PW 2 Kawle who was the watchman on duty. There was some interaction between the watchman and these three accused because as per the procedure followed in Vikas Towers, the visitors were required to write their names in the Visitors register unless the host concerned instructed the watchman to let them come in without writing their names in the register. PW 2 stated in his depositions before the trial Court that he had detained the accused and asked them to write their names in the register but accused No. 1 contacted the deceased on the intercom and thereafter the deceased instructed PW 2 to let them in without writing their names in the register. PW 5 was the liftman on duty and he stated that on 22/9/1999 he had taken them to the 10th floor by the lift and he was on his lunch hours after 12.30 p.m. He also stated that the lift would be unmanned between 12.30 to 1.30 p.m. and before he resumed his duty after lunch hour, he had seen all the three accused coming down from the lift and going out of the society. At that time, as

per PW 2 as well as PW 5, accused No. 2 was carrying a suitcase and accused Nos. 1 and 3 had their lady's purse. So far as PW 6 is concerned, she stated before the trial Court that she worked not only with the deceased but some other flat owners in Vikas Towers as well. She stated that on 22/9/1999 she went to the 10th floor and was there upto 10-30 a.m. and thereafter she went to the 7th floor and thereafter to 4th floor. She also stated that while she was in the house of the deceased between 9-30 to 10-30 a.m. on the date of the incident, she saw that the accused were sitting with the deceased and they were talking with each other. Deceased had asked her to prepare tea for the accused and accordingly she prepared. At that stage it was accused No. 3 who entered the kitchen and picked up the prepared items for being served to the accused and the deceased. Thus she remained in flat No. 1001 for about one hour and, therefore, had sufficient time to observe the accused. All these three witnesses i.e. PW 2, PW 5 and PW 6 not only identified accused Nos. 1 to 3 in the TI parade but even in their substantial evidence before the trial Court each one of them identified accused Nos. 1 to 3 by pointing finger. It was submitted that accused Nos. 1 to 3 had visited, as per the prosecution, Vikas Towers on 22/9/1999 and the TI parade was held on 18/11/1999 i.e. after two months and, therefore, it was unbelievable that the memory of these witnesses would be so sharp as to identify the accused. We are not impressed by these submissions and more so when accused No. 1 had very special features in her looks and with all the three witnesses there was some communication of the three accused while they entered Vikas Towers at about 9 a.m. and left the said place at about 1.30 p.m. on the same day. The identification of these three accused by PW 2, PW 5 and PW 6, in our opinion, has rightly been found to be reliable by the trial Court.

8. At this stage it needs to be recorded that accused No. 3 has been, as stated across the bar, found to be a juvenile on the date of the offence within the meaning of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and, therefore, Ms. Kaushik did not press for her case in Criminal Appeal No. 385 of 2007. Criminal Appeal No. 385 of 2007 therefore, does not survive so far as accused No. 3 is concerned. We are, therefore, required to consider these three appeals for accused No. 1, accused No. 2 and accused No. 4.

9. It is well settled that to prove the charge of conspiracy u/s 120A of IPC, there must be an agreement between more than one persons to do one or other of the acts described in the Section. The said agreement may be proved by direct evidence or may be inferred from the acts and conduct of the parties. There is no difference between mode of proof of offence of conspiracy and that of any other offence. It can be established by direct evidence or by circumstantial evidence. However, Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the other conspirators. Once a conspiracy to commit an illegal act is proved, the act of one conspirator becomes the act of the other. The conspiracy can be proved by proving different circumstances and then putting them together. On the touchstone of these legal propositions, we are required to

examine whether the prosecution has proved its case of conspiracy to commit robbery and murder by all the accused or by some of them. As noted earlier, the prosecution claims that accused No. 1 is the mastermind and accused Nos. 2 to 4 joined her in the plan she masterminded and the conspiracy was at the first instance hatched at Indore. It is the case of the prosecution that in the second spell of conspiracy all the accused on their journey from Indore to Mumbai had halted at Akola for one night in the house of PW 4 who is the brother-in-law of accused No. 4. This relationship between PW 4 and accused No. 4 is not disputed. It is also not disputed that accused Nos. 1, 3 and 4 are the residents of Indore whereas accused No. 2 is the resident of Halda in Madhya Pradesh. We have considered the depositions of PW 4 as well as PW 19, PW 7 Ramesh Ghogre. PW 4 and PW 7 have turned hostile and, therefore, the contents of the panchanam dated 27/11/1999 could not be proved though the signatures at Exhibits 20, 22 and 84 were admitted. PW 8 Santosh Rajankar who is one of the panch witnesses for the very same panchanama also turned hostile. However, our attention was invited by Mrs. Bhosale, the learned APP to the admission of PW 4 in his examination in chief and before he was declared hostile by the learned Special PP. He stated before the trial Court that on 27/11/1999 Police from Mumbai had enquired with him in respect of the subject case and during the said enquiry his statement was recorded. He further admitted that the police had recorded his statement as stated by him and on the next day the police had brought him to Mumbai. Mrs. Bhosale, the learned APP, therefore, submitted that by the evidence of PW 4 the visit of PW 19 -Shri Indalkar to Akola during the course of investigation on 27/11/1999 is proved and in his statement recorded by PW 19, PW 4 had admitted that all the accused (two males and two females) had stayed in his house at Akola for one night two months prior to 27/11/1999. Even if these submissions are accepted, it cannot be held that the prosecution proved its case that all the accused had halted at Akola for one night before they reached Mumbai on 22/9/1999. The prosecution also did not bring any plausible evidence to bring home its case that all the four accused after their halt at Akola travelled to Mumbai either on 21st September 1999 or any proximate date thereto. Therefore, in our opinion, this second link of conspiracy viz. the visit to Akola and overnight stay of the accused in the house of PW 4 is not proved beyond doubt. We have also, with the help of the learned Counsel for the respective parties, tried to examine any acceptable evidence to find out whether accused No. 4 visited Mumbai along with accused Nos. 1 to 3 either on 22/9/1999 or on the earlier date and it is admitted by the prosecution that he was not one of the visitors to Vikas Towers along with accused Nos. 1 to 3 on 22/9/1999. Even the recoveries allegedly made from accused No. 4 could not be proved by the prosecution and it would be unsafe to accept the prosecution case in this regard only on the basis of the evidence of PW 19. We do not find any corroboration to the said evidence of PW 19 so as to uphold the recovery allegedly made from accused No. 4 on 7/11/1999 at Indore (Dravidnagar). In our view the complicity of accused No. 4 in the alleged conspiracy by accused Nos. 1 to 3 in the robbery in flat No. 1001 of Vikas Towers and the murder of

Vinodchandra is not established beyond reasonable doubt.

10. So far as the recovery from accused No. 2 is concerned, Mr. Apte, the learned Counsel for the said accused invited our attention to the depositions of PW 10 Mohammed Khan Guljar Khan and submitted that even as per the prosecution, the wrist watch and gold ring were seen by this witness for the first time outside the house of accused No. 2 and, therefore, it cannot be accepted that it was a recovery made from the house of accused No. 2 in the midnight on 6/11/1999. Mr. Apte also submitted that the prosecution theory was unbelievable as accused No. 2 cannot be accepted to be walking on the streets in the midnight i.e. 00.30 hours when he was allegedly apprehended by the police at the instance of accused No. 1. Mr. Apte, therefore, submitted that if the recovery from accused No. 2 is not established, an additional link in the chain of circumstances of the prosecution case gets broken. We have considered these submissions and we have noted that PW 10 was not a hostile witness. It has come in his evidence and the panchanam at Exhibit 25 proved by him that the house of accused No. 2 admeasured 10 ft. x 10 ft. and it did not have electricity. The police party itself consisted of more than four and if the police party had entered the house of the accused in the midnight along with him, it is possible that PW 10 preferred to wait outside the house and the recovery made from the house of accused No. 2 was shown to the said witness outside the house of the said accused. This by itself cannot lead to the inference straightway that the recovery could not be proved, in the peculiar facts of this case.

11. PW 17 who was also declared hostile, stated before the trial Court that she knew the deceased since July 1990 and they had met each other in one marriage bureau. The deceased was dealing in fabrication business and his office was located at Mahakali Caves at Andheri (East). She was appointed by the deceased as Office Manager in his establishment and that is how she got acquainted with him and subsequently she moved to stay with him. She further stated that the family members of the deceased were not residing with him and they were staying at E/302 Ayojan Nagar, Liberty Cross Road, Malad (West). She also knew Nitin, the brother of the deceased and his wife Madhavi who were staying at Bhayander. As per her, the deceased was supporting the education of Nitin's children and Nitin and Madhavi often used to visit the house of the deceased at Vikas Towers. She stated that prior to September 1999 in her presence Madhavi had visited the deceased at Vikas Towers and had lunch. She used to visit the house of the deceased with her children and her husband used to come in the evening. Somewhere in 1995 one Manisha @ Sanju Chavan (accused No. 1) had visited the flat of the deceased and at that time another gentleman had accompanied the accused No. 1. She did not remember the name of the gentleman but it was something like Pappu Yadav and they were sent by Madhavi Solanki and there was some problem with Nitin. While in the witness box she pointed towards the accused No. 1 and stated that the said accused looked like the lady who had visited the flat of Vinodchandra and she was unable to identify the gentleman to whom she had referred to as Pappu Yadav. She was declared

hostile at a later stage. She stated that there was some dispute between Dilip Solanki and the deceased about the business and Dilip Solanki was dejected on that count. She further admitted that she had a quarrel with Dilip Solanki as he was jealous about her relationship with the deceased and he was misbehaving with her. She also stated that Dilip Solanki had beaten her on 30/4/1991. She also admitted that she was residing with the deceased till about July 1999. She stated that the deceased had visited her on 21/9/1999 at about 2 p.m. and again on 22/9/1999 at about 4 p.m. But such a statement did not find place in her statement recorded by the police. She also admitted in her cross-examination that during the stay of Madhavi in Vikas Towers in the flat of the deceased, accused No. 1 used to visit her and she further admitted that on 22/9/1999 she had gone to Gujrahat in regard to her income tax matter along with one Bhupendra Dave.

12. PW 2 stated in his evidence before the trial Court that accused No. 1 had talked to the deceased on intercom in Gujarathi language from the main gate of Vikas Towers on 22/9/1999 and when the accused left the building, he did not record the time. PW 1 Jignesh, the son of the deceased stated before the trial Court that his last talk with his father was at about 4 p.m. on 21/9/1999. On 23/9/1999 at about 9 a.m. his uncle Dilip Solanki contacted him. From the uncle he came to know that on 22/9/1999 at about 10 p.m. the uncle did not see the lights of the flat occupied by the deceased and PW 1 tried to contact his father between 11 to 11-30 a.m. on 23/9/1999 but there was no response on the phone. He, therefore, called his uncle at the factory who told him that uncle had visited Vikas Towers and seen the scooter of the deceased in the parking lot. The uncle also told him that nobody opened the door of the flat of the deceased when Dilip along with his friend Vimal had visited the said place on 23/9/1999. The uncle also told him that he had made enquiry with the watchman who informed that the deceased was seen on 21/9/1999 at about 5.30 p.m. going out of the building and that he had returned at about 7.45 p.m. PW 1, therefore, along with Dilip, and friend Vimal had gone to the flat of Renuka PW 17 and it was found locked. He came back to the factory at Mahakali Caves Road at about 7.30 p.m. and then went to Vikas Towers, made enquiry with the night duty watchman who informed him that he had not seen his father after 7.45 p.m. on 21/9/1999. In the night again he went to Vikas Towers along with his uncle and friend and contacted the Secretary and Chairman. All of them went to Andheri Police Station and with the help of the police, flat was broke opened in the midnight. On 13/11/1999 he was called to the police station and some sealed packets were opened in his presence. He found two wrist watches, one yellow metal chain and two yellow metal rings. He identified these articles as those belonging to his father. When PW 2 and PW 5 were in the witness box no effort was made by the defence to find out whether any outsider, other than PW 1 had in fact visited the flat of the deceased between 1.30 p.m. on 22/9/1999 till it was broke opened in the midnight on 23/9/1999 by the police and, therefore, the trial Court was justified in holding that the prosecution proved the last seen theory i.e. the

accused Nos. 1 to 3 were the last visitors to the house of the deceased on 22/9/1999 and till the house was broke opened in the midnight on 23/9/1999. At the same time from the evidence of PW 17 Renuka and PW 2 Chandrakant Kawale the prosecution established that accused No. 1 knew the deceased and she used to talk to the accused in Gujarathi language. The accused Nos. 1 to 3 entered Vikas Towers at about 9 a.m. and after the telephonic clearance was given by the deceased, they entered his flat on the 10th floor. When PW 6 Rahima entered the house of the accused for doing her work as a maid servant, the accused were present and they continued to be there after she had left at 10.30 a.m. on 22/9/1999 from the house of the deceased. The accused were seen last by PW 2 and PW 5 while going out of Vikas Towers at about 1.30 p.m. on 22/9/1999 and thereafter a courier delivery boy had gone to deliver a letter on 10th floor but returned and informed PW 2 that the deceased did not open his house despite his pressing the bell and the mail was left with the said witness. The prosecution evidence, therefore, goes to show that from 1.30 p.m. on 22/9/1999 till the house was broke opened in the midnight of 23/9/1999, no one had entered the house of the deceased though PW 1 and his uncle Dilip along with other two three persons had visited Vikas Towers to try to find out the whereabouts of the deceased and there was no response from his house. The learned Judge of the trial Court, therefore, considered the panchanama at Exhibit 26 and recorded a finding about robbery and homicidal death of Vinodchandra Solanki. The trial Court on accepting the evidence of PW 2, PW 3, PW 5 and PW 6 held that the accused were present in the flat of the deceased between 9 a.m. to 1.30 p.m. on 22/9/1999 and accepted the theory of last seen of accused Nos. 1 to 3 in the said flat. The accused died a homicidal death and it was not accidental or suicidal as per the evidence of PW 11 Dr. Kendre. These circumstances duly support the case of the prosecution that it is accused Nos. 1 to 3 who caused the death of Vinodchandra Solanki in his flat i.e. Flat No. 1001 located on 10th floor of Vikas Towers on 22/9/1999 and committed robbery in the said house before leaving Vikas Towers at about 1.30 p.m. The way accused Nos. 1 to 3 entered initially Vikas Towers and subsequently the house of the deceased and as has been brought on record through the evidence of PW 2, PW 5 and PW 6, it is clear that there was earlier meeting of minds between the accused and they had entered Vikas Towers with a specific intention. It was a pre- planned visit and with a specific objective. Even if it is not established whether this meeting of mind between the accused was Indore or Mumbai, it is clear that when they entered Vikas Towers at about 9 a.m. on 22/9/1999, there was an agreement between them to commit illegal acts in the house of the deceased. Thus the chain of circumstances as placed before the trial Court and leading to the homicidal death of Vinodchandra Solanki was rightly accepted by the Trial Court so far as accused Nos. 1 to 3 are concerned and we have already held that the prosecution could not prove the complicity of accused No. 4 beyond reasonable doubt in the incident. We are, therefore, not inclined to accept the finding of the trial Court that accused No. 4 was also a party to the conspiracy hatched between accused Nos. 1 to 3 and which conspiracy resulted into further crimes of

robbery and murder of Vinodchandra Solnaki. In our opinion, it would be unsafe to hold the accused No. 4 as a party in any manner to the plan hatched by accused Nos. 1 to 3 in the incident and he deserves to be released on benefit of doubt.

13. Ms. Kaushik, the learned Counsel for the accused No. 1 urged before us that in the peculiar facts of this case the conviction and sentence of accused Nos. 1 and 2 be accepted only for the offence punishable u/s 394 of IPC instead of the offence punishable u/s 302 read with Section 34 or 120B of IPC. We have given our anxious considerations to the said submissions and we are not inclined to accept the same and, therefore, we uphold the order of sentence passed by the learned Addl. Sessions Judge against accused Nos. 1 and 2 on all counts.

14. In the premises, we confirm the order of conviction and sentence recorded by the learned Addl. Sessions Judge at Mumbai in Sessions Case No. 239 of 2000 as against accused No. 1 Manisha @ Sanju Lalji Chavan and accused No. 2 Satyanarayan @ Raju Sunderlal Jangare and dismiss Criminal Appeal No. 385 of 2007 and Criminal Appeal No. 350 of 2003. The substantive sentences to run concurrently. Undoubtedly, accused Nos. 1 and 2 shall be entitled for set off u/s 428 of Cr.P.C. We allow Criminal Appeal No. 1129 of 2002 and set aside the order of conviction and sentence recorded by the learned Addl. Sessions Judge in Sessions Case No. 239 of 2000 against the said accused i.e. accused No. 4 Ashok Hiralal yadav. He stands acquitted from all the charges. His bail bonds stand cancelled.

15. Mr. Apte was appointed as the Defence Advocate in Criminal Appeal No. 350 of 2003 and his professional fees is quantified at Rs. 3000/-. The Legal Services Authority to pay the said fees to Mr. Apte.