

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
Through Virtual Mode**

**CRA No. 21/2018
C/W CONF 3/2018**

*Reserved on: 26.09.2025
Pronounced on: 28.11.2025
Uploaded on: 28.11.2025*

*Whether the operative part or
full judgment is pronounced____*

Arvind Verma & anr.

.....Applicant

Through :- Mr. Anmol Sharma, Advocate.

v/s

State of J&K

.....Respondent

Through :- Mr. Dewakar Sharma, Dy. AG

**CORAM:HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

PER: RAJESH SEKHRI-J

INTRODUCTION:

01. This appeal has been directed against judgment dated 07.03.2018, passed by learned Principal Sessions Judge, Reasi [“the trial Court”], vide which, appellants came to be convicted and sentenced to life imprisonment for offences under Sections 302, 201 & 120-B RPC.

02. Before a closer look at the grounds urged in the memo of appeal, it shall be expedient to have an overview of background facts of the case.

PROSECUTION CASE:

03. As the prosecution story would unfurl, on 16.03.2011, at around 4:15 p.m. one Ajay Prashar, owner of Prasher Guest House, Katra, lodged a written report in Police Station, Katra stating, *inter alia*, that on 14.03.2011, at around

9.50 a.m., two women checked in the Guest House. They were allotted Room No.110 and keys were handed over to them. One of the women made entry in Hindi by the name Shalu, Soumya Vihar, 128/260, Bhopal, M.P. Thereafter both of them went into the room of the hotel. At about 1:00 p.m. their room was found locked. He thought they had gone to Vaishno Devi and had not returned. However, when he peeped into the room through Ventilator, he found the dead body of one of the women lying on the bed, whose throat was slit with some sharp edged weapon. The woman who had made entry had run away. On the basis of this report, FIR No. 59 of 2011 for offences under Sections 302 RPC and 4/25 Arms Act came to be registered and investigation came into vogue.

04. The investigating officer, when looked into the room through ventilator, he found the dead body of a woman lying on the bed in a pool of blood. He broke open the lock of the room and found that throat of the deceased woman had a deep cut with some sharp edged weapon and blood had accumulated around. The place of occurrence was photographed, site plan was prepared and dead body was taken into custody. FSL team took finger prints from the spot. The investigating agency, besides other articles, seized entry register of the guest house, which was comprised of 188 pages and at page No. 118 of the Register, entry dated 14.03.2011, at 9:50 for Room No. 110 was marked as Mark Q-1. Autopsy on the dead body was conducted and after waiting for identification of the dead body for 72 hours, it was cremated as unidentified. The investigating agency also took CCTV footage of the Police Station, which revealed that on 14.03.2011 at 9:36 a.m., the deceased was found in the company of some unknown woman at bus stand. Photographs of the footage were developed and pamphlets were published with the address printed on the

purse. Brother of the deceased, namely, Arvind Kumar got the information and contacted the police.

05. It surfaced during investigation of the case that deceased was married to appellant No. 1/accused, Arvind Verma some 10 to 12 years back, who used to ill treat the deceased. On 13.03.2011, he telephonically informed family of the deceased that she had gone missing. It came to the fore that husband of the deceased i.e., appellant No. 1 had illicit relations with some other woman and deceased was considered a hurdle. On this revelation, a police party headed by S.I. Romesh Choudhary was deputed for investigation in the State of U.P. Statements of material witnesses in the parental house of the deceased at Janakpur, U.P., in terms of Section 161 Cr.P.C. were recorded. Appellant No. 2 came to be arrested under Section 54 Cr.P.C. and was brought to the Police Station.

06. During interrogation, appellant No. 1/accused Arvind Verma, husband of the deceased, made a disclosure that he had extra-marital affair with appellant No.2 for last six to seven years. On 07.02.2011, they hired a room in a hotel at Kanpur, where they conspired to kill the deceased. In furtherance of execution of their plan, they got two railway tickets in the name of Soni and Moni for 12.03.2011 from Railway Station, Etawa to Delhi. A knife, three intoxicating tablets were put in a lady purse. On 12.03.2011, the deceased and appellant No. 2 were sent to Vaishno Devi without intimation to the family members. A rumour was spread that deceased had gone missing, whereas, both the appellants were in touch on phone from their respective Mobile Nos. 096966070888 and 09936543930. A new Sim No. 07499433687 was obtained in the name of appellant No. 2.

07. The investigating agency, upon aforementioned revelations, during investigation, recovered and seized relevant documents including the railway tickets, photocopy of hotel entry register etc. from U.P and call detail records (CDRs) of aforementioned mobile numbers. The incriminating articles were sent to FSL for chemical examination. Postmortem report of the deceased was obtained from CHC, Katra.

08. The investigating agency, thus concluded that appellant No. 1- Arvind Verma had illicit relations with appellant No. 2 for about six to seven years. The duo conspired to get rid of the deceased-wife of appellant No. 1. Appellant No. 2 and deceased were sent to Vaishno Devi on the pilgrimage by appellant No. 1 on 12.03.2011. They hired Room No. 110 in Prasher Guest House, Katra. A false entry in the hotel register was made in the name of Shalu, Soumya Vihar 128/260, Bhopal, M.P. by appellant No. 2. After appellants went into the room, the deceased went for a bath and appellant No. 2 went out for taking tea. Taking advantage of the absence of the deceased, appellant No. 2 put three intoxicating tablets, given by appellant no.1, in the tea cup of the deceased. The deceased after having tea, fell unconscious on the bed and as per the plan, appellant No. 2, slit her throat with a knife. She locked the door of the room and left the hotel with her belongings. She threw away the weapon of offence and keys while travelling by train and reached home on 15.03.2011. The investigation culminated in the presentation of charge sheet against the appellants for the commission of offences under Sections 302, 201, 120-B RPC and 4/25 of Arms Act.

CHARGE:

09. Appellants came to be charged by the trial court for aforesaid offences, whereby they pleaded not guilty and claimed trial, prompting the trial court to ask for the prosecution evidence and prosecution examined 35 witnesses.

EVIDENCE:

10. In order to establish guilt of the appellants, prosecution has examined 35 witnesses, out of which PW9 Vijay Rathore, PW17 Anil Kumar, PW19 Jatinder Sharma and PW29 Kamal Dev Kumar, TTE of the railways turned hostile. Besides, PW2 Ram Krishan, waiter of Prashar guest house was, though examined in chief by the prosecution, however, since he could not be produced for cross-examination, his statement is not admissible in evidence. PW-28 Ram Babu, is a hearsay witness.

11. A detailed reference to the testimonies of rest of the prosecution witnesses shall be made at appropriate stages of this judgment.

12. On the conclusion of prosecution evidence, statements of appellants/accused came to be recorded under Section 342 Cr.P.C., whereby they denied incriminating evidence against them and examined three witnesses in their defence.

TRIAL COURT'S CONCLUSION:

13. Learned trial Court having analyzed and marshalled the evidence produced by the prosecution and the defence and having regard to the case law cited at bar has concluded that prosecution succeeded to bring home guilt of appellants/accused with respect to the murder of the deceased, namely, Shoba Verma, wife of appellant No. 1/accused Arvind Verma. Learned trial court is of the view that unnatural conduct of the appellants after the crime and false explanations tendered by them in their respective statements u/s 342 Cr.P.C.,

provided additional link in the chain of circumstances. According to learned trial court, the aforesaid circumstances unerringly lead to the only hypothesis that it were the appellants who conspired with each other to get rid of the deceased and this hypothesis is inconsistent with their innocence. Accordingly, both the appellants came to be convicted and sentenced to undergo imprisonment for life and fine of Rs. 50,000/- for offence under Section 302 RPC with the stipulation that in default of payment of fine, convict shall suffer imprisonment for six months, imprisonment for three years and fine of Rs.10,000/- for offence under Section 120-B RPC and imprisonment for one year and a fine of Rs. 1,000/- for offence under Section 201 RPC.

GROUND OF CHALLENGE:

14. Appellants are aggrieved of the impugned judgment of conviction and order of sentence *inter alia* on the following grounds:

- “i. That the impugned judgment and sentence is against the law and facts, as such liable to be set aside.*
- ii. That the impugned judgment and conviction is bad in the eyes of law, as the evidence of the prosecution relied upon by the trial court are highly improbable, incredible having major contradictions regarding the place of occurrence, weapon of offence, recovery withholding of star witness. The evidence so lead by the prosecution are not cogent to prove the guilt against the appellants. PW-Ajay Prashar, PW-Kartar, PW-Anil Kumar and PW-Ram Krishan are the interested witnesses who failed to identify and appears to have been tutor witnesses. The appellant No. 2 has been identified by the PWs-1, 3 and 4 in the court room after a period of one year on the basis of CCTV footage, photographs which is placed on record which have been disputed by the IO who deposed in his statement that he cannot identify the appellant No. 2 on the basis of photographs beside this, the guest house staff had occasion to see the appellant No. 2 very shortly had only short glimpse. The appellant No. 2 was not known to the witnesses previously thus under these circumstances conducting of identification parade of the appellant No. 2 was necessary in order to test the veracity of the witnesses on the question of his capability to identify the unknown person to whom the witnesses have seen only once. Thus, the statement of PW-Ajay Prashar, Kartar, Ram Krishan and Anil Kumar are absolutely*

insignificant unless there has been a test identification parade. Therefore, the statements of the witnesses are not reliable as such the court below has committed error by drawing assumption as such the impugned judgment and sentence is bad and liable to be set aside.

iii. That the impugned judgment is not sustainable in view of the fact that electronic evidence is not admissible in law the evidence collected by the prosecution that is CCTVs footage/CD is not admissible under Section 65(B) of the Evidence Act until and unless the prosecution get the certificate of its genuineness from the expert. The witnesses who prepared the CD from the CCTV footage were not shown to them neither it was displayed before the court thus it cannot be relied at all. The court below while relying upon the CCTV footage and the photograph thus, the impugned judgment is bad and liable to be set aside.

iv. That the impugned judgment is otherwise not sustainable in the eyes of law as per the prosecution the photographs of the appellants allegedly recovered from one Ashok Kumar Verma and one Mobile phone along with SIM No. 9936543930 from U.P. on 13.04.2011 which has been discredited by the defence witnesses Ashok Kumar Verma the police has not cited him as a prosecution witness and has been produced in defence by the appellants thus, the seizure memo pertaining to photographs and SIM Card has no relevance. As per the prosecution story the alleged SIM was issued by PW-Jatinder Singh to appellant No. 1 in the name of Latee seizure memo was prepared by the IO this has no relevance because of the reason that PW-Jatinder Singh has disputed the document and denied that any SIM was issued to the appellant No.1. Similarly, photostate record of Hotel Himalayan U.P., Kanpur was seized by the police with the allegations that both the accused persons stayed in a hotel few month back and hatched the conspiracy to murder the deceased but this fact has not been proved by the prosecution rather the entry of the register is in the name of appellant No. 1 and the deceased. It is the settled law that in order to convict the accused on the circumstantial evidence with the chain of the circumstances evidence is complete and the circumstances point unerringly towards the guilt of the accused and the offence has been committed by the accused none else. All the circumstances stated herein above are contrary to the basic golden principle of circumstantial evidence the requirement is the circumstances from which the conclusion of guilt is drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt circumstances should of conclusive nature they should exclude every possible hypothesis except the one to be proved and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion. In the present case, there is nothing which point

out that the circumstances or chain of circumstances are against the appellants rather a prosecution failed to prove the guilt against the appellants and the court below without appreciating the statement of the witnesses if the statement of one witness is to be believed other does not support the case. Therefore, the court below has not appreciated this fact and convicted the appellants.

- v. That the impugned judgment is otherwise liable to be set aside on the ground that recovery of clothes of the appellant No. 2 on the basis of which she was identified by police is highly doubtful as per the recovery memo articles were recovered by Tarlok Singh but Tarlok Singh was not produced as witness and as a defence witness denied the said contents of the recovery memo the investigating officer during his cross examination deposed that articles were recovered from the daughter of the appellant No. 2 but failed to prove this fact. Thus, the impugned judgment on this count is also liable to be set aside.*
- vi. That the impugned judgment is otherwise liable to be set aside on the ground that there is no sufficient material before the Court below to base the conviction. The prosecution has withheld the independent witnesses and the case is solely based on circumstantial evidence. PW-Pankaj Soni and Arvind Soni deposed in their statement before the court that they were told by the deceased that the appellants is having illicit relationship with the appellant No. 2 which the improvement has been made by the witnesses during their examination in the court but in the statement recorded under section 161 Cr.P.C. there is no such statement ever made before the Police thus, in view of the law laid down by the Hon'ble Supreme Court the statement of the witnesses cannot be relied upon.*
- vii. That the impugned judgment is otherwise liable to be quashed on the ground that the weapon used has not been seized, genesis of the offence has not been produced before the Court. The prosecution failed to prove the criminal conspiracy the condition precedent for holding the accused persons guilty of charges of conspiracy must be established by the prosecution meeting of two or more person is required to be proved by the prosecution. Nothing has been proved. Therefore, the impugned judgment is bad and liable to be set aside.*
- viii. That the impugned judgment is otherwise bad, perverse based on non appreciation of witnesses even the defence witnesses has not been discussed and as such liable to be set aside."*

15. Heard learned counsels for the parties and perused the record.

ARGUMENTS:

16. Mr. Anmol Sharma learned counsel for the appellants has reiterated the grounds urged in the memo of appeal. He has argued that learned trial court has convicted the appellants on the basis of photographs seized during investigation, whereas material witnesses of the prosecution including witnesses to the CCTV footage and concerned TTE of Indian Railway failed to identify the deceased and appellant No.2 at the relevant points of time. According to learned counsel for the appellants, learned trial court has recorded impugned judgment on the basis of presumptions and in the absence of credible evidence to bring home guilt of the appellants beyond reasonable doubt. Mr. Sharma is of the view that prosecution evidence, being contradictory and discrepant on material factual aspects of the case is not worthy of credence and appellants are entitled to benefit of doubt.

17. The case law cited at bar by learned counsel for the appellants shall be discussed at appropriate stage of this judgment.

18. Per contra, Mr. Dewakar Sharma, learned Dy.AG, has defended the impugned judgment and order by contending that prosecution has succeeded to establish a complete chain of circumstances on the basis of ocular testimonies of prosecution witnesses and scientific evidence, leading to the only hypothesis that deceased was killed by none other than the appellants.

ANALYSIS:

19. Before we cut across to the grounds of challenge urged in the memo of appeal, it shall be apt to recall the prosecution version, though at the cost of brevity.

20. The crux of the prosecution case is that on 14.03.2011, two women checked in Prashar guest house, Katra, at around 9.50 am. They were allotted

room No. 110 and keys were handed over to them. Appellant No. 2 made entry in Hindi by the name Shalu, Soumya Vihar 128/260 Bhopal MP. On 16.03.2011, room was found locked. PW Ajay Prashar, owner of the guest house, when peeped into the room through ventilator, found dead body of one of the women lying on the bed, whose throat was slit, and the woman who had made entry in the hotel register had run away. Lock of the room was broken open during investigation and it was found that throat of the deceased had a deep cut with some sharp-edged weapon, with blood accumulated around.

21. It is evident from the prosecution version that occurrence was committed in utmost secrecy in a Hotel room and, therefore, entire case of the prosecution is predominantly perched on circumstantial evidence and theory of last seen together.

22. It is well settled that with a view to base conviction on circumstantial evidence, prosecution is obliged to establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no confusion or any other hypothesis than one of guilt of the accused.

23. The legal position as to how matters related to circumstantial evidence should be examined has been expounded by Hon'ble Supreme Court in *Sharad Birdhi chand Sarda v. State of Maharashtra; (1984) 4 SCC 116*, whereby following five principles which in legal parlance, is known as the *Panchsheel* of proof were laid down for a case exclusively based on circumstantial evidence:

- a. *“the circumstances from which the conclusion of guilt is to be drawn should be fully established;*
- b. *the facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say they should not be explainable on any other hypothesis except that the accused is guilty;*

- c. *the circumstances should be of a conclusive nature and tendency;*
- d. *they should exclude every possible hypothesis except the one to be proved; and*
- e. *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused”*

24. A similar observation came to be pronounced by the Apex Court in **Nizam and another v. State of Rajasthan** reported as **(2016) 1 SCC 550**, in the following words:

“The case of the prosecution is entirely based on the circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, forming a chain and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The principle of circumstantial evidence has been reiterated by this Court in a plethora of cases. In Bodhraj v. State of J&K, wherein this Court quoted a number of judgments and held as under; (SCC pp. 55- 56, paras 10-11)”

“10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan, Eradu v. State of Hyderabad, Erabhadrapa v. State of Karnataka, State of U.P vs. Sukhbasi, Balwinder Singh vs. State of Punjab and Ashok Kumar Chatterjee v. State of M.P.). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab it was laid down that where the case depends upon the conclusion drawn from circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in C. Chenga Reddy VS. State of A.P, wherein it has been observed thus: (SCC pp. 206-07, para 21)

21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be

complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

25. Let us appreciate the evidence with the aforesaid principles of law, enunciated by the Apex Court, in mind.

FIRST CIRCUMSTANCE:-

Presence of appellant No. 2 at the scene of occurrence:

26. In order to prove the presence of appellant No. 2 at the scene of occurrence, prosecution seeks to rely upon the testimonies of PW1, PW2, PW4, and PW6. However, since PW2 Ram Krishan, one of the waiters of the guest house was not produced by the prosecution after his chief examination, therefore, testimony of PW2 being inadmissible in evidence is required to be discarded.

27. PW1 Kartar is an employee of Trikuta Nivas Dharamshalla, Katra. Appellant No. 2 and deceased had first met him and asked for a room for 24 hours. PW1 has stated that since room for this duration, was not available in his Dharamshalla, he took them to Prashar guest house. Owner of the Guest House PW6, Ajay Prashar was sitting in the lobby of the Guest House near his counter. PW Ajay Prashar asked his employee, PW2 Ram Krishan, to show them room no. 110. Both the women went to see the room and after sometime appellant No. 2 came down and made entry in the hotel register. Thereafter, PW4 Anil Kumar, one of the waiters of the Guest House went upstairs along with the keys of the room. He took his commission of Rs. 50 and went away. In this way PW1-Kartar, who took appellant No. 2 and deceased to the Prashar guest house - the place of occurrence has clearly stated that both the appellant No. 2 and deceased checked in the Prashar guest house and it was appellant No. 2 who made entry in the guest register of the hotel. Similarly, PW4 Anil Kumar has stated that it

was PW1 Kartar, an employee of Trikuta Yatri Niwas, who had brought appellant No. 2 and deceased to their Guest House. PW6 - Ajay Prashar was present in the Guest House. Room No. 110 was shown to the ladies by PW2 Ram krishan. Appellant No. 2 made entry in the Guest House register of the hotel. She took the keys and went into the room along with the deceased. PW4 has also stated that on 16.03.2011, when some foul play was suspected, they looked into the room through ventilator and found the deceased lying in the room, whereafter, room was broken open by the police and legal formalities were conducted. Likewise, owner of the guest house PW6, Ajay Prashar has also stated on the same lines that deceased and appellant no. 2 came to his guest house. Room no. 110 was allotted to them. Appellant no. 2 made entry in the hotel register in her hand. The keys were handed over to her and both the ladies went into their room. Like PW4, Anil Kumar, PW6, Ajay Prashar has stated that when some foul play was suspected, he and his staff members peeped through the ventilator of the room and found dead body of the deceased lying on the bed. It is manifest even from a cursory perusal of the statements of these three material witnesses that their testimonies are consistent on all material aspects of the prosecution case that appellant no. 2 and deceased checked in Prashar Guest house, they were allotted room no. 110, keys were handed over to them and it was appellant no. 2 who made entry in the guest register of the hotel. Therefore, prosecution has successfully proved not only the presence of appellant no. 2 at the scene of occurrence at the relevant point of time, but also that deceased was last seen in the company of appellant no. 2 at the time of occurrence.

28. Mr. Anmol Sharma, learned counsel for the appellants, has taken strong exception to the reliance of learned trial court on the testimonies of PWs 1, 4 and 6 by contending that since appellant No. 2 and deceased are stated to have

checked in the guest house as guests only and they did not have prior acquaintance with the said witnesses, failure on the part of investigating agency to conduct Test Identification Parade, renders their testimonies inadmissible in evidence. Mr. Sharma is of the view that since owner of the guest house PW6 Ajay Prashar and PWs 1& 4 failed to disclose the identity, features or description of appellant No. 2 in their own versions during investigation, Dock Identification of appellant No. 2 by these witnesses for the first time in trial court is of no consequence. He has relied upon *State of Himachal Pradesh vs Lekh Raj & anr*, AIR 1999 SC 3916, *Amrik Singh vs State of Punjab*, 2022 LiveLaw (SC) 582 and *Rajjan Khan vs State of Madhya Pradesh*, (2024) 1 SCC (Cri) 559.

Scope of Test Identification Parade:-

29. Section 9 of the Evidence Act deals with relevancy of facts. It provides that facts which establish the identity of anything or person whose identity is relevant, insofar as they are necessary for the purpose, are relevant. Therefore, it is entirely up to the prosecution to establish the identity of a thing or a person, which is relevant for the purpose. The prosecution, in its wisdom, may rely upon the testimonies of witnesses to prove the identity of a thing or a person. It is well settled in law that Test Identification Parade remains in the realm of investigation. There is nothing in the Code of Criminal Procedure which mandates to hold Test Identification Parade. Test Identification Parades are conducted by investigative agencies, with a view to strengthen the credibility of witnesses at the stage of investigation only. Neither investigating agencies are obliged, under CrPC to hold Test Identification Parades nor it is a right conferred upon the accused to claim Test Identification Parade.

30. The purpose of Test Identification Parade is, to test the observation, grasp, memory, capacity to recapitulate, of a witness as seen earlier and to ascertain if it would be used as a corroborative evidence of a witness identifying the accused or not. Therefore, Test Identification Parade is a corroborative piece of evidence, whereas evidence of dock identification is substantive evidence. In other words, the fact which establishes the identity of an accused is relevant under Section 9 of the Evidence Act. As such, as a general rule, the substantive evidence of witness is the statement made in the court. Test Identification Parade is considered a safe rule of prudence, to look for corroboration of the sworn testimony of the witnesses in the court as to the identity of the accused. This rule of prudence, however, is subject to exceptions, that a court may be satisfied with the testimonies of particular witnesses which is corroborated by the oral testimonies of the witnesses, upon which court can safely rely without any other corroboration of Test Identification Parade or otherwise. In appropriate cases, trial court can accept the evidence of dock identification, without insisting upon Test Identification Parade. It depends upon case-to-case. If a witness had a chance to interact with accused or an opportunity to observe distinctive features of the accused, evidence of identification in the court shall be suffice to prove the identification of accused and Test Identification Parade in such cases cannot be insisted upon. Pertinently, it has been so held by Hon'ble Supreme Court in the case law relied by learned counsel for the appellants.

31. If we approach the present case with the aforesaid principle of law in mind, we find that PWs 1, 4 and 6 had not only sufficient time to observe the features of appellant No. 2 who is stated to have made entry in the guest register of the hotel but to interact with her, in particular, PW1, to whom appellant No.2 and deceased first approached for a room in Katra. Since room was not available

in his guest house, he took both of them to Prashar guest house, where PW4 took the woman upstairs on the first floor of the guest house to show room No. 110. Later, appellant No. 2 came down, made entry in the hotel register, took the keys and went into the room. In the process, not only PW1, the agent who brought both the appellant No. 2 and deceased to the Prashar guest house had sufficient time to observe the features of both the deceased and appellant No. 2, but owner of the guest house PW6, Ajay Prashar and PW4 waiter of the guest house also had enough time to interact with the ladies and observe their distinctive features. It is not a case where aforesaid prosecution witnesses had a fleeting glimpse or a short lived glimpse of the deceased and appellant No. 2. Therefore, on the appraisal of the testimonies of PWs 1, 4 and 6, it is evident that absence of Test Identification Parade in the present case is not fatal to the prosecution and prosecution has succeeded to prove the presence of appellant No. 2 at the scene of occurrence at the relevant point of time, by relying upon the testimonies of aforesaid witnesses. The defense failed to shake the credibility of these witnesses in cross-examination. Presence of PWs 1, 4 and 6 at the scene of occurrence was quite natural and there was nothing improbable or unnatural in their statements. All these witnesses are independent witnesses and they had no axe to grind against the appellants.

32. The prosecution, in addition to the oral testimonies of PWs 1, 4, and 6, also seeks to rely upon CCTV footage of Police Station, Katra, to prove that deceased on the day of occurrence was seen in the company of appellant No. 2 at Bus Stand Katra. Since electronic evidence, in the absence of certificate under Section 65-B of the Evidence Act, is inadmissible in evidence, learned trial court has rightly discarded the CCTV footage, produced in the trial court by

way of compact disc and the CDRs due to non-production of the requisite certificate in terms of Section 65-B of the Evidence Act.

33. Viewed so, we have no hesitation in relying upon the oral testimonies of prosecution witnesses that appellant No. 2, along with deceased hired room No. 110 of Prashar Guest House on 14.03.2011 at 9.50 a.m.

SECOND CIRCUMSTANCE:-

False entry made by appellant No. 2 in the hotel register:

34. It may be recalled that it is allegation of the prosecution that it was appellant No. 2 who made entry in the guest register of the hotel in her hand by the name Shalu. In order to prove this fact, the investigating agency during investigation not only seized guest register of the guest house but also obtained specimen of the handwriting of appellant No. 2.

35. PW1 Kartar, the agent who introduced appellant No. 2 and deceased to the Prashar guest house, has stated that after room No. 110 was shown to the ladies, appellant No. 2 came down and made entry in the hotel register in the name of Shalu Soumya Vihar, 128/260 Bhopal MP in her hand. Owner of the guest house PW6, Ajay Prashar, and waiter of the guest house PW4 Anil Kumar, have also deposed on the same lines that appellant No. 2 made entry in her hand in the guest register of the hotel. All these witnesses have admitted the seizure memo EXTP-1/7 of the guest register. The questioned entry is at page No. 118 of the register. The date and time of entry is 14.03.2011 at 9.50 a.m. i.e., the day appellant No. 2 and deceased are stated to have entered Prashar guest house and hired room No. 110. Number of persons staying in the said room has been recorded as 2.

36. In addition to the ocular evidence, admitted specimen handwriting of appellant No. 2 was obtained by investigative agency in the presence of PW8

Rattan Singh, NaibTehsildar, Executive Magistrate 1st Class. The Executive Magistrate has admitted that specimen handwriting of appellant No. 2 was obtained in his presence and he attested the same. PW5 RakeshHangloo, Scientific Officer Documents FSL, Jammu, has examined questioned handwriting of appellant No. 2 on the guest register of the hotel and admitted specimen handwriting of the said accused. PW5 has tendered the following opinion.

“The person who wrote the blue enclosed Specimen writings/signature stamped and marked S1 to S18 also wrote the read enclosed questioned writings/signature similarity stamped and marked Q1 and Q2.”

37. The Scientific Officer has admitted his FSL report which has been marked as EXTP-36, which reflects that it was appellant No. 2 who made false entry by the name Shalu in the Guest House Register in her hand. Pertinently, when FSL opinion EXTP-36 was put to appellant No. 2 for her explanation, in her statement under Section 342 Cr.P.C., she feigned ignorance.

38. However, it is seriously argued by learned counsel for appellants that investigating officer has no authority to collect specimen handwriting of accused in custody and send it to the handwriting expert, without express order from the court. In the opinion of Mr. Anmol Sharma, learned counsel for appellants, the course adopted by the investigating agency in the present case is not in accordance with any procedure and is unlawful. He has submitted that in the circumstances, no evidentiary value can be attached to the expert opinion. He has relied upon *State of UP vs Ram Babu Mishra, AIR 1980 SC 791, Sapan Haldar and anr vs State (CRA 804/2201)* of Delhi high court and *Selvi vs State of Karnataka, 2010 (3) SCC (Cri) 1*.

39. In *Ram Babu Mishra (supra)*, it was the investigating officer who moved the Chief Judicial Magistrate, Lucknow for a direction to the accused to give his

specimen handwriting for the purpose of comparison with disputed writings. It was in this background that Hon'ble Supreme Court, while interpreting Section 73 of the Evidence Act held that language of Section 73 does not permit a court to give a direction to the accused to give specimen writings for comparison in a proceeding, which was later be proceeded in the court. Same observation came to be made by the Apex Court in **Selvi (supra)**, in which the legality of three scientific tests, namely Narco Analysis, Polygraphic Test (Lie Detector Test) and Brain Electrical Activation Profile (BEAP) Test came to be challenged on the ground that these tests violate right of accused under Articles 20(3) and 21 of the Constitution of India. The facts and circumstances of the aforesaid cases are clearly distinguishable from the facts and circumstances of the present case, because in the present case, the investigating officer did not move the court to obtain specimen handwriting of appellant No. 2.

40. However, we find force in the argument of learned counsel for appellants because ordinarily specimen handwriting of an accused, while he is in custody, must be obtained by the investigating agency with the express direction of a Magistrate only and after apprising the accused about self-incrimination. Even otherwise, it is highly unsafe to base conviction solely on the evidence of handwriting expert. Generally, the opinion of handwriting expert is considered a frail character and its fallibilities have been often noticed by the courts. The courts, therefore, must be wary to give much weight to the opinion of handwriting experts. This being the factual and legal position regarding the science of identification of handwriting, no serious reliance can be attached to the expert opinion.

41. However, the prosecution in the present case, by relying upon the testimonial potency of independent witnesses viz; PW1, the agent who brought

appellant No. 2 and deceased to Prashar guest house, PW6, Ajay Prashar, owner of the guest house and PW4 Anil Kumar, waiter of the guest house, has succeeded to prove that it was appellant No. 2 who made false entry in the hotel register and she was present on the scene of occurrence at the relevant point of time and deceased was last seen in her company.

THIRD CIRCUMSTANCE:

Abscondence of appellant No. 2 after the crime:

42. We are conscious that abscondence of an accused, by itself does not necessarily leads to a definite conclusion of guilty mind, as held by Hon'ble Supreme Court in *Matru alias Girish Chandra v.s State of Uttar Pradesh AIR 1971 SC 1050*. The prosecution, as already discussed, has established the presence of appellant No. 2 at the scene of occurrence and false entry made by her in the guest register of the hotel. She later came to be arrested from her native place, vide arrest memo. Learned trial court has rightly observed that such a conduct of an accused, in whose company deceased is proved to have been last seen, is a relevant piece of evidence and lends credence to the prosecution version. Pertinently, appellant No. 2 has not assigned any reason as to why she left the hotel leaving behind the deceased and without informing the hotel staff.

FOURTH CIRCUMSTANCE:-

Theory of last seen together:

43. The law relating to the last seen theory is by and large crystallized now. It no longer remains *res integra* now that "last seen theory" is one of the vital links in the chain of circumstances from which conclusion of guilt is drawn and once the theory of last seen is proved by the prosecution, the burden shifts on the accused to explain as to the cause of death of the deceased.

44. Section 106 of the Evidence Act, 1872 (the Evidence Act, for short) envisages that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon the said person. The “last seen theory”, is based on this principle of law and if a person is last seen with the deceased, the said person is obliged to explain as to the death of the deceased. In a case which hinges on the circumstantial evidence, if an accused fails to offer plausible explanation in discharge of the burden placed on him under section 106 of the Evidence Act, it provides an additional link in the chain of circumstances proved against him.

45. Though conviction of an accused cannot be based solely on the theory of last seen together but it provides an additional link in the chain of circumstances against the accused. If the time gap between the point of time when accused is last seen in the company of the deceased and deceased is found dead, is long, it would be highly unsafe to sustain conviction on the theory of last seen together. In other words, such time gap must be small to rule out the possibility of any person other than the accused being the author of the crime. Section 106 of the Evidence Act does not absolve the prosecution to prove the guilt of the accused beyond reasonable shadow of doubt under section 101 of the Evidence Act.

46. Hon’ble Supreme Court in *Nizam v. State of Rajasthan* reported as (2016) 1 SCC 550 has laid down the following principles of last seen theory:

“Last seen theory” is important link in chain of circumstances that would point towards guilt of accused with some certainty. Such theory permits court to shift burden of proof to accused and he must then offer a reasonable explanation as to cause of death of deceased. But, it is not prudent to base conviction solely on “last seen theory”. Such theory should be applied taking into consideration case of prosecution in its entirety and keeping in mind circumstances that precede and follow the point of being so last seen. Where time gap is long it would be unsafe to base conviction on „last seen theory”. It is safer to

look for corroboration from other circumstances and evidence adduced by prosecution.”

47. To avoid the multiplication of authorities, reference in this respect may also be had to *State of Rajasthan Vs. Kashi Ram (2006) 12 SCC 254, 2011 (1) Crimes 319 (SC) and 2016 (1) Crimes 94 (SC)*.

48. As per the prosecution story, appellant No. 2 and deceased were closeted in the guest house room. The hotel register reflects that number of occupants of Room No. 110 are 2 only. There is no evidence of any intruder. PWs 1, 4 and 6 are consistent in their testimonies that both appellant No. 2 and deceased entered the hotel room and appellant No. 2 made entry in the hotel register. It also stands established that appellant No. 2, after the incident, escaped the scene of occurrence and came to be arrested later from her native place. In the circumstances, appellant No. 2 owes an explanation, as to what happened to the lady who was last seen in her company in the hotel room and under what circumstances, the deceased met her end and how her throat was found slit with a sharp-edged weapon. This explanation assumes more significance in view of the fact that the hotel room, after the occurrence, was found locked and was broken open by the investigating agency. As per the prosecution evidence, keys of the room were given to appellant No. 2. Appellant No. 2 being inmate of the said room, where deceased was found murdered, cannot be allowed to get away by maintaining silence and offering no explanation on the supposed premise that entire burden lies on the prosecution to establish its case beyond all reasonable doubts and she has constitutional right to maintain silence and offer no explanation.

49. Hon’ble Supreme Court in *State of West Bengal vs Mir Muhammad Omar and others reported as AIR 2000 SC 2988* has rightly held that:

“The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offenses would be the major beneficiaries, and the society would be the casualty.”

50. In the aforesaid view of circumstances, learned trial court has rightly discarded the plea of alibi taken by appellant No. 2. The chain of circumstantial evidence forged from the evidence adduced by the prosecution is enough for fastening guilt on appellant No. 2 beyond any reasonable doubt.

51. Hon’ble Supreme Court dwelling upon the import of Section 106 of the Evidence Act in *Trimukh Maroti Kirkan vs State of Maharashtra (2006) 10 SCC 681* has held that:

“..... A judge does not preside over the crime trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.....”

52. Therefore, in view of Section 106 of the Evidence Act, there is corresponding burden on the inmate of a room to explain as to how the crime was committed. Failure on the part of appellant No. 2 to offer any explanation much less cogent to explain how deceased was found murdered in a room which they together hired. This is a staggering circumstance, looking at the face of appellant No. 2, which she has failed to explain.

FIFTH CIRCUMSTANCE:

Medical evidence:

53. The prosecution has examined all the doctors viz; PW3 Dr. Gopal Dutt, PW10 Dr. Kuldeep Bharti and PW15 Dr. Anila Koul, who constituted the Board of Doctors to conduct autopsy on the dead body to prove that the deceased died a homicidal death and it was not a suicidal one.

54. All the medical officers who conducted post-mortem are consistent in their opinion and have admitted the post-mortem report EXTP-GD. The Board of Doctors have found following ante mortem injuries on the body of the deceased.

“A deep incised wound extending from below the angle of the mandible on the right side to the nape of neck on the left side anteriorly superior to the thyroid cartilage. Cutting edges of the skin and underlying platysma are smooth and well defined around 2½ in width. Underlying major vessels of the neck were found cut through and through. Oesophagus and trachea were found incised through and through.

The duration of injuries was within 96 hours of the post-mortem. As per medical opinion EXTP-GD/EXTP-28, the cause of death is,

In the opinion of the board the cause of death was cardiopulmonary arrest as a result massive hemorrhagic shock.”

55. It is evident from the nature of injuries i.e., a deep incised wound on the neck to the thyroid cartilage of the deceased, that it was a case of homicidal death.

SIXTH CIRCUMSTANCE:

Motive:-

56. According to the prosecution, the motive behind the murder of the deceased was illicit relations between the appellants.

57. The legal position regarding the importance of motive in cases relating to circumstantial evidence is trite now. Although failure to prove motive in such cases is not fatal by itself. However, if prosecution is able to establish its case on motive, it will also be a corroborative piece of evidence.

58. Hon’ble Supreme Court in *Nizam’s case (supra)*, dealing with the concept of motive in cases resting on circumstantial evidence has observed that:

“.....If the prosecution is able to prove its case on motive, it will be a corroborative piece of evidence lending assurance to the prosecution case. But even if the

prosecution has not been able to prove the motive, that will not be a ground to throw away the prosecution case. The absence of proof of motive only demands careful scrutiny and deeper analysis of evidence adduced by the prosecution.”

59. It is also trite position of law that motive being a state of mind, direct evidence to prove motive is seldom available. We may, in this context, profitably refer to the pronouncement of Supreme Court in ***Nathuni Yadav and others v. State of Bihar and another (AIR 1997 SC 1808)*** which reads thus:

“Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in R. v. Palmer (Shorthand Report at page 308 CCC May 1856) thus: "But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties". Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental Condition existed in the mind of the assailant.”

60. As per the prosecution case, appellants were involved in extramarital relations. It is the prosecution allegation that appellant No. 1 used to ill-treat his wife-the deceased. The appellants thought that deceased was a hurdle in their extramarital affair. Appellant No. 1, as per the prosecution version, in order to get rid of his wife-the deceased, sent appellant No. 2 with the deceased on the pilgrimage at Katra. Rest of the prosecution story has already been narrated in detail that they hired a room at Prashar Guest House, appellant No. 2 made false

entry in the hotel register and after some time, appellant No. 2 escaped the scene of occurrence and deceased was found dead in the hotel room. Prosecution has succeeded in proving that deceased wife of appellant No. 1 was last seen in the company of appellant No. 2 in the hotel room and after the commission of crime, appellant No. 2 fled the scene of occurrence and when hotel room was broken open, deceased was found dead with, a deep incised cut on her throat.

61. The prosecution, in order to prove strained matrimonial relations of appellant No. 1 with the deceased, has examined PWs 11, 12, 13 and 17. PWs 12 and 13 are real brothers of the deceased. They have stated that appellant No. 1 used to ill treat their sister – the deceased. Their relations were strained after the marriage. PW-17, Uncle of the deceased has also stated on the same lines that appellant No. 1 used to ill treat the deceased. Though PWs 12, 13 and 17 are relatives of the deceased, however, their testimonies to this effect stand corroborated by independent witness PW-11 the pandit, who is stated to have solemnized marriage of the deceased with appellant No. 1. PW11 has also deposed that relations between appellant No. 1 and deceased were not cordial. Appellant No. 1 used to ill treat his wife and he at some point of time has counseled appellant No. 1 to mend his behavior.

CONSPIRACY:-

62. It is trite in law that conspiracy by its very nature is generally hatched in secrecy and it is difficult to adduce direct evidence of the same. The prosecution, in such circumstances would rely on the evidence of acts of parties to the conspiracy that such acts were done in furtherance of their common intention. No doubt, criminal conspiracy can be proved by direct or circumstantial evidence. Hon'ble Supreme Court in *Kehar Singh and Ors. Vs State (Delhi Administration)* (AIR 1988 SC 1883) has held that Court in such

circumstances “**must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement.**”

63. This principle of law further came to be explained in *S.C. Bahri Vs. State of Bihar (AIR 1994 SC 2420)* and *Mohd. Khalid Vs. State of West Bengal 2002 (4) Crimes (SC) 160*.

64. The prosecution, in order to prove physical manifestation of conspiracy between the appellants has relied upon their photograph, which pertinently was produced by none other than brother of appellant No. 1 from his shop, seized by the investigating agency vide seizure memo EXTP-1/14. Though, brother of appellant No. 1 DW Ashok Kumar has denied the contents of seizure memo EXTP-1/14, however independent witness, PW6 Ajay Prashar, owner of the guest house and PW26 Constable Suraj Prakash have admitted the said seizure memo that this joint photograph of appellants came to be seized from the shop of brother of appellant No. 1. Pertinently, appellant No. 1, in his statement under Section 342 Cr.P.C., appears to have evaded explanation with respect to seizure of photograph from the shop of his brother by merely replying that he never went to his native place. Pertinently, he did not deny that the person shown in the photograph along with appellant No. 2 was him. Hon’ble Supreme Court in *Deonandan Mishra Vs. The State of Bihar AIR 1955 SC 801* has held that absence of explanation or false explanation would be an additional link in the chain of circumstances against the accused. To same effect is the observation of Hon’ble Supreme Court in *Sidhartha Vashisht @ Manu Sharma Vs. (NCT of Delhi) (2010) 6 SCC 1*.

SIXTH CIRCUMSTANCE:-

Conduct of the appellants:

64. Finally, in a case perched on circumstantial evidence, another aspect of the case as also the principle of law, to be kept in mind, is conduct of the accused. The legal position is that when incriminating circumstances are put to an accused and the said accused either offers no explanation or offers an explanation which he fails to prove and same is found to be untrue, then it becomes an additional link in the chain of circumstances. The conduct of an accused preceding, attending and following the crime is also relevant fact in such cases. Profitable reference in this respect may be made to *State of Tamil Nadu v. Rajendran* reported as *AIR 1999 SC 3535*, *State of U.P. v. Dr. Ravindra Prakash Mittal* reported as *AIR 1992 SC 2045*, *State of Maharashtra v. Suresh* reported as [(2000) 1 SCC 471] and *Ganesh Lal v. State of Rajasthan*, reported as (2001) AIR SCW 5251.

65. If present case is considered with the aforesaid principle of law in mind, we find that the fallacy in the story projected by the appellants during investigation or during the trial stands exposed from their conduct, after the commission of crime and in the explanation offered by them to the incriminating circumstances in their respective statements.

66. Admittedly, appellant No. 1 was husband of the deceased, residing together in the house of appellant No. 1. As per the prosecution story, on 12.03.2011 deceased and appellant No. 2 were sent by the appellant No. 1 to Vaishno Devi without informing their family members. On 13.03.2011, appellant No. 2 telephonically informed family of the deceased that she had gone missing. PW12 Arvind Soni, real brother of deceased has stated that on 13.03.2011, they came to know that deceased had gone missing. It is evident

from the sequence of these events that appellant No. 2 and deceased left for Vaishno Devi, Katra on 12.03.2011. Appellant No. 1 in his statement under Section 342 Cr.P.C stated that he lodged missing report of his wife – deceased on 14.03.2011 in Mangalpur police station. Learned trial court has rightly observed that when appellant No. 1 and deceased were residing together under a single roof of their matrimonial house, if appellant No. 1 had not conspired with appellant No. 2 to kill his wife, he would have immediately lodged missing report of his wife on 12.03.2011 or at least on 13.03.2011. Learned trial court is also right in its observation that a husband whose wife had gone missing, would have gone wild and immediately approached the police station for the search of his wife. It is not forth coming in his explanation under Section 342 CrPC, as to what prevented him from approaching the police immediately on 12.03.2011 or 13.03.2011. He even did not bother to inform the family of the deceased on 12.03.2011 itself, on the day she went missing, as real brothers of deceased PW12 and PW13 are consistent in their testimonies that appellant No. 1 telephonically informed them about the missing of their sister on 13.03.2011 and came to their house on 14.03.2011. It is evident from the prosecution evidence and the explanation tendered by the appellants under Section 342 Cr.P.C. that appellant No. 1 decided to inform the family of the deceased only after appellant No. 2 had succeeded to execute their plan to get rid of the deceased. Be that as it may, the explanation tendered by appellant No. 1 that he lodged missing report of his wife on 14.03.2011 has been contradicted by none other than his brother DW-1 Ashok Kumar, who has stated that he accompanied appellant No. 1 to lodge missing report of the deceased in the evening of 12.03.2011. If it were so, appellant No. 1 could have conveniently produced the missing report of the deceased in his defence, which he has not chosen to do. It

gives rise to the only inference that appellant No. 1, in order to suppress the actual facts, lodged missing report of his wife on 14.03.2011 only with an intention to give it a color of her missing.

67. Another staggering circumstance to expose the fallacy in the stand of the appellants comes to the fore from the explanation tendered by appellant No. 2 under Section 342 Cr.P.C. Appellant No. 2 in the said statement denied any acquaintance with the deceased or her family. However, husband of appellant No. 2, DW Trilok Singh has stated that shop of appellant No. 1 is situated in the market and they used to visit each other. He also stated that he visited the house of appellant No. 1 and wife of appellant No. 1- deceased would also come to his house and his wife used to visit the house of appellant No. 1. It is evident from the statement of husband of appellant No. 2, DW Trilok Singh that families of the appellants used to visit each others' house. We are conscious that if the circumstances or some of them are explainable by any reasonable hypothesis, accused must have the benefit of that hypothesis. However, appellants in the present case have not only furnished false explanation, but failed to provide explanation with respect to the incriminating circumstances attributed to them by the prosecution witnesses in their respective statements on material aspects of the case. Therefore, the explanations tendered by the appellants, which are found untrue and failure on their part to explain the incriminating circumstances against them provide a very strong additional link in the chain of circumstances, which prosecution has successfully established by way of trustworthy evidence.

CONCLUSION:

68. On the conspectus of the present case, the minute evaluation and assessment of the prosecution case canvasses a picture which presents a complete chain of circumstances, commencing right from Bhopal, MP, the

native town of the appellants and the deceased, from where appellant No. 2 and deceased set-out for holy pilgrimage to Katra. Prosecution has succeeded to establish that appellants were involved in extra marital relations. They thought that deceased was a hurdle in their extra marital affair. Therefore, appellant No. 1 in order to get rid of his wife – the deceased sent appellant No. 2 along with deceased on the pilgrimage. Appellant No. 2 and deceased hired a room at Prashar guest house on 14.03.2011 at 9:50 a.m. Appellant No. 2 made false entry in the hotel register. After some time, deceased was found dead in the hotel room, with a deep cut on her throat with some sharp edged weapon and appellant No. 2 had fled the scene of occurrence. Prosecution has also successfully established that deceased – wife of appellant No. 1 was seen in the company of appellant No. 2 in the hotel room. It also proved, by way of ocular testimonies of independent witnesses, that the hand which made entry in the guest register of the guest house was that of appellant No. 2. It is also established from testimonial potency of the prosecution witnesses that deceased was last seen in the company of appellant No. 2. The motive of gruesome murder of the deceased was illicit relations between the appellants. At last but not the least, failure on the part of appellants to offer plausible explanations to the incriminating circumstances against them proves fatal.

69. We have carefully scanned the rival evidence on record and it brooks no demur that prosecution has succeeded to prove that appellants have conspired with each other to kill the deceased with a view to get rid of the deceased to sustain their extra marital affair.

70. Having regard to the aforesaid discussion, we do not find any illegality muchless perversity in the impugned judgment of conviction.

SENTENCE:

71. This takes us to the ultimate analysis of the quantum of sentence imposed upon the appellants.

72. Proportion between crime and punishment remains a strong influence in determination of sentences. Generally, the Criminal Law adheres to the principle of proportionality in prescribing the sentence according to the culpability and criminal conduct of an accused. The criminal law responds to the reformatory theory or the deterrence machinery depending upon the factual scenario of each case, as also the nature of crime, the manner in which it was premeditated and executed, the motive preceding the commission of the crime, the conduct of the accused preceding, attending and after the commission of the offence, the nature of the weapon of offence and the attending circumstances. In order to decide a just and appropriate sentence, having regard to the facts and circumstances of a case, the aggravating and extenuating circumstances in which the crime has been committed are required to be delicately balanced in a dispassionate manner and such act of balancing is indeed a difficult task.

73. The Apex Court had an occasion to discuss the process of sentencing in *Dhananjay Chatterjee Vs. State of W.B.* reported as **1994 (2) SCC 220** and observed that shockingly large number of criminals go unpunished thereby encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility. A similar view was expressed by Hon'ble Supreme Court in *Ravji @ Ram Chandra Vs. State of Rajasthan* reported as **1996 (2) SCC 175**. Consequently, criminal courts have been adhering to the principles of proportionality in prescribing the sentence in accordance to the crime committed.

74. The law provides only two options between death sentence and imprisonment for life for conviction under Section 302 RPC. It goes without saying that life imprisonment is the rule and death sentence is an exception. The capital punishment is resorted to only when life sentence is found to be inadequate. If we recall the manner, in which, life of the deceased has been taken away by none other than her husband and his paramour and ask the common man about the sentence, the common man without any hesitation would propose death sentence for the appellants, in view of enormity of the crime committed by them, but the legal parameters do not permit us. Learned trial Court has rightly balanced the aggravating and mitigating circumstances before handing down conviction upon the appellants. Although prosecution has established a complete unbroken chain of circumstances to prove guilt of the appellants, but there is nothing on the record to suggest that appellants have any criminal background, which calls for imposition of extreme penalty of death sentence. Undoubtedly, the crime committed by the appellants is unpardonable but keeping in view the legal parameters, the present case does not fall in the category of 'rarest of the rare case'. Thus considered, we are of the opinion that appellants have been rightly sentenced, by learned trial Court, for the minimum imprisonment prescribed under law i.e. imprisonment for life for the offences committed by them.

75. Having regard to what has been discussed and observed hereinabove, we do not find any illegality, muchless perversity in the impugned judgment of conviction and the order of sentence passed by learned trial Court against the appellants. The impugned judgment and order are well reasoned and we have not been persuaded to take a different view from the one taken by learned trial

Court. Hence, the present appeal being devoid of merit, is dismissed and impugned judgment of conviction and order of sentence are upheld.

- 76. The Reference is answered accordingly.
- 77. Record be returned to the trial Court forthwith.
- 78. A copy of this judgment be forwarded to Superintendent of concerned jail for compliance.

(Rajesh Sekhri)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR
28 .11.2025
Adil Ismail

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes