

Neutral Citation No. - 2025:AHC:36052-DB

Judgement reserved on 20.02.2025

Judgement delivered on 12.03.2025

Court No. - 45

Case :- CRIMINAL APPEAL No. - 2170 of 2019

Appellant :- Roop Kumar

Respondent :- State of U.P.

Counsel for Appellant :- Amit Kumar Srivastava

Counsel for Respondent :- Anil Kumar Singh, Anubhav Singh, Dileep Kumar (Senior Adv.), G.A., Rajrshi Gupta

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Shri Amit Kumar Srivastava, learned counsel for the appellant, Shri L.D. Rajbhar, learned A.G.A. for the State, and Shri Rajrshi Gupta, learned counsel for the informant.
2. Present criminal appeal arises from the judgment and order of conviction dated 23.02.2019 passed by Shri P.K. Singh, learned Sessions Judge, Gautam Buddh Nagar, in Sessions Trial No. 18 of 2017 (State v. Roop Kumar) whereby the sole accused-appellant has been convicted for offence under Section 302 and 201 IPC.
3. The prosecution story emerged from the F.I.R. dated 07.09.2016 (**Ex. Ka-3** at the trial). It was lodged pursuant to the Written Report dated 07.09.2016 submitted by Kushalpal (**P.W.-1** at the trial), written by the scribe Amit Kumar (**P.W.-12** at the trial). The said Written Report is **Ex. Ka-1** at the trial. Thus, the first informant (**P.W.-1**) narrated that his brother Manoj Kumar (the deceased) aged about 40 years was sleeping at his house, during the intervening night of 06/07.09.2016. On 07.09.2016 at about 8:00 a.m., **P.W.-1** received an information from Rana Sangram Singh Inter College (hereinafter described as 'Inter College') that the dead body of the deceased was lying outside the toilet of the Inter College. On receiving that information, **P.W.-1** and others reached

the Inter College and found the dead body of the deceased lying there. He noticed various injury marks on that dead body.

4. Then the F.I.R. narrates that the deceased had disputes with his wife Savita and Pratima-wife of Basant (brother of the present appellant). In those circumstances, Pratima and Savita had threatened to kill the deceased, on earlier occasions.

5. Next, the F.I.R. narrated, the previous evening, the deceased had disclosed to the informant **(P.W.-1)** that Pratima had threatened to kill the deceased, that night itself. The deceased had also informed the first informant **(P.W.-1)** that he had seen three unknown people at the house of Basant. Upon being thus informed, he visited the house of Basant and inquired about them. On that, Basant disclosed to the first informant that those three people were family members on the side of his in-laws.

6. Then, the first informant **(P.W.-1)** further narrated, while he was returning from the house of Basant, he met up with the latter's wife Pratima, who threatened him with dire consequences in a while as people from her native village (described as '*Ghodi wale*'), were about to arrive to settle scores.

7. After making such narration, the first informant further alleged that Bhopal, Satish, Sandeep, Pintu described as villagers of village Godi, District Gautam Buddh Nagar, along with Savita (wife of the deceased) Pratima (wife of Basant) and Basant, killed his brother/the deceased and threw his dead body near the Inter College.

8. Last, the first informant also stated that his son had seen Savita (wife of the deceased) traveling in a car with 4-5 people at about 12 midnight, in the direction of Bisahda Village, Dadri, on the previous night.

9. On 07.09.2016, upon such F.I.R. being lodged, S.H.O. Pradeep Kumar Singh (**P.W.-13** at the trial) recovered bloodstained and plain tiles and stone from the toilet of the Inter College. That Recovery Memo is **Ex. Ka-14** at the trial. Also, on that day itself, **P.W.-13** recovered bloodstained and plain earth from outside the house of the deceased. That Recovery Memo is **Ex. Ka-15**. Also, on 07.09.2016, **P.W.-13** the police recovered bloodstained and plain earth from outside the toilet of the Inter College. That Recovery Memo is **Ex. Ka-16**.

10. Last, on 07.09.2016, **P.W.-13** recovered a blanket ('*Rajai*'), a cotton mattress, a pillow, a green colored jute mat, a body cloth and a pair of slippers from outside the toilet of the Inter College. That Recovery Memo is **Ex. Ka-17**.

11. It may be noted here itself, samples of bloodstained and plain earth were recovered from two places. First, from outside the house of the deceased, and another from within the campus of the Inter College where the occurrence is described to have been caused i.e. the dead body of the deceased recovered. A third sample of bloodstained and plain tiles/stone was recovered from inside the toilet at the Inter College. Also recovered were personal belongings of the deceased, namely, a pair of slippers and a body cloth. As to the jute mat, cotton mattress and blanket, the ownership is not disclosed or proven or explained.

12. Also, on 07.09.2016 at about 9:05 a.m. the '*Panchayatnama*' was drawn. It was witnessed by Rahul, Rakesh, Sanjeev Kumar (**P.W.-10** at the trial) and Mangi Singh. The '*Panchayatnama*' is **Ex. Ka-8** at the trial. Thereafter, autopsy was performed (on the dead body of the deceased thus recovered) at about 11 p.m. on 07.09.2016 by Dr. Arvind Kumar (**P.W.-9** at the trial). He noted following *ante mortem* injuries on the dead body of the deceased:

“(i). Lacerated wound 4 x 4 cm x bone deep and left skull 2 cm above left ear.

(ii). Abraded contusion 10 x 7 cm on front of chest at 6 cm above left nipple.

(iii). Abraded contusion on front of right face 12 x 9 cm (multiple).

(iv). Abraded contusion 1 x 1 cm on left face at 3 cm below left eye.

(v). Abraded contusion 5 x 2 cm on lower lip from inner side.

(vi). Abraded contusion 13 x 3 cm on right forearm at 16 cm above wrist.

(vii). Abraded contusion 2 x 2 cm on back of left scapular region at 7 cm below nape of neck.

(viii). Abraded contusion 2 x 2 cm on back of left scapular region at 6 cm below to injury no. (7).

(ix). Transverse ligature mark 38 x 2 cm on all around neck on and below thyroid cartilage continues. Ligature mark situated 6 cm below left and right ear and 6 below chin also.

---- Base of groove of ligature mark is soft and brownish.

---- On opening s/c tissue underneath the ligature mark on ecchymosed.

----- on opening neck muscles hematoma present around ligature mark.”

13. As to the cause of death, the same was recorded – 'due to asphyxia as a result of strangulation'.

14. Thereafter, on 18.09.2016, the first informant **(P.W.-1)** through Amit Kumar, the scribe of the F.I.R. **(P.W.-12)** at the trial submitted another Written Report. In that, he first owned the fact of the Written Report dated 07.09.2016 **(Ex. Ka-1)** submitted by him. Thereafter, he alleged that he had made a wrong disclosure in that/first Written Report, at the instance of the present appellant who had told him the facts narrated in that Written Report. Believing the same to be true, he had lodged the F.I.R. accordingly.

15. Thereafter, he now narrated, on 18.09.2016 Surajpal Singh **(P.W.-2)** told him that he had seen the appellant-leaving the campus of the Inter College at about 11:30 p.m. on 06.09.2016, in a nervous state. He also claimed to have seen the appellant go towards Kakret.

16. **P.W.-1** further narrated that his wife Lalita Devi (**P.W.-6** at the trial) also told him that while she was returning home from a 'Jagran', on 06/07.09.2016, she had seen the appellant near Kakret Irrigation Canal, carrying something in his hand.

17. Last, he narrated that there is some talk in the village that the occurrence had been caused by the appellant, and he had misled the first informant (**P.W.-1**) to lodge the F.I.R. against the latter. That second Written Report is **Ex. Ka-2**.

18. On such development, the appellant was arrested. It is claimed by the prosecution that he led to the recovery of a knife and rope, the weapons of assault used in the occurrence on 20.09.2016. That Recovery Memo is **Ex. Ka-18** at the trial. The same was drawn by Pradeep Kumar Singh (**P.W.-13**). It is not witnessed by any independent witness. It does not contain disclosure statements, either to establish knowledge shared by the appellant with the police authorities that he may help them recover the weapon of assault and it also does not contain the disclosure in the second part that he confessed that the recovered items were used by the appellant, to assault the deceased.

19. In any case, the rope and the knife thus recovered were sent for forensic examination. The report of the Forensic Science Laboratory, Agra dated 19.05.2018 is on record. It corroborates that besides the bloodstained and plain tiles recovered from inside the toilet of the Inter College, other two samples of bloodstained and plain earth were also sent for forensic examination. With respect to the other two samples, the expert reported that no result could be reported as those samples had disintegrated. However, with respect to the third sample collected from inside the toilet of the Inter College presence of human blood was confirmed. Similar report was tendered with respect to the rope & knife recovered and the

undergarments of the deceased.

20. In such state of evidence and investigation, charge sheet was submitted against the appellant. No other person was made accused in that charge sheet. The case was committed for trial. In that, vide order dated 12.04.2017 following two charges were framed against the appellant:

"1- यह कि दिनांक 06/07.09.2016 की रात्रि समय लगभग 00.00 बजे से 08.00 बजे के मध्य, स्थान-राणा संग्राम सिंह इण्टर कॉलेज, थाना-जस्वा, जिला-गौतम बुद्ध नगर में अपने बादी कुशल पाल के भाई मनोज कुमार जो घर पर सोया हुआ था, की सशय व जानबूझकर मारकर हत्या कर दी। इस प्रकार अपने धारा 302 भारतीय दण्ड संहिता के अधीन दण्डनीय अपराध करारित किया है जो इस न्यायालय के प्रसंग में है।

2- यह कि उपरोक्त दिनांक, समय व स्थान पर अपने बादी कुशल पाल सिंह के भाई मनोज कुमार की हत्या करारित कर सक्षय व विलोपन करने के अशय से स्वयं को उक्त अपराध से प्रतिच्छिन्न करने हेतु मनोज कुमार के शव को स्कूल राणा संग्राम सिंह इण्टर कॉलेज, थाना-जस्वा, जिला-गौतम बुद्ध नगर के परिसर में फेंक दिया। इस प्रकार अपने धारा 201 भारतीय दण्ड संहिता के अधीन दण्डनीय अपराध करारित किया है जो इस न्यायालय के प्रसंग में है।"

21. At the trial, besides the above documentary evidence, the prosecution also relied on two site plans, one with respect to the occurrence and the other with respect to the recovery of rope and knife. The first site plan with respect to the occurrence is **Ex. Ka-13** at the trial. In that, recovery of bloodstained and plain earth is shown recovered from point 'Z' located outside the verandah of the deceased; another point described in the Recovery Memo (**Ex. Ka-16**) outside the toilet and another point described in the Recovery Memo (**Ex. Ka-14**) i.e. the toilet of the Inter College (with respect to bloodstained and plain tiles/stone). The dead body was recovered from point 'X' outside the toilet of the Inter College, whereas the quilt was recovered from point 'B' whereas the jute mat, cotton mattress, blanket and pillow were recovered from point 'A'.

22. Besides the above documentary evidence, the prosecution sought to rely on oral testimony of 14 witnesses. Thus, the first informant Kushalpal was examined as **P.W.-1**. Surajpal Singh s/o Lakkhi Singh whose information led to the second Written Report

dated 18.09.2016 (submitted by **P.W.-1**), was examined as **P.W.-2**. Smt. Kela Devi, the mother of the deceased, was examined as **P.W.-3**. Rajesh Singh, who was also described to have seen the appellant after the occurrence, was examined as **P.W.-4**. Satyapal, witness of prior occurrence between the deceased and the appellant was examined as **P.W.-5**. Smt. Lalita Devi, (wife of **P.W.-1**), who had witnessed the appellant walk towards the irrigation canal after the occurrence, was examined as **P.W.-6**. Constable Clerk, Sunil Kumar was examined as **P.W.-7** - to prove the lodging of the F.I.R. Constable Clerk, Rakesh was examined as **P.W.-8**, Dr. Arvind Kumar who conducted the autopsy on the dead body of the deceased, was examined as **P.W.-9**. Sanjeev Kumar, the witness of the '*Panchayatnama*' was examined as **P.W.-10**. Then, S.I. Arvind Kumar was examined as **P.W.-11**, while the scribe of the F.I.R. Amit Kumar was examined as **P.W.-12**. Lastly, the Investigating Officer Pradeep Kumar Singh was examined as **P.W.-13**.

23. Kushal Pal (**P.W.-1**) first stated that the deceased was his brother and on the fateful night of 06/07.09.2016, the deceased was sleeping at his own house. Next, he stated that he received information at 8:00 a.m., on 07.09.2016 that the deceased had been done to death, and that his body was lying in the campus of Inter College. When he reached there, he saw *ante mortem* knife injury marks on the temple area and other injury marks in the neck area of the deceased. He admitted that the deceased had disputes with his wife. He also claimed that the appellant had misled him for which reason he had falsely named his relatives Bhopal, Satish, Sandeep, Pintu, Savita, Pratima and Basant. He further admitted that he had submitted the Written Report (**Ex. Ka-1**) through Amit Kumar (**P.W.-12**). He also admitted that he had been read over that Written Report before he signed it. He also proved **Ex. Ka-1**. Then, he

further stated that after about 11 days from the occurrence i.e. 18.09.2016 Surajpal Singh (**P.W.-2**) told him that he had seen the appellant at about 11:30 p.m. on the night of the occurrence - walking nervously towards Kakret. He also stated, now his wife Lalita Devi (**P.W.-6**) had similarly informed him that she had seen the appellant on the intervening night of 06/07.09.2016, near the irrigation canal. He claimed that his wife was returning from a 'Jagran' organized by Ram Mool. In such circumstances, the appellant claimed, he submitted the second Written Report, on 18.09.2016 (**Ex. Ka-2**).

24. During his cross-examination he stated that he was not in his senses when he had submitted the first Written Report (**Ex. Ka-1**). He also admitted that his statement had been recorded by the Investigating Officer on that date itself. On being confronted with that statement wherein he had reiterated the FIR allegations, he only stated that he was not aware that that statement had been recorded.

25. He also admitted that there existed matrimonial discord in the marriage of the deceased for which a case was pending in Court. However, he denied knowledge of the fact that maintenance allowance Rs. 10,000/- per month had been awarded to the wife of the deceased. He admitted that the deceased had a share in Khasra No. 1204 and 1617 at village Bisahda. He feigned ignorance of an order dated 24.06.2012 passed by the Civil Judge (Jr. Div.) dated 24.06.2017, restraining the deceased from transferring his immovable property.

26. Then, on being questioned - when his wife Lalita Devi (**P.W.-6**) informed him that she had seen the appellant on the intervening night of 06/07.09.2016 near the irrigation canal, he stated his wife had told him after about 11 days. He denied knowledge that Pratima

(wife of Basant) had lodged a case being Case Crime No. 61 of 2016, under Sections 452, 354 and 323 IPC against the deceased and that the wife of the deceased, namely, Savita was a witness in that case. Last, he could not deny that the two of the accused originally named in the FIR lodged by him, namely, Sandeep and Bhopal were advocates. He also admitted that Sandeep was appearing as a lawyer in this case itself. However, he denied the suggestion that he entered a settlement with the main accused on the persuasion of the said Bhopal and Sandeep.

27. Then, Suraj Pal Singh (**P.W.-2**) was examined. He claimed to have witnessed the appellant walking out of the Inter College on 06.09.2016 in a nervous stage. According to him, the appellant was walking towards Kakret irrigation canal. He learnt of the occurrence the next morning. He further stated, he did not immediately inform **P.W.-1** of the same because by that time the FIR had already been lodged against the in-laws of the deceased and others. Thereafter, he claimed to have left for Delhi in connection with treatment of his wife who was ill. He further claimed to have informed **P.W.-1** of the correct facts (as were known to him), on 18.09.2016.

28. Next, Smt. Kela Devi (**P.W.-3**), the mother of the deceased was examined. She was about 60 years when her deposition was recorded. She claimed to have seen the deceased and the appellant talking to each other while sitting on a cot in the house of the deceased, on 06.09.2016. She claimed to have met the appellant the next morning and inquired him the whereabouts of the deceased. To that the appellant is described to have nervously stated that he was not aware. She claimed, about 25 days prior to the occurrence, the deceased and the appellant had entered a verbal quarrel. At that time, the appellant held out verbal threat to kill the deceased.

During her cross-examination she admitted that her statement was first recorded 10-11 days after the occurrence. She also claimed to have regained her senses only on 18.09.2016. She admitted that she had not told anyone about the prior occurrence of verbal quarrel between the deceased and the accused, about 25 days prior to this occurrence. To a further question, she claimed to have disclosed this fact to the Investigating Officer, and feigned ignorance as to why such a statement was not recorded, during investigation. She further stated that the deceased and the appellant resumed their talking terms, about 4-5 days prior to occurrence.

29. Next, Rajesh Singh (**P.W.-4**), another villager, was examined by the prosecution. He claims to have seen the appellant carrying another person on his shoulder from the house of the deceased. According to him, he did not suspect anything amiss as he assumed that the appellant was carrying someone who was unwell. The next morning when he reached the Inter College, he found that the appellant was shouting that the deceased had been done to death by '*Ghodi-wale*'. On questioning - why he did not inform others what he had seen the previous night, he claimed he was afraid of the appellant. As to why he was afraid of the appellant, he further claimed that the appellant had murdered two persons, earlier. On being further questioned as to the reason for him being afraid of the appellant, he stated that he had heard in the village that the appellant is a dangerous person. However, he specifically admitted that there is no police report registered against the appellant. Only after the appellant was arrested on 22.9.2016, did **P.W.-4** gain confidence to report what he saw on 06.09.2016.

30. Next, Satyapal (**P.W.-5**), another villager, was examined by the prosecution. He stated that there pre-existed a dispute between the appellant and the deceased, with respect to

apportionment/partition of 'Abadi' land. According to him, the deceased had insulted the father of the appellant. That quarrel was resolved upon intervention offered by other villagers. However, at that time of the quarrel, the appellant had threatened to kill the deceased. That occurrence is described to have taken place on 17.08.2016 - at the thirteenth day rites of the brother of **P.W.-5** (namely Radheyshyam), who died. During his cross-examination, nothing significant emerged. The witness stuck to his stand as to the occurrence on 17.08.2016 wherein the appellant had threatened to kill the deceased for reason of the latter having insulted the father of the deceased.

31. Next, Lalita Devi (**P.W.-6**), wife of Kushal Pal (**P.W.-1/informant**) was examined. She claims to have seen the appellant on 06.09.2016, during night hours, carrying a small 'Potli' like item. This she claims to have witnessed while she was returning from a 'Jagran'. That place was described - near a bush, along the irrigation canal. During her cross-examination she stated, she told her husband Kushalpal (P.W. 1) about that occurrence only when she met him on 18.09.2016, and not earlier. Since many men were visiting her house, therefore, she could not meet her husband, earlier.

32. Next, Constable Clerk Sunil Kumar (**P.W.-7**) was examined to prove the submission of the Written Report (**Ex. Ka-1**) that led to the registration of the F.I.R.

33. Next, Constable Clerk Rakesh (**P.W.-8**) was examined to prove the registration of the F.I.R.

34. Next, Dr. Arvind Kumar (**P.W.-9**), who had conducted the autopsy on the dead body of the deceased, was examined. He proved the *ante mortem* injuries. During his cross-examination, he

stated that injury no.1 may be caused with a knife if the knife is twisted inside the injury wound.

35. Next, Sanjeev Kumar (**P.W.-10**), a '*Panch*' witness, was examined.

36. Next, Sub-Inspector Arvind Kumar (**P.W.-11**) was examined. He proved the proceeding of the '*Panchayatnama*' etc.

37. Next, Amit Kumar (**P.W.-12**), the scribe of the two Written Reports namely **Ex. Ka-1** & **Ex. Ka-2**, was examined. He claimed to have reached the place of occurrence at about 8 A.M. on 07.09.2016. There, he found the appellant instigating people against the assailants whom he described as '*Ghodi-wale*'. According to him, the appellant took the said witness and **P.W.-1** aside and asked them to report the incident as per his wishes. According to him, he wrote the F.I.R. on the dictation of the appellant. As to the second Written Report dated 19.9.2016 (**Ex.Ka-1**), he claimed that the same was dictated to him by **P.W.-1**.

38. He also claimed that the police recovered the plain and blood-stained tiles/stone from inside the washroom of the Inter College and plain and blood-stained earth from two other places, namely, from near the place where the dead body of the deceased was found and from outside the house of the deceased. He also stated, other recoveries of personal belongings etc. of the deceased were made by the police.

39. Next, Pradeep Kumar Singh (**P.W. 13**), the Investigating Officer, was examined. He proved the investigation. He also added that the recovery of rope and knife was made on due disclosure made by the appellant. During his cross-examination, he denied that Suraj Pal (**P.W. 2**) had told him that he had seen the appellant on 06/07.09.2016. He denied that Kela Devi (**P.W. 3**) had ever told

him that the appellant had threatened to kill the deceased. He also denied that Rajesh Singh (**P.W. 4**) had told him that he had seen the appellant walking out of the house of the deceased. He also denied that Amit Kumar (**P.W. 12**) ever told him that he and **P.W. 1** had been taken aside by the appellant on 07.09.2016 and asked to report the offence against the accused – described as ‘*Ghodi-wale*’.

40. Then, as to the first Written Report (**Ex. Ka-1**) and the statement of the Kushal Pal (**P.W. 1**) recorded on 07.09.2016, he stated that the said **P.W. 1** never told him that the said Written Report was written on the dictation of the appellant or that he was not in his senses when he lodged the F.I.R.

41. Last, the second Investigating Officer, namely Ram Sen Singh (**P.W. 14**) was examined. He proved the submission of charge-sheet.

42. In his statement recorded under Section 313 Cr.P.C., the appellant clearly disclosed that he is the elder brother of Basant Kumar whose wife Pratima had lodged Case No. 61 of 2013 against the deceased. In such circumstances, he clearly doubted the prosecution allegation of having dictated the F.I.R. allegation and stated he had no reason to seek false implication of his own brother and his wife. He did not stand to gain.

43. In such facts and evidence, the learned court below has believed the circumstantial evidence led by the prosecution that emerged on the second Written Report dated 18.09.2016. Accordingly, the appellant has been convicted and consequently sentenced as noted above.

44. Submission of learned counsel for the appellant is, the prosecution story is ridden with unexplained and unproven facts as may never allow the chain of circumstantial evidence to be

complete, that too to establish the singularity that the occurrence was caused by the appellant and no other. Arising from the own conduct of the prosecution witnesses, that chain of evidence may never be described as complete. First, the prosecution theory as propounded in the FIR based on the first Written Report dated 07.09.2016 was pursued during investigation, for almost 10 days. A *volte face* was offered by **P.W. 1**, on 18.11.2016, without any plausible or believable or proven explanation. The facts cited and the evidence led to establish justification for such change are themselves wholly doubtful. Referring to the contradictions in the statement of the ocular witness and the Investigating Officer and further relying on the confrontation offered to **P.W.-1** with his previous statement recorded during investigation and the incredible reply furnished thereto, it has been submitted that the ocular evidence led by that witness as also the other witness **P.W.-3 and P.W.-6**, who are all close family members of the deceased, is unreliable.

45. In support of his submission, learned counsel for the appellant has relied on **Uppala Bixam v. State of A.P., (2019) 13 SCC 802**, wherein it has been observed as below :

“9. The only other circumstance relied upon by the prosecution is the recovery of the dead body of the deceased Ramesh on the basis of the confession of the appellant-accused. In our considered view this only circumstance by itself may not be sufficient to establish the guilt of the accused. It was also submitted on behalf of the appellant-accused that in his questioning under Section 313 CrPC the appellant-accused has denied making of any confessional statement and recovery of dead body of the deceased Ramesh at his behest. It was further argued that recovery of the dead body of the deceased Ramesh after two days of the occurrence also raises doubt about the prosecution case.

10. The circumstance of recovery of the dead body on the basis of confession may indicate that the accused might have been involved in the incident. However, as held in Raj Kumar Singh v. State of Rajasthan [Raj Kumar Singh v. State of

Rajasthan, (2013) 5 SCC 722 : (2013) 4 SCC (Cri) 812] that suspicion however grave but cannot take the place of the proof. There is a wide gap between “may be” and “must be”. In the present case, the circumstance of recovery of the dead body allegedly based on the alleged confessional statement may raise a suspicion against the appellant-accused that he might be involved in the incident but mere suspicion itself cannot take itself the evidence of proof. In our view conviction under Sections 302/201 IPC cannot be sustained, more so, when the motive attributed for the murder has been theft of the sheep, and the accused-appellant has been acquitted of the charge of theft.”

In **Yogesh v. State of Haryana, (2021) 5 SCC 730**, it has been observed as below :

“28. There are of course circumstances like recovery of clothing apparel as well as tiffin box, etc. belonging to the victim. However, such recoveries by themselves, in the absence of any other material evidence on record pointing towards the guilt of the accused, cannot be termed sufficient to hold that the case was proved beyond reasonable doubt. Not only those circumstances are not conclusive in nature but they also do not form a cogent and consistent chain so as to exclude every other hypothesis except the guilt of the appellants.”

In **Madhav v. State of M.P., (2021) 17 SCC 600** , it has been observed as below :

“29. Apart from the fact that the witnesses in whose presence the seizure of the weapons was allegedly effected, had turned hostile, there was also one more thing. There is nothing on record to show that the bloodstains said to have been present in those weapons, matched with the blood of the deceased. Unfortunately, the High Court proceeded on a wrong premise that there was scientific evidence to point to the guilt of the accused, merely because as per Ext. P-25 (FSL Report), the knife and lathis said to have been seized by the police, contained stains of human blood. The prosecution has not established either through the report of FSL or otherwise, that the bloodstains contained in the knife and lathis were that of the deceased.

30. We are conscious of the fact that there is a divergence of views on this aspect. In Raghav Prapanna Tripathi v. State of U.P. [Raghav Prapanna Tripathi v. State of U.P., 1962 SCC OnLine SC 34 : AIR 1963 SC 74] , a Constitution Bench of this Court by a majority held that, “... that it would be far-fetched to conclude from the mere presence of bloodstained earth that that earth was stained with human blood and that the human blood was that of the victims...”. In Kansa Behera v. State of Orissa [Kansa Behera v. State of Orissa, (1987) 3 SCC 480 : 1987 SCC (Cri) 601] , this Court acquitted the appellant on the ground that though the serologist report found the shirt and dhoti recovered from the possession of the appellant to be stained with human blood, there is no evidence to connect the same with the blood of the deceased. In Surinder Singh v. State

of Punjab [Surinder Singh v. State of Punjab, 1989 Supp (2) SCC 21 : 1989 SCC (Cri) 649] , the bloodstains found on the knife allegedly used for the commission of the offence, were established to be human blood. But this Court rejected the prosecution theory on the ground that those bloodstains on the knife were not shown to be of the same group as the blood of the deceased.

In Raghunath v. State of Haryana [Raghunath v. State of Haryana, (2003) 1 SCC 398 : 2003 SCC (Cri) 326] , this Court held that the bloodstain, though of a human blood, is not conclusive evidence to show that it belongs to the blood group of the deceased. In Sattatiya v. State of Maharashtra [Sattatiya v. State of Maharashtra, (2008) 3 SCC 210 : (2008) 1 SCC (Cri) 733] , this Court found the credibility of the evidence relating to the recovery of the object used for the commission of the crime, substantially dented, on account of the fact that the bloodstains, though found to be of human source, could not be linked with the blood of the deceased.

31. In contrast, this Court held in State of Rajasthan v. Teja Ram [State of Rajasthan v. Teja Ram, (1999) 3 SCC 507 : 1999 SCC (Cri) 436] , that at times the serologist may fail to deduct the origin of the blood, either because the stain is too insufficient or because of haematological changes and plasmatic coagulation. After referring to the Constitution Bench decision in Raghav Prapanna Tripathi [Raghav Prapanna Tripathi v. State of U.P., 1962 SCC OnLine SC 34 : AIR 1963 SC 74] , this Court held in Teja Ram [State of Rajasthan v. Teja Ram, (1999) 3 SCC 507 : 1999 SCC (Cri) 436] that it is not as though the circumstances arising from the recovery of the weapon would stand relegated to disutility, in all cases where there was failure of detecting the origin of the blood. This Court indicated in Teja Ram [State of Rajasthan v. Teja Ram, (1999) 3 SCC 507 : 1999 SCC (Cri) 436] that, "... the effort of the criminal court should not be to prowl for imaginative doubts..." and that the doubts should be of reasonable dimension, which a judicially conscientious mind entertains with some objectivity.

32. The decision in Teja Ram [State of Rajasthan v. Teja Ram, (1999) 3 SCC 507 : 1999 SCC (Cri) 436] was followed in Gura Singh v. State of Rajasthan [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205 : 2001 SCC (Cri) 323] and in Prabhu Dayal v. State of Rajasthan [Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127 : (2018) 3 SCC (Cri) 517] .

33. In R. Shaji v. State of Kerala [R. Shaji v. State of Kerala, (2013) 14 SCC 266 : (2014) 4 SCC (Cri) 185] , this Court took note of almost all previous decisions starting from Prabhu Babaji Navle v. State of Bombay [Prabhu Babaji Navle v. State of Bombay, 1955 SCC OnLine SC 22 : AIR 1956 SC 51] and including those in Raghav Prapanna Tripathi [Raghav Prapanna Tripathi v. State of U.P., 1962 SCC OnLine SC 34 : AIR 1963 SC 74] ; Teja Ram [State of Rajasthan v. Teja Ram,

(1999) 3 SCC 507 : 1999 SCC (Cri) 436] ; Gura Singh [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205 : 2001 SCC (Cri) 323] ; John Pandian v. State [John Pandian v. State, (2010) 14 SCC 129 : (2011) 3 SCC (Cri) 550] ; and Sunil Clifford Daniel v. State of Punjab [Sunil Clifford Daniel v. State of Punjab, (2012) 11 SCC 205 : (2013) 1 SCC (Cri) 438] and came to the conclusion that once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood groups loses significance.

34. Therefore, as pointed out by this Court in Balwan Singh v. State of Chhattisgarh [Balwan Singh v. State of Chhattisgarh, (2019) 7 SCC 781 : (2019) 3 SCC (Cri) 392] , there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. But the judicial conscience of the court should be satisfied both about the recovery and about the origin of the human blood.”

In Subramanya v. State of Karnataka, (2023) 11 SCC 255,

it has been observed as below :

“76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

***“27. How much of information received from accused may be proved.—**Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”*

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This

first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

79. In the aforesaid context, we may refer to and rely upon the decision of this Court in *Murli v. State of Rajasthan* [*Murli v. State of Rajasthan*, (2009) 9 SCC 417 : (2010) 1 SCC (Cri) 12], held as under : (SCC p. 425, para 34) “34 [Ed. : Para 34 corrected vide Official Corrigendum No. F.3/Ed.B.J./141/2009 dated 14-9-2009.] . The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box.”

80. One another serious infirmity which has surfaced is in regard to the authorship of concealment by the person who is said to have discovered the weapon.

81. The conditions necessary for the applicability of Section 27 of the Act are broadly as under:

(1) Discovery of fact in consequence of an information received from accused;

(2) Discovery of such fact to be deposed to;

(3) The accused must be in police custody when he gave information; and

(4) So much of information as relates distinctly to the fact thereby discovered is admissible — *Mohd. Inayatullah v. State of Maharashtra* [*Mohd. Inayatullah v. State of Maharashtra*, (1976) 1 SCC 828 : 1976 SCC (Cri) 199] . Two conditions for application:

(1) information must be such as has caused discovery of the fact; and

(2) information must relate distinctly to the fact discovered — *Earabhadrapa v. State of Karnataka* [*Earabhadrapa v. State of Karnataka*, (1983) 2 SCC 330 : 1983 SCC (Cri) 447] .

82. We may refer to and rely upon a Constitution Bench decision of this Court in *State of U.P. v. Deoman Upadhyaya* [*State of U.P. v. Deoman Upadhyaya*, 1960 SCC OnLine SC 8 : AIR 1960 SC 1125], wherein, para 71 explains the position of law as regards the Section 27 of the Evidence Act : (AIR p. 1146)

“71. The law has thus made a classification of accused persons into two : (1) those who have the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their statements are not admissible, and in the case of the second category, only that portion of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says: “I pushed him down such and such mineshaft”, and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft.”

83. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in *Pulukuri Kotayya v. King Emperor* [*Pulukuri Kotayya v. King Emperor*, 1946 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67], which have become locus classicus, in the following words : (SCC OnLine PC : AIR p. 70, para 10)

“10. ... it is fallacious to treat the “fact discovered” within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A” these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

84. What emerges from the evidence of the investigating officer is that the appellant-accused stated before him while he was in custody, “I may get discovered the murder weapon used in the incident”. This statement does not indicate or suggest that the appellant-accused indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere

discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.

85. *In Dudh Nath Pandey v. State of U.P. [Dudh Nath Pandey v. State of U.P., (1981) 2 SCC 166 : 1981 SCC (Cri) 379] , this Court observed that the evidence of discovery of pistol at the instance of the appellant cannot, by itself, prove that he who pointed out the weapon wielded it in the offence. The statement accompanying the discovery was found to be vague to identify the authorship of concealment and it was held that pointing out of the weapon may, at the best, prove the appellant's knowledge as to where the weapon was kept.*

86. *Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama, the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.”*

In Ramanand v. State of U.P., (2023) 16 SCC 510 , it has been observed as below :

“56. *If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his bloodstained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the*

commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

57. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW 2 Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the bloodstained clothes. The second panch witness, namely, Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the bloodstained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

58. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.

59. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the

panchnama and it is only if the investigating officer has successfully proved the contents of the discovery *panchnama* in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW 7 Yogendra Singh is that he has not proved the contents of the discovery *panchnama* and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a *panchnama*. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery *panchnama* (Ext. 5). There is a reason why we are laying emphasis on proving the contents of the *panchnama* at the end of the investigating officer, more particularly when the independent *panch* witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery *panchnama* of weapon of offence was drawn as the accused was willing to take it out from a particular place.

67. *The conditions necessary for the applicability of Section 27 of the Act are broadly as under:*

- (1) Discovery of fact in consequence of an information received from accused;*
- (2) Discovery of such fact to be deposed to;*
- (3) The accused must be in police custody when he gave information; and*
- (4) So much of information as relates distinctly to the fact thereby discovered is admissible — Mohmed Inayatullah Mohd. Inayatullah v. State of Maharashtra [Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483] .*

Two conditions for application—

- (1) Information must be such as has caused discovery of the fact; and*
- (2) Information must relate distinctly to the fact discovered — Earabhadrapa v. State of Karnataka [Earabhadrapa v. State of Karnataka, (1983) 2 SCC 330 : 1983 SCC (Cri) 447 : AIR 1983 SC 446] .*

70. *What emerges from the evidence in the form of *panchnama* is that the appellant stated before the *panch* witnesses to the effect that “I will show you the weapon used in the commission of offence”. This is the exact statement which we could read from the discovery *panchnama* and the investigating officer*

also could not have deposed as regards the exact statement other than what has been recorded in the panchnama. This statement does not suggest that the appellant indicated anything about his involvement in concealment of the weapon. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source. He may have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered weapon, he was the person who concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the panchnama of the discovery of weapon and the evidence in this regard is that he disclosed that he would show the weapon used in the commission of offence. In the same manner we have also perused the panchnama, Ext. 32 wherein the statement said to have been made by the accused before the panchas in exact words is "the accused resident of Roghada Village on his own free will informs to take out cash and other valuables".

71. What emerges from the evidence of the investigating officer is that the appellant-accused stated before him while he was in custody, "I may get discovered the murder weapon used in the incident". This statement does not indicate or suggest that the appellant-accused indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence."

46. On the other hand, the learned A.G.A. and learned counsel for the informant have strenuously urged that there existed strong motive with the appellant. That was proven by the mother of the deceased **P.W. 6** and **P.W. 5**, at whose (**P.W.-5**) place a prior altercation had taken place between the appellant and the deceased. Also, reference has been made to other disputes between the appellant side and the deceased with respect to common passage. In that regard, further reference has been made to the fact that the

deceased and the appellant are related. Both have descended from a common great-grandfather on their paternal side. In that context, reliance has been placed on the site plan to establish that the parties resided in the same campus where the occurrence may have taken place. Though described as different places, all are in the same area.

47. Next, reference has been made to the confessional statement of the appellant that led to the recovery of the rope and knife used in the assault. It has been asserted that due disclosures were made as are contained/recorded in the Case Diary. Those have been proven by the Investigating Officer. Therefore, there exists strong corroborative material to establish that the occurrence was caused by the appellant-being asphyxia caused by strangulation. Recovery of the rope with blood marks offers enough corroboration. The serological report prepared by the F.S.L. clearly records the presence of human blood on the rope.

48. Shri Rajrshi Gupta, learned counsel for the informant, would further submit that the present being a case of circumstantial evidence, the Court may not burden the prosecution to prove each fact as if it were a case of direct evidence. Cumulative effect of proven circumstances, all consistent to the prosecution theory as to the occurrence, are enough to sustain the conviction. In that context, it has been submitted, the FIR came to be wrongly lodged against the persons named therein, for reason of influence exercised by the appellant. In fact, it only contains the narration made by the appellant. This fact was duly proven both by **P.W. 1** and **P.W. 12**, who is the scribe of the two Written Reports-namely, **Ex. Ka-1** and **Ex. Ka-2**.

49. As to the testimony of the mother of the deceased **P.W. 3** and **P.W. 1**, it has been strenuously urged, those witnesses never testified that they were unconscious till 18.09.2016. They only

stated that they were not in their proper senses as may have allowed them to rationalize the facts and make a proper narration to the police authorities. The fact that the mother of the deceased was not in her proper senses was corroborated by the wife of **P.W. 1**, namely, **P.W. 6**.

50. As to the motive, the same was clearly established both by **P.W. 3** and **P.W. 5**. No doubt exists as to the occurrence at the function organized by the said **P.W. 5** wherein the appellant had held out a verbal threat to kill the deceased, for reason of the deceased having insulted the father of the present appellant.

51. Also, he would submit, there is nothing to doubt the proof offered by **P.W. 2**, **P.W. 4** and **P.W. 6** that they had seen the appellant at the time and immediately after the occurrence. Therefore, in the face of such proven facts, the alleged inconsistency in the prosecution story as narrated in the first Written Report, fades into insignificance.

52. In support of his submissions, Sri Rajrshi Gupta, learned counsel for the respondents has relied on **Kusuma Ankama Rao Vs. State of A.P., AIR 2008 SC 2818** to demonstrate the true test to be applied by Courts at criminal trials-based on circumstantial evidence. Also, he has relied on **Satpal Vs. State of Haryana, AIR 2018 SC 2142** to submit that the evidence of last seen and recovery may be enough to sustain conviction against the present appellant. Reliance has also been placed on the principle-delay in examination of witness, during investigation may not be material to doubt the prosecution story that is otherwise duly proven. Thus, reliance has been placed on **Ramanand Yadav Vs. Prabhu Nath Ja & Ors., AIR 2004 SC 1053** and **Gautam Joardar Vs State of West Bengal, Criminal Appeal No. 1181 of 2019 decided on 07.10.2021**. Reliance has also been placed on **Gorusu Nagaraju**

Vs. State of A.P., III (2018) SLT 333 to submit no adverse inference may be drawn on minor inconsistencies or contradiction. Besides the above, reliance has been placed on the decision of the Supreme Court in **Anthony D'Souza & Ors. Vs. State of Karnataka, VI (2002) SLT 299; Prahlad Vs. State of Rajasthan, JT 2018 (11) SC 338** and **Dharam Deo Yadav Vs. State of U.P., 2014 Cri.L.J. 2371** as to the correct principle in law to be applied to statements recorded under Section 313 Cr.P.C. Last, reliance has been placed on **Raju Manjhi Vs. State of Bihar, AIR 2008 SC 3592** and **Shyam Babu Vs. State of U.P., AIR 2012 SC 3311** to indicate the testimony of interested witness related to the deceased/victim may not be disbelieved for reason of such relationship.

53. Having heard learned counsel for the parties and having perused the record, in the first place, it must be accepted that the present is not a case of direct evidence. Whether on the strength of the first theory narrated by the prosecution, vide FIR dated 07.09.2016 or according to the second Written Report dated 18.09.2016, both prosecution theories (though directed against two different sets of accused persons), are based on circumstantial evidence, only.

54. In **Hanumant Vs. State of Madhya Pradesh, (1952) 2 SCC 71**, a three-judge bench of the Supreme Court provided a functional rule for application by Courts, at criminal trials, involving circumstantial evidence. In that it was provided as below:

"12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words,

there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. In spite of the forceful arguments addressed to us by the learned Advocate General on behalf of the State we have not been able to discover any such evidence either intrinsic within Ext. P-3A or outside and we are constrained to observe that the courts below have just fallen into the error against which warning was uttered by Baron Alderson in the abovementioned case."

(emphasis supplied)

55. Next, in **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) Cri.L.J. 178**, Supreme Court was pleased to observe as below:

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) 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.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

154. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in The King v. Horry,(1) thus:

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that up on no rational

hypothesis other than murder can the facts be accounted for."

155. Lord Goddard slightly modified the expression, morally certain by 'such circumstances as render the commission of the crime certain'.

156. This indicates the cardinal principle' of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. The State of Bombay(2) Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases Tufail's case (supra), Ramgopals case (supra), Chandrakant Nyalchand Seth v. The State of Bombay (Criminal Appeal No. 120 of 1957 decided on 19.2.58), Dharmbir Singh v. The State of Punjab (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration(1). Mohan Lal Pangasa v. State of U.P.,(2) Shankarlal Gyarasilal Dixit v. State of Maharashtra(3) and M.C. Agarwal v. State of Maharashtra(4)-a five-Judge Bench decision.

157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra v. The State of Bihar(5), to supplement this argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

"But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation-such absence of explanation of false explanation would itself be an additional link which completes the chain."

158. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

"(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance point to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation."

(emphasis supplied)

56. The law then existing was next summarised in **Padala Veera**

Reddy Vs. State of Andhra Pradesh & Ors., 1989 Supp (2) SCC

706. Therein it was observed as below:

"10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

20. *This Court in Palvinder Kaur v. State of Punjab [(1952) 2 SCC 177 : AIR 1952 SC 354 : 1953 SCR 94 : 1953 Cri LJ 154] has pointed out that in cases depending on circumstantial evidence courts should safeguard themselves against the danger of basing their conclusions on suspicions howsoever strong.*

21. *In Chandrakant Ganpat Sovitkar v. State of Maharashtra [(1975) 3 SCC 16 : 1974 SCC (Cri) 712] it has been observed:*

"It is well settled that no one can be convicted on the basis of mere suspicion, however strong it may be. It also cannot be disputed that when we take into account the conduct of an accused, his conduct must be looked at in its entirety."

22. *In Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116 : 1984 SCC (Cri) 487] this Court has reiterated the above dictum and pointed out that the suspicion, however great it may be, cannot take the place of legal proof and that "fouler the crime higher the proof."*

57. Applying the above rule, in **Kishore Chand Vs. State of H.P., (1991) 1 SCC 286**, it was further observed as below:

"4. The question, therefore, is whether the prosecution proved guilt of the appellant beyond all reasonable doubt. In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so established should be consistent only

with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can be explained by any of the reasonable hypothesis then the accused must have the benefit of that hypothesis.

5. In assessing the evidence imaginary possibilities have no role to play. What is to be considered are ordinary human probabilities. In other words when there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established. The chain of events furnished by the circumstances should be so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. If any of the circumstances proved in a case are consistent with the innocence of the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt.

6. In assessing the evidence to find these principles, it is necessary to distinguish between facts which may be called primary or basic facts on one hand and inference of facts to be drawn from them, on the other. In regard to the proof of basic or primary facts, the court has to judge the evidence in the ordinary way and in appreciation of the evidence in proof of those basic facts or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The court has to consider the evidence and decide whether the evidence proves a particular fact or not. Whether that fact leads to the inference of the guilt of the accused or not is another aspect and in dealing with this aspect of the problem, the doctrine of benefit would apply and an inference of guilt can be drawn only if the proved facts are inconsistent with the innocence of the accused and are consistent only with his guilt. There is a long distance between may be true and must be true. The prosecution has to travel all the way to establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accused and those circumstances should be of conclusive nature and tendency and they should be such as to exclude all hypothesis but the one proposed to be proved by the prosecution. In other words, there must be a chain of evidence so far consistent and complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that in all probability the act must have been done by the accused and the accused alone."

(emphasis supplied)

58. In **Jaharlal Das Vs. State of Orissa, (1991) 3 SCC 27**, the Supreme Court cautioned that in cases depending largely upon

circumstantial evidence, the Courts may remain careful of conjectures of suspicions taking place of legal proof. In that it was observed as below:

"9. It may not be necessary to refer to other decisions of this Court except to bear in mind a caution that in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion howsoever strong cannot be allowed to take the place of proof. The court has to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. The court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. Bearing these principles in mind we shall now consider the reasoning of the courts below in coming to the conclusion that the accused alone has committed the offence."

(emphasis supplied)

59. In the case of **State of U.P. Vs. Ashok Kumar Srivastava, (1992) 1 SCR 37**, the Supreme Court pointed out - great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt of the accused, and no other.

60. In the case of **Sanatan Naskar & Anr. Vs. State of West Bengal, (2010) 8 SCC 249**, the Supreme Court observed as under:

"13. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eye witness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of accepted principles in that regard."

61. In **Kusuma Ankama Rao (supra)** the Supreme Court has

not taken another view. We find, the test for circumstantial evidence as deduced from the decisions of the Supreme Court (noted above) and the test as laid and applied by the Supreme Court in **Kusuma Ankama Rao (supra)**, is one and the same.

62. Thus, to evaluate the circumstantial evidence led by the prosecution, we note, it is a candid admission made by the prosecution that was never altered and remained consistent throughout the trial that the deceased had gone to sleep at his residence on 06.09.2016. Again admittedly, the appellant did not have common dwelling with the deceased. Their houses are located across opposite sides of a village lane, whereas the Inter College campus is on the back side of the house of the deceased separated by some greenery. The evidence of being last seen led by Kela Devi (**P.W.-3**), the mother of the deceased, did not specify the time. However, she did state that she had seen the accused, and the deceased engaged in small talk, with both seated on the cot/bed of the deceased i.e. inside the house of the deceased. She never deposed to having seen the deceased leave his house with the appellant. Thus, even if we take that proven occurrence to be of 10 p.m. on 06.09.2016, as stated by the Investigating Officer (**P.W.-13**), the prosecution never proved that the deceased left his dwelling house with the appellant. No one saw that occurrence. Also, undeniably, the occurrence is not of inside the house of the deceased.

63. In such circumstances, it is an admitted case of the prosecution that the occurrence took place outside the house of the deceased, at the Inter College, situated on the other side of the house of the deceased and not on the side of the house of the appellant, or beyond it. The occurrence was not caused and the dead body of the deceased was not found inside his house but at a

different place, described as the toilet of the Inter College. That discovery was made the next morning, on 07.09.2016, not by the first informant or any of his family members but by others, i.e. people who are not named. That fact was communicated to the informant side at about 8 a.m., leading to their reaching the place of occurrence.

64. The prosecution has not described the distance between the two places where the deceased went to sleep and where his dead body was discovered. Though we are not disbelieving the prosecution story for that reason, at the same time, we must recognize that those two places are not co-joint but at some distance from each other and separated by greenery and other structures. That alone explains the natural time gap in the prosecution narration between the disappearance of the deceased; the knowledge of his disappearance and the discovery of his dead body, first by others (who may have otherwise gone to the Inter College), and then by the informant side, on reaching the Inter College, upon being thus informed. Thus, crucially both premises are completely different-one being a dwelling house and another being a washroom at an Inter College.

65. In that admitted position of facts, the prosecution clearly proved through **Ex. Ka-15** and **Ex. Ka-16**, (both collected on 07.09.2016 itself) recovery of two samples of bloodstained and plain earth. The sample **Ex. Ka-15** was drawn from outside the house of the deceased. Also, the sample **Ex. Ka-16** was drawn from outside the toilet of the Inter College. Yet, a third sample **Ex. Ka-14** of bloodstained and plain tiles/stone was drawn from inside the toilet of the Inter College. Those three Recovery Memos were duly proven at the trial.

66. Besides that specific proof, Amit Kumar (**P.W. 12**) the scribe

of the FIR also confirmed such samples had been drawn. That fact finds further corroboration from the report of the FSL (on which the prosecution relies). It clearly indicates that two samples of blood-stained and plain earth and one sample of blood-stained and plain tiles/stone were sent for forensic examination. The finding of that report apart, there is nothing to doubt this critical aspect of the prosecution story that blood-stained earth was recovered from outside the house of the deceased, as well. The sample of blood-stained earth collected from outside the house of the deceased, was never explained.

67. In view of that unexplained occurrence, a possibility remains, that the assault began outside the house of the deceased, during the night hours of 06/07.09.2016. Neither the prosecution proved that occurrence nor was it ever explained at the trial how the deceased may have been abducted and who may have caused such abduction from inside his house where he was residing. The only factor in favour of the prosecution is, according to the FSL report, that blood sample had disintegrated, and it was not confirmed to be of human origin, yet there is nothing to doubt that such a sample of blood-stained earth was drawn, after the occurrence. Here, it is critical to note, other than the ligature mark, seven other injuries caused by assault made, were duly proven.

68. Next, we do not intend to discard the prosecution story merely because of the inherent contradiction in the two theories propounded by it - one emanating from the Written Report dated 07.09.2016 (not relied at the trial) and the other emanating from the Written Report dated 18.09.2016 (relied at the trial). Yet, not only direct allegation was made against another set of accused named in the FIR dated 07.09.2016 arising from the Written Report of that date lodged by **P.W. 1**, that theory was also pursued by the

prosecution for ten days. In that, not only Kushal Pal (**P.W. 1**), the brother of the deceased was shown to have signed the Written Report dated 07.09.2016 after it had been read out to him, but he also made a positive statement to the Investigating Officer as was recorded under Section 161 Cr.P.C. during that investigation. In that, he had clearly supported that FIR allegation. When confronted with that exact his previous statement during his cross-examination, he only denied having made that statement. However, the Investigating Officer (**P.W. 13**) stated otherwise. It clearly puts to doubt - the prosecution narration that **P.W. 1** lodged the FIR on 07.09.2016, under the controlling influence of the appellant.

69. As to the reason how the prosecution story narrated by the fact witness drastically transformed after ten days, Kushal Pal (**P.W. 1**) has offered a wholly doubtful explanation. According to him, he had acted under the influence of the appellant, in lodging the first information report, on 07.09.2016. We find that explanation wholly unbelievable. According to the prosecution story narrated and proven at the trial, the deceased and the appellant had entered a verbal quarrel, twenty to twenty-five days earlier, on 17.08.2016, wherein the appellant had threatened to kill the deceased. That narration has been offered by the mother of the deceased Kela Devi (**P.W. 3**) and (**P.W. 5**) Satyapal (at whose function such an occurrence had taken place. On that fact proven by the prosecution, it was further asserted by the mother of the deceased Kela Devi (**P.W. 3**) that the deceased and the appellant got on to talking terms, only four to five days earlier. Also, it was the prosecution case that the accused and the deceased though related, their families had pre-existing differences over a common path. That fact was specifically proven by **P.W. 3** and **P.W. 5**. The natural consequence of the above proven facts and that can never be ignored by the Court is that the

appellant did not hold a position of trust or influence over the family members of the deceased, on the date of occurrence, such that he may have dictated to **P.W. 1** who is the real brother of the deceased to lodge the FIR, one way or the other. No fact indicating existence or emergence of prior good relations between **P.W. 1** and the appellant was ever proven. A person who had quarreled with the deceased and for that reason may not have remained on talking terms for a fortnight thereafter, may hardly be described as a person of such influence and trust who could dictate to the brother of the deceased - to lodge the FIR of such gravity, solely as per his wishes.

70. While we are not inclined to disbelieve the further claim made by the Kela Devi (**P.W. 3**) that she had seen the deceased and the appellant engaging in small talk while sitting on the cot/bed inside the house of the deceased, we are unable to accept as natural or plausible, the prosecution assertion that therefore the first Written Report dated 07.09.2016, had been dictated by the appellant himself.

71. Crucially, the prosecution completely and utterly failed to prove any fact as may lead to an inference that the appellant did exercise controlling influence over Kushal Pal (**P.W. 1**) and Amit Kumar (**P.W. 12**). Therefore, what led the first prosecution narration contained in the first Written Report dated 07.09.2016, is not for us to speculate. Suffice to note, we are unable to subscribe to the contention of the prosecution that that narration arose at the instance of the present appellant. Accepting the prosecution explanation that the key eyewitnesses Kushal Pal (**P.W. 1**) and Kela Devi (**P.W. 3**) may not have been entirely in their senses, yet it would be completely conjectural to accept that therefore, they were stating everything (including before the Investigating Officer),

solely at the dictation of the appellant.

72. The credibility of Kushal Pal (**P.W. 1**) may also remain in a shadow of doubt for reason of his evasive and doubtful statements with respect to the matrimonial relationship of the deceased and the litigation faced by the deceased. He specifically admitted that the deceased was facing matrimonial discord with his wife. Yet, he denied knowledge of the order passed by the competent court, providing for maintenance allowance to the wife of the deceased at the rate Rs. 10,000/- per month. He also feigned ignorance of another criminal case pending against the deceased lodged by Pratima (sister-in-law of the present appellant), alleging offence of molestation, etc. While those statements may only create doubt, his credibility (as a witness), was critically dented on it being established through his cross-examination, that the two persons named in the original Written Report dated 07.09.2016 (lodged by **P.W. 1**), had been engaged at this criminal trial on behalf of the victim party namely Sandeep and Bhopal. While he did not specifically admit the engagement of Bhopal, he did admit that Sandeep was thus engaged as a lawyer.

73. Seen in that light, the simple explanation offered by Kushal Pal (**P.W. 1**) that he acted under pre-dominant influence of the appellant and thus lodged the F.I.R. on 07.09.2016 against the first set of accused, is incredulously unbelievable. Denial of his previous statement in such facts casts a serious doubt to his credibility.

74. Coming to Kela Devi (**P.W. 3**), as noted above, her testimony may not lead to any inference of guilt of the appellant even if we accept that the deceased and the appellant had engaged in small talk on the evening preceding the occurrence inasmuch further unproven facts and doubts remain as to how the deceased was abducted from his dwelling house and done to death at the Inter

College, upon assault that may have commenced just outside his house. The presence of blood-stained earth outside the house of the deceased was not explained by the prosecution. Though the blood on that sample may have disintegrated, the fact of such sample being drawn was proved. In fact, that recovery made was also supported by the scribe **(P.W. 12)**. No evidence exists to infer that the sample drawn did not pertain to this occurrence.

75. Even if we consider the testimony of Kela Devi **(P.W. 3)** to be of some substance, in entirety, it may not be proper to act on the same, alone. Then, the other member of the family of the deceased namely Lalita Devi **(P.W. 6)** also offered a wholly incredible explanation that she could speak to her husband only about after ten days for reason of many men having visited her house. Clearly, the story at her end has developed purely by way of an afterthought. This we say, as the same witness claimed to have walked back to her home, late in the night of 06/07.09.2016 (while returning alone from a '*Jagran*'), when she had seen the appellant with a '*Potli*'/small hand bag. Being a lady independent enough to be walking that late in the night, it is difficult to accept, she had been prevented from seeing her husband for ten days, for the reason cited by her. Then, no '*Potli*' or '*Potli* - like' article was ever recovered though she claimed to have seen the appellant with such an item, after having caused the occurrence.

76. Insofar as Suraj Pal Singh **(P.W.-2)** is concerned, he never saw the appellant with the deceased. His evidence is only relevant to the extent he claimed to have seen the deceased walk nervously near the place from where recoveries are claimed. Coming to the recovery of the knife and rope, that Recovery Memo is lacking with respect to disclosure in Part-1 and disclosure in Part-2. It is also not witnessed by two independent witnesses. In **Earabhadrapa vs**

State of Karnataka, (1983) 2 SCC 330, the Supreme Court observed as below:

“8. For the applicability of Section 27 therefore two conditions are prerequisite, namely (1) the information must be such as has caused discovery of the fact; and (2) the information must “relate distinctly” to the fact discovered. In the present case, there was a suggestion during the trial that PW 26 had prior knowledge from other sources that the incriminating articles were concealed at certain places and that the statement Ex. P-35 was prepared after the recoveries had been made and therefore there was no “fact discovered” within the meaning of Section 27 of the Evidence Act. We need not dilate on the question because there was no suggestion made to PW 26 during his cross-examination that he had known the places where the incriminating articles were kept. That being so, the statement made by the appellant Ex. P-35 is clearly admissible in evidence.”

(emphasis supplied)

77. Then, in **Bodhraj vs State of J & K, (2002) 8 SCC 45**, the Supreme Court further observed as below:

*“18. Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Indian Evidence Act, 1872 (in short “the Evidence Act”) is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by this Court in *Delhi Admn. v. Bal Krishan* [(1972) 4 SCC 659 : AIR 1972 SC 3] and *Mohd. Inayatullah v. State of Maharashtra* [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483]. The words “so much of such information” as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous*

results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most-quoted authority for supporting the interpretation that the “fact discovered” envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu Gopinath Shinde [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301] .) No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which “distinctly relates to the fact thereby discovered”. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.”

(emphasis supplied)

78. Then, a three-judge bench of the Supreme Court in **Ramanand alias Nandlal Bharti vs State of Uttar Pradesh, (2022) SCC OnLine SC 1396**, further elaborated that principle in law and lucidly expressed the same as below:

“53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead

to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW-7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.”

(emphasis supplied)

79. In **Subramanya vs State of Karnataka, (2023) 11 SCC 255**, the Supreme Court again explained the above principle as

below:

“78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

80. Recently, that principle has been reiterated by another three-judge bench decision of the Supreme Court in **Rajesh & Anr. vs State of Madhya Pradesh, (2023) 15 SCC 521**.

81. In absence of any narration of disclosure statements made in that Recovery Memo, we are unable to accept the submission advanced by learned A.G.A. and learned counsel for the informant that the Investigating Officer proved such disclosure statements during his cross-examination. The disclosure had to arise and be recorded at the stage of preparation of the Recovery Memo and the words then spoken by the accused had to be proved at the trial.

Such Recovery Memo, thus complete, in material parts, was required to be signed by two independent witnesses. Once the Recovery Memo does not establish recording of due disclosures, the proof claimed on the strength of oral evidence of the Investigating Officer on the basis of Case Diary material may not be read to cure that fatal flaw in the evidence of recovery. Since we are unable to accept that recovery as credible, it would be erroneous to draw any adverse conclusion against the appellant based on the testimony of **P.W.-2** that he had seen the appellant walk nervously near Kakrat Irrigation Canal.

82. Equally doubtful is the testimony of Rajesh Singh (**P.W.-4**). Though he claimed that he had seen the appellant carrying someone on his shoulder during night hours of 06/07.09.2016, it is very imaginative that in the first place he would of thought that the appellant was carrying someone who was not well and yet not inquire. Besides the inherent doubt that arises in that narration, it would be absurd to accept that the said witness (**P.W.-4**) would have been afraid of the appellant when it was admittedly known to him that the appellant had no criminal record. It is equally unbelievable that the said witness would have regained his courage merely because the appellant came to be arrested. If the said witness was afraid of the appellant because of his unfounded belief that the latter had committed two murders in the past and had therefore not spoken about the truth, it is wholly irrational behaviour claimed that he got rid of his fear upon the arrest of the appellant.

83. Besides the above, we are unable to place faith in the deposition made by Rajesh Singh (**P.W.-4**) who on his own statement may remain a person who may be described to have acted in a cowardly manner for no reason shown. He claimed to have

developed fear of the appellant for no rational reason. He also claimed that he suddenly regained his confidence once it stood admitted to that witness that there is no criminal case pending against the appellant and no past conduct was alleged or attributed to the appellant, of doing anything as may have left the said witness **(P.W.-4)** threatened, for any valid or existing reason, it would be dangerous to rely at his testimony that emerged with delay. The witness has self-described to be a person not willing to speak up when required.

84. As to the testimony of Satyapal **(P.W.-5)**, while it may remain proven that some verbal threat had been held out by the appellant to the deceased on 17.08.2016, at a function organized by the said witness which fact has also been corroborated by Kela Devi **(P.W.-3)**, it would be preposterous to conclude that the appellant had therefore caused the occurrence. **P.W.-3** herself stated that she saw the accused and the appellant engage in small talk, on 06.09.2016.

85. The prosecution has also left gaping holes unattended beginning from the disappearance of the deceased from his house where he was asleep, continuing with unexplained bloodstained earth discovered from outside his house. Such gaping holes and unexplained facts have to be seen in the context of the glaring unexplained conduct of the prosecution, in pursuing two divergent stories, first against another set of accused persons which was given up during investigation and the second prosecution story, that having been picked up ten days after the occurrence, by relying on at least one person named in the first theory propounded by the prosecution namely Sandeep who appeared as a lawyer for the informant side. Therefore, the second theory propounded by the prosecution must be tested with greater scrutiny as the element of

false/wrong implication may never be excluded completely in such a case.

86. The testimony of Amit Kumar (**P.W.-12**) is also of no great consequence. It is to be read with the testimony of Kushalpal Singh (**P.W.-1**). To the extent, it could not be disputed that the Written Report dated 07.09.2016 was written by **P.W.-12** and read out to **P.W.-2** before he signed it and insofar as it could not be doubted that **P.W.-1** maintained that stand during his statement recorded by the Investigating Officer under Section 161 Cr.P.C., in absence of predominant influence shown to exist at the instance of the appellant, we find doubtful the story narrated upon U-turn made by the prosecution, in the second Written Report dated 18.09.2016.

87. Therefore, there are reasonable doubts as to where the occurrence was caused. It appears to have begun outside the house of the deceased and completed at the place where his dead body may have been discovered. No one saw that occurrence, at any stage. It is not clear how the deceased may have left his house where he was sleeping, and no attempt was made to explain that fact. Doubts exist as to how the actual occurrence may have been caused. In absence of credible evidence existing to establish either that the appellant was seen carrying the deceased on his shoulder or otherwise before or around the time of occurrence and further in absence of any evidence to accept the recovery of weapon of assault-as truthful, merely because the appellant may have been seen talking-normally, to the deceased in the evening and merely because the appellant may have been seen walking (alone) near the Katrat Irrigation Canal, would never be enough to complete the chain of circumstance that may have led to a singular theory that the appellant and no other had caused the occurrence of gruesome murder of the deceased.

88. Gaping and/or unexplained holes in the prosecution story are not to be hidden or covered by emotions of the parties or the gravity of the offence. If at all, the emotions that the parties bring to Court through depositions made in such proceedings, have to be screened out by the Courts, to look at the bare bones of the testimonies, to identify the truth in it. Gravity of the offence alleged burdens the prosecution to prove its case beyond reasonable doubt, more exactly. More so, in cases of circumstantial evidence. While a minor inconsistency or strength of proof on one aspect may be seen and examined by the Court in the totality of other proven facts that may otherwise prove the singular theory of guilt of the accused and that conclusion may not be avoided, where vital inconsistencies and unproven facts break the chain of evidence to the point, parts of the chain get disjointed, the benefit of doubt must arise in favour of the accused. How the prosecution may conduct itself is not for the Court to guide in the first place. It is also not for the Court to pick deficiencies with the object of defeating the fair result of honest prosecution. At the same time, maintaining a balance, the Court must look at the evidence holistically/in entirety.

89. As noted above, in the present facts that holistic appraisal leads to only one conclusion that the prosecution has been unable to prove its case beyond reasonable doubt. One continuous chain of evidence-starting from the disappearance of the deceased from his dwelling house, leading to his murder at the Inter College, was not proven. The evidence of recovery of bloodstained rope at the pointing out by the appellant, is itself doubted. In the absence of any credible evidence of last seen arising outside the house of the deceased, and no attempt made by the prosecution to explain the occurrence from outside the house of the deceased, to the Inter College, the chain of evidence stands broken, in all vital parts.

Then, the testimony of appellant last seen near the place from where recoveries were made, is equally doubtful. In part that evidence is also not reliable, as noted above.

90. Accordingly, the appeal is **allowed** on a benefit of doubt. The impugned judgment and order of conviction dated 23.02.2019 is set aside. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged. The appellant-Roop Kumar shall however comply with the mandatory requirements of Section 437-A Cr.P.C. within one month.

Order Date :- 12.03.2025
SA/Abhilash/Prakhar

(Dr. Gautam Chowdhary, J.) (S.D. Singh, J.)