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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 323 OF 2012**

Mr. Paras Kamlesh Pandya	]
Age around 24 years,	]
Residing at Room No. 5,	]
Eknath Bhavan, Gangawadi,	]
L.B.S.Marg, Ghatkopar, Mumbai	]
(Currently in Nashik Road	]
Central Prison)	].. Appellant
	[Ori. Accused]

Vs.

1) The State of Maharashtra	]
Through APMC Police Station	]
Navi Mumbai, Thane)	]
2) Mr. Prakash Maimtora	]
3) Smt. Vasanti Prakash Maimtora	].. Respondents

.....

Mr. Vinit Kulkarni Advocate appointed for the Appellant
Mrs. A.S. Pai A.P.P. for the State of Maharashtra

.....

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT. I.K.JAIN, JJ.**

**RESERVED ON : JAN. 29, 2015
PRONOUNCED ON : FEB. 24, 2015**

JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.]:

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 20.1.2011 passed by the learned District Judge-3 and Additional Sessions

Judge, Thane in Sessions Case No. 52 of 2005. By the said judgment and order, the learned Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and to pay a fine of Rs. 5000/- in default R.I. for six months.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Shweta was the daughter of P.W. 17 Vasanti. Shweta was about 18 years at the time of incident. The appellant knew Shweta as he used to come to her house to take tuition from Nisha who was the elder sister of Shweta. The appellant along with Shweta used to attend birthday parties of their friends which were organized in hotels. Due to this, people started talking about intimacy between Shweta and the appellant. Vasanti the mother of Shweta, then told the appellant not to see Shweta or not to talk to her. She further told the appellant not to visit their residence. In order to prevent Shweta and the appellant meeting, Vasanti used to accompany her daughter Shweta to Ghatkopar Railway Station when she had to attend college and even on her return, Vasanti used to receive Shweta at Ghatkopar Railway Station and bring her to the residence.

(ii) On 6.11.2004 at about 8.00 a.m. Vasanti accompanied Shweta till Ghatkopar Railway Station from where Shweta was to go to attend her college. Shweta was told that day to come near Borivli Station where a sale was arranged. However, till 7.30 p.m. as Shweta did not come to the shop at Borivli where the sale was arranged, Vasanti told her daughter Nisha to make enquiry with her mother-in-law who was at home, whether Shweta had come home. At about 8.15 p.m. Nisha received one telephone call on her mobile and on hearing the talk, Nisha started weeping. Vasanti then asked Nisha to hand over cell phone to her. Vasanti snatched cell phone from the hand of Nisha. Vasanti found that the appellant was on the line and he was talking. The appellant told her on phone that he had killed her daughter Shweta and she was at liberty to take whatever action she wanted to take against him.

(iii) In the meantime, it transpired that on 6.11.2004 the appellant and deceased Shweta had gone to Hotel Rex Plaza Lodging and Boarding at Vashi, Navi Mumbai. P.W. 1 Bansiraj was the Manager of the said hotel. His duty hours were from

8.00 a.m. to 8.00 p.m. At about 11.00 a.m. to 11.15 a.m. the appellant brought one girl (Shweta) aged about 18 years along with him to the hotel. The appellant told Bansiraj that he had come for interview and therefore, he will occupy room upto 8.00 p.m. on that day. The appellant also told that the girl who had come with him, was his wife and he gave their names as Mr. and Mrs. Patil. Accordingly, Room no. 115 was allotted to the appellant and Shweta. Thereafter, the appellant along with Shweta left the room at about 12.30 p.m. They returned back at 1.30 p.m. along with some eatables. The appellant told Bansiraj that he wanted to go out of the hotel to bring some articles and the appellant alone left the hotel at about 4.00 to 4.15 p.m. Thereafter, the appellant did not come back. At about 8.00 p.m. Bansiraj rang the bell of Room no. 115. He got no response. He tried to contact person/s inside the room on intercom. But there was no response. Then he informed owner of hotel P.W. 10 Saiyad Kadar about this fact. He called the owner to the hotel. The owner came to the hotel and rang the bell of the room but there was no response. Then the owner of the hotel informed Police Station on telephone. The owner also went to APMC Police Station at Vashi personally and informed the police. The owner Saiyad Kadar brought police to the hotel

and showed the situation to them. In presence of police, the door of the room was opened with a master key. The girl (Shweta) who had come along with the appellant, was lying on the bed facing the ceiling. The girl was found dead. One chit was found lying on the bed near her body in which there was writing in Hindi and English and it was signed as "Paras". In the chit, it was written that "I Paras have committed the murder of this girl Shweta". The chit also contained other details. From the chit, they came to know the name of the appellant was Paras Pandya and the name of the girl was Shweta. Police prepared inquest panchnama of the dead body. P.W. 1 Bansiraj then lodged F.I.R. (Exh. 58). Thereafter investigation commenced. On the next day, Bansiraj was called to the police station along with hotel register. At that time, police asked him whether the accused sitting in the police station was the same person who had come to their hotel. Bansiraj replied in the affirmative because the accused had come to the hotel earlier on 2 to 3 occasions before the incident. He also showed previous entries in the register before the incident. During the course of investigation, it was revealed that extra judicial confession was made by the appellant to P.W. 12 Vinod who was the friend of the father of the accused as well as to P.W. 17

Vasanti. The chit along with sample handwriting of the appellant was sent for handwriting analysis. The report showed that the signature on the chit as well as the handwriting tallied with that of the appellant. During the investigation, it was further revealed that the appellant had given one packet containing a cassette to P.W. 7 Rahul alias Babbu. The appellant told Rahul to hand over the packet to Shweta's parents. Rahul went to the house of Shweta but he found the house was locked, hence, he handed over the packet to P.W. 4 Shantabhai Mestry (who was the neighbour of Shweta). Shantabhai Mestry knew Babbu as they were residing in the same society. P.W. 4 Shantabhai Mestry gave the said packet to the family of Shweta. The appellant also gave one cassette to his friend P.W. 16 Ankur and told him to hear the same. On hearing the contents of the cassette, Ankur got frightened and he handed over the cassette to the father of the appellant. Both these cassettes along with sample of voice of the appellant were sent for voice analysis and it was found that the voice recorded on the cassettes was that of the appellant. After completion of investigation, the charge sheet came to be filed against the appellant.

3 Charge came to be framed against the appellant under section 302 of IPC. The appellant / accused pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

4 We have heard the learned Advocate appointed for the Appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the learned Sessions Judge has rightly convicted and sentenced the Appellant and there is no merit in the present Appeal.

5 In order to support the conviction, the prosecution is heavily relying on the evidence of P.W. 1 Bansiraj. Bansiraj was the Manager of Hotel Rex Plaza Lodging and Boarding situated at Vashi, Navi Mumbai. He has stated that P.W. 10

Saiyad Kadar was the owner of the said hotel. He has further stated that he was the Manager of the said hotel. His working timings were from 8.00 a.m. to 8.00 p.m. Bansiraj has further stated that on 6.11.2004 at about 11.00 a.m. to 11.15 a.m. the appellant brought one girl (Shweta) aged about 18 years along with him to the hotel. The appellant told Bansiraj that he had come for interview and therefore, he will occupy room upto 8.00 p.m. on that day. The appellant also told that the girl who had come with him, was his wife and he gave their names as Mr. and Mrs. Patil. Accordingly, Room no. 115 was allotted to the appellant and Shweta. Thereafter, the appellant along with Shweta left the room at about 12.30 p.m. They returned back at 1.30 p.m. along with some eatables. The appellant told Bansiraj that he wanted to go out of the hotel to bring some articles and the appellant alone left the hotel at about 4.00 p.m. to 4.15 p.m. Thereafter, the appellant did not come back. At about 8.00 p.m. Bansiraj rang the bell of Room no. 115. He got no response. He tried to contact person/s inside the room on intercom. But there was no response. Then he informed owner of hotel P.W. 10 Saiyad Kadar about this fact. He called the owner to the hotel. The owner came to the hotel and rang the bell of the room but there was no response. Then the

owner of the hotel informed Police Station on telephone. The owner also went to APMC Police Station at Vashi personally and informed the police. The owner Saiyad Kadar brought police to the hotel and showed the situation to them. In presence of the police, door of the room was opened with a master key. The girl (Shweta) who had come along with the appellant, was lying on the bed facing the ceiling. The girl was found dead. One chit was found lying on the bed near her body in which there was writing in Hindi and English and it was signed as "Paras". In the chit, it was written that "I Paras have committed the murder of this girl Shweta". The chit also contained other details. From the chit, they came to know the name of the appellant was Paras Pandya and the name of the girl was Shweta. P.W. 1 Bansiraj then lodged F.I.R.

6 The evidence of P.W. 10 Saiyad Kadar who was the owner of hotel Rex Plaza Lodging and Boarding shows that P.W. 1 Bansiraj was working as a Manager in hotel Rex Plaza. On 6.11.2004 at about 11.30 a.m. he came to his hotel and as usual, he checked the register. He found that at about 11.15 a.m. there was an entry in the register that one Mr. and Mrs. Patil had arrived in his hotel. Saiyad Kadar remained in hotel

till 2.30 p.m. Thereafter, he returned home. At about 8.00 p.m. he received a telephone call from his Manager P.W. 1 Bansiraj. Bansiraj asked him to come to the hotel immediately. Accordingly, Saiyad Kadar came to the hotel. Bansiraj told Saiyad Kadar that Mr. Patil was to leave the hotel at 8.00 p.m., therefore, he tried to contact Patil on intercom about when he was going to vacate the room. Bansiraj also told Saiyad Kadar that he rang the bell of the door of the room and also tried to contact Mr. Patil on intercom but there was no response. Saiyad Kadar also rang the bell and rang on intercom but there was no response from Room No. 115, therefore, suspicion arose in his mind. Hence, he went to APMC Police Station and informed the police about this fact. He brought the police along with him to the hotel. Police also tried to open the door by ringing door bell and knocking on the door as well as calling on intercom but there was no response from Room No. 115. Bansiraj the Manager of the said hotel, opened the lock with the help of master key in the presence of police. On entering the room, they found one girl aged 21 years was lying on the bed in supine condition. They realized that the girl was dead. One letter / chit was lying on the bed next to the girl. In the chit, it was written that he is killing his sister Shweta Maimtora

as her family members did not allow the appellant and Shweta to be in touch. Some further details were also given in the chit. The said chit along with sample handwriting of the appellant taken in the presence of panch witness P.W. 2 Kadar Inamdar, were sent to handwriting expert. The handwriting expert P.W. 21 Shri. Pandit has deposed that signature and writing on the chit were that of the appellant. The evidence of P.W. 1 Bansiraj shows that the appellant along with the deceased came to his hotel at about 11.00 to 11.15 a.m. and booked Room No. 115. Thereafter, the appellant left the room at about 4.15 p.m. and he did not return back. Though the appellant stated that he would vacate the room by 8.00 p.m. the appellant thereafter did not return back and they rang the door bell of the room and also tried to contact on intercom but there was no response. When the door of the room was opened, they found Shweta lying dead on the bed. Thus, the evidence of P.W. 1 Bansiraj shows that the deceased was last seen alive in the company of the appellant.

7 The evidence on record shows that the appellant and Shweta arrived at the hotel Rex Plaza, Navi Mumbai at 11.00 to 11.15 a.m. and they booked Room No. 115. The appellant left

the hotel at 4.15 p.m. and thereafter, Shweta was seen in dead condition in the room. In such case, the appellant has to explain how the deceased died. In this connection, we may refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principle which underlies Section 106 of the Evidence Act can be applied in cases of 'Last Seen'. In the case of ***State of Rajasthan Vs. Kashi Ram; (2006) 12 SCC 254 : AIR 2007 SC 144***, the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or

hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain. In the present case, no explanation has been furnished by the appellant.

8 Mr. Kulkarni, the learned advocate for the appellant submitted that the entire prosecution case cannot be believed because P.W. 1 Bansiraj had earlier stated that the appellant left the hotel at about 7.00 p.m. to 7.15 p.m. however, the evidence of P.W. 1 Bansiraj as well as Investigating Officer shows that the appellant left the hotel at about 4.00 p.m. Thus, we find no merit in this submission.

9 The learned advocate for the appellant thereafter submitted that no reliance can be placed on the evidence of P.W. 1 Bansiraj who was the Manager of hotel Rex Plaza who stated that the appellant had come to his hotel and booked Room No. 115 because the appellant was not known to Bansiraj and no test identification parade was held prior to Bansiraj identifying the appellant in the Court. Thus the learned counsel for the appellant pointed out that the appellant was unknown to P.W. 1 Bansiraj and Bansiraj had identified the

appellant for the first time in the Court.

10 Mr. Kulkarni, the learned counsel for the appellant again argued that as far as the identification of the appellant by P.W. 1 Bansiraj at the time of trial without participating in a previous Test Identification Parade is concerned, such identification is worthless and, therefore, that part of the evidence should be excluded from consideration and thus a vital link in the chain of circumstances would be missing.

11 The Supreme Court has considered the evidentiary value of identification of an accused by a witness in the Court for the first time in a case when the eye witnesses did not know the accused earlier and when no Test Identification Parade has been held. The Supreme Court observed that the real credence of such evidence would depend upon the facts and circumstances of each case. It was observed in the case of **Ramanbhai Naranbhai Patel and Others Vs. State of Gujarat; (2000) 1 SCC 358** that in the absence of Test Identification Parade, it cannot be said that the evidence of any independent witness would become inadmissible, totally useless or irrelevant.

12 In the case of **Ramanbhai Naranbhai Patel (Supra)**, also two witnesses directly identified the accused in the Court but without any previous Test Identification Parade. It was argued that such identification is of no assistance to the prosecution. The Supreme Court observed that as the witnesses were injured in the incident, they could have easily seen the faces of the accused persons who assaulted them and their appearance and identity would remain imprinted in the minds of the witnesses especially when they were assaulted in broad daylight.

13 In connection with the above argument of Mr. Kulkarni, we may make useful reference to a decision of the Supreme Court in the case of **Ronny alias Ronald James Alwares and Ors. Vs. State of Maharashtra; (1998) 3 SCC 625**. In the said decision, it is observed that the statement of the witness made in the Court is substantive evidence whereas the evidence of identification in the TIP is not substantive evidence but it is only corroborative evidence. It falls in the realm of investigation. The purpose of test identification parade is to test the observation, grasp, memory, capacity of a

witness to recapitulate what he has seen earlier, the strength or trustworthiness of the evidence of the identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in Court. But if a witness has seen an accused earlier in such circumstances which lends assurance to identification by him in Court and if there is no inherent improbability or inconsistency, his statement in Court about the identification of accused would be relied upon as any other acceptable but uncorroborated testimony. The identification of the accused by a witness if he had an opportunity to interact with him or to notice his distinctive feature lends assurance to his testimony in Court and absence of corroborative evidence by way of test identification parade would not be material.

14 In the case of **Ronny (*supra*)**, the prosecution had relied on the evidence of two witnesses i.e. PW 29 and PW 34. Both these witnesses had directly identified the accused for the first time in Court. The evidence of both these witnesses was relied upon by the prosecution to show that the accused persons had come to the bungalow of the deceased on the night of the incident. The evidence of both these witnesses

was accepted by both the trial Court as well as the High Court that the accused persons were seen entering the bungalow of the deceased on the previous night. The Supreme Court has observed that both the Courts below had rightly accepted the identification of the accused by these two witnesses. The accused persons were not known to both PW 29 and PW 34 prior to the date of incident, however, both these witnesses had a talk with the accused when the accused came to the bungalow. Some talk took place between the witnesses and the accused for about 7 to 8 minutes. Thereafter, the accused persons entered into the bungalow. On the next day, the inmates of the bungalow were found dead. The Supreme Court held that identification of the accused by a witness if he had an opportunity to interact with him or notice his distinctive features lends assurance to his testimony in Court and that the absence of corroborative evidence by way of TIP would not be material.

15 In ***Shyamlal Ghosh Vs. State of West Bengal; (2012) 7 SCC 646- para 80***, the Supreme Court observed that it is equally correct that Criminal Procedure Code does not oblige investigating agency to necessarily hold TIP. Failure to

hold TIP while in custody does not by itself render the evidence of identification in Court inadmissible or unacceptable.

16 In the present case P.W. 1 Bansiraj had ample opportunity to observe the appellant. He has stated that the appellant had come to their hotel on 6.11.2004 at about 11 to 11.15 a.m. The appellant and Bansiraj had interaction with each other when the appellant booked a room in the hotel. Bansiraj again saw the appellant at 12.30 p.m., 1.30 p.m. and 4.00 p.m. on 6.11.2004. In addition Bansiraj has stated that on two earlier occasions the appellant had come to his hotel. In these facts and circumstances, we are of the opinion that we can safely rely upon the identification of the appellant by Bansiraj in the Court.

17 In addition to the above evidence, the prosecution is relying on the circumstance of extra judicial confession made by the appellant to P.W. 12 Vinod and P.W. 17 Vasanti. Vasanti was the mother of Shweta. P.W. 12 Vinod has stated that he was residing at Vashi at Navi Mumbai. He further stated that he knew Kamlesh the father of the appellant. On 6.11.2004 in the evening he received a message on telephone from his friend Kamlesh that Paras S/o Kamlesh was going to commit suicide. Kamlesh told him that Paras was at telephone Booth

near D.Y. Patil College at Nerul and he should save Paras (appellant). Kamlesh told Vinod that in the meantime, Kamlesh would keep Paras busy on telephone. Kamlesh also informed P.W. 12 Vinod that he had sent his other son Vishal and one boy to Nerul. Vinod and his son Deepak went to the telephone Booth. The appellant was at the telephone Booth. Vishal and the other boy took Paras in their custody. They took Paras to Ghatkopar. Paras told Vinod that he had killed his sister. Vinod told the appellant that the appellant had no sister, therefore, he could not understand what he was saying. Paras then told Vinod that a girl named Shweta was residing near his house and he treated her as his sister. Parents of Shweta were not allowing him and Shweta to meet and neighbours were taking doubt on him. Paras then told that he had killed Shweta. Vinod could not believe that Paras would kill a girl. He then took Paras to house of Paras. Vinod suggested to father of Paras that Paras should be taken to Ghatkopar Police Station. The parents of Paras then took Paras to Ghatkopar Police Station and Vinod came back to Vashi.

18 The evidence of P.W. 12 Vinod is supported by the evidence of P.W. 13 Ganesh. Ganesh was working in S.T.D. centre at Nerul. He used to work at the said S.T.D. booth from

2.30 p.m. to 8.30 p.m. Two local phones were installed in that S.T.D. centre. Ganesh has stated that on 6.11.2004 one boy came to the S.T.D. booth at about 7.30 p.m. to 8.00 p.m. The boy told Ganesh that he wanted to make a telephone call to Ghatkopar. Ganesh provided him local telephone in the booth. Ganesh heard that the boy was talking in Gujarati. The boy was continuously weeping and he was taking the name of Shweta. The boy was in a frightened condition and he was continuously weeping. Ganesh identified the appellant as the same boy who made a telephone call to Ghatkopar from his telephone booth. It is to be noted that the family of the appellant as well as the deceased were residing at Ghatkopar. Ganesh has identified the appellant in Court as the same person who had come to his STD booth and made a call to Ghatkopar.

19 It was again submitted by the learned counsel for the appellant that the identification of the appellant by Ganesh cannot be relied upon because there was no prior test identification parade. He submitted that as the appellant was not earlier known to Ganesh, holding of test identification parade was mandatory. The same not having been done, identification of the appellant by Ganesh directly in Court

cannot be relied upon. As far as this contention is concerned, we find that the evidence of Ganesh shows that they used to charge Rs.1 for 90 seconds i.e. they used to charge Rs.1 for talk of one and half minute. The bill came to Rs.35/-. This shows that the appellant was talking for more than 22 minutes from the S.T.D. booth of Ganesh. Moreover, the fact that the appellant was continuously weeping and he was in a frightened condition, would especially attract the attention of the telephone booth operator i.e. Ganesh and there was special reason for him to observe the appellant and identify him later. Thus, Ganesh did not have a fleeting glimpse of the appellant but he had opportunity to observe the appellant for more than 22 minutes and looking to the fact that the appellant was continuously weeping there was special reason for Ganesh to observe the appellant and identify him correctly later on. Moreover, the same case law would apply in the case of identification by Ganesh as would apply in the case of identification by Bansiraj.

20 An extra judicial confession was also made by the appellant to P.W. 17 Vasanti who was the mother of Shweta. Vasanti has stated that the appellant Paras resided in the building opposite their residential premises. Paras used to

come to their house to attend tuition classes for XII standard conducted by her elder daughter Nisha at their residence. The appellant had no real sister and he was saying that he treated Shweta and her sister Nisha as his sisters. The appellant was on regular visiting terms to their house. The appellant along with Shweta used to attend birthday parties of their friends which were organized in hotels. Due to this, people started talking about intimacy between Shweta and the appellant. Vasanti then told the appellant not to see Shweta and not to talk to her. She further told the appellant not to visit their residence. In order to prevent Shweta and the appellant meeting, Vasanti used to accompany her daughter Shweta to Ghatkopar Railway Station when she had to attend college and even on her return, Vasanti used to receive Shweta at Ghatkopar Railway Station and bring her to the residence. Vasanti has further stated that on 6.11.2004 at about 8.00 a.m. she accompanied Shweta till Ghatkopar Railway Station from where Shweta was to go to attend her college. Shweta was told that day to come near Borivli Station where a sale was arranged. However, till 7.30 p.m. as Shweta did not come to the shop at Borivli where the sale was arranged, Vasanti told her daughter Nisha to make enquiry with her mother-in-law

who was at home, whether Shweta had come home. At about 8.15 p.m. Nisha received one telephone call on her mobile and on hearing the talk, Nisha started weeping. Vasanti then asked Nisha to hand over cell phone to her. Vasanti snatched cell phone from the hand of Nisha. Vasanti found that the appellant was on the line and he was talking. The appellant told Vasanti that he had killed her daughter Shweta and she was at liberty to take whatever action she wanted to take against him.

21 It is the prosecution case that the appellant strangled Shweta with a wire and caused her death. Panch witness P.W. 8 Rajkumar has deposed about recovery of cable wire at the instance of the appellant. Mr. Kulkarni submitted that the evidence of panch witness P.W.8 Rajkumar cannot be relied upon because he could not give details of all the flats and area. Mr. Kulkarni submitted that in the cross-examination of this panch witness, it has been elicited that he cannot tell number of stories in the building, he could not tell how many flats were there and how many flats were adjacent to the house of the accused nor the number of rooms in the flat of the accused. He submitted that in such case, the evidence of panch witness cannot be relied upon. However, the evidence

of the panch witness clearly shows that statement was made by the appellant in his presence that he had kept cable wire at his residence and he was ready to produce the same. Thereafter, the appellant led the police and the panchas to Ganganagar at Ghatkopar. Jeep was then stopped near a building. The appellant then led them to one flat which was opened by his mother. The appellant then took out a cable wire from a show-case. It is pertinent to note that the incident took place in the year 2004. This panch witness was deposing in the year 2009, hence, after so many years, it is not possible for the panch witness to give exact details of the flat or building. This does not make his evidence unreliable. On going through the evidence, we find that panch P.W. 8 Rajkumar has stated that appellant / accused made a statement before him and police that he will produce the cable wire and a memorandum statement came to be recorded and thereafter, the appellant took them to Ganganagar at Ghatkopar in a jeep and produced the cable wire.

22 The learned counsel for the appellant submitted that there is no signature or thumb impression of the appellant on the panchnama relating to recovery of cable wire. He submitted that in such case, no reliance could be placed upon

the alleged disclosure statement relating to recovery of cable wire and the panchnama relating to recovery of cable wire. In support of this contention, he relied on a decision of the Supreme Court in ***Jaskaran Singh Vs. State of Punjab; 1997 SCC (Cri.) 651.***

23 The Supreme Court in the case of ***Yakub Abdul Razak Memon Vs. State of Maharashtra reported in (2013) 13 SCC 1*** considered the decision in the case of ***Jaskaran Singh (supra)*** and observed as under:

"We do not find any force in the submissions made by the learned counsel appearing for the appellant to the effect that as the recovery memo did not contain signature of the appellant, the same cannot be relied upon, even though, to fortify such submission, he has placed very heavy reliance upon the judgment of this Court in ***Jaskaran Singh (supra)***, wherein it has been held that the absence of signature or thumb impression of the accused upon his disclosure statement, may render the said statement unreliable, particularly, in a case where the panch witness has not been examined at a trial, to testify the authenticity of the same. The judgment relied upon by the learned counsel for the appellant is easily distinguishable, as in the said case none of the panch witnesses had been examined, while in the instant case the panch witness has been examined."

The same are the facts in the present case, hence, the decision in the case of **Yakub Memon** would apply on all fours to the present case.

24 In **State of Rajasthan Vs. Teja Ram; (1999) 3 SCC 507 : 1999 SCC (Cri.) 436 : AIR 1999 SC 1777**, the Supreme Court while dealing with the issue held as under:

" 30. The resultant position is that the investigating officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. Hence, we cannot find any force in the contention of the learned counsel for the accused that the signatures of the accused in Exh. P-3 and P-4 seizure memos would vitiate the evidence regarding recovery of the axes".

25 So also in the case of **State of West Bengal Vs. Kailash Chandra Pandey; (2004) 12 SCC 29 : 2004 SCC (Cri.) Supp 149**, the Supreme Court has held that the signature of the accused is not required on the seizure memo. Therefore, the evidence relating to recovery panchnama of the cable wire at the instance of the appellant, can safely be relied upon.

26 The dead body of Shweta was sent for post mortem. P.W. 9 Dr. Jain conducted the post-mortem on the dead body of Shweta. On external examination, Dr. Jain found the following injury on the dead body:

" Ligature mark seen in the middle 1/3rd portion of neck completely encircling around neck, horizontally placed.

It is of size 32 x 0.3 cm. situated at the distance of 6.5 cm. from chin, 7 cm. from right and left mastoid, 7 cm. from C-7 spine and 9 cm. from occipital protuberance.

On dissection of the neck underneath the ligature mark reveals subcutaneous tissue, muscles, fascia contused, fracture of the superior horn of right thyroid cartilage. Infiltration staining of blood seen within. "

27 According to Dr. Jain, the above injury was ante-mortem. In Dr. Jain's opinion, cause of death was asphyxial death due to strangulation and the above injury is possible due to forceful constriction of neck by ligature material. According to Dr. Jain, the injury mentioned above is possible by cable wire (Art. D). Dr. Jain has categorically stated that it is not true that such injuries are usually found in hanging or suicidal death. Thus, the medical evidence is totally consistent with the

prosecution case.

28 It is the prosecution case that the appellant recorded two cassettes, one he sent to the house of the deceased and the other cassette was sent to his friend P.W. 16 Ankur. The evidence of P.W. 7 Rahul @ Babbu shows that he knew the appellant as he and the appellant used to go to the house of Shweta for tuition. Rahul has stated that Shweta and the appellant were looking at each other as sister and brother. The parents of Shweta did not allow Shweta and the appellant to meet each other, hence, they used to meet each other outside the house. Rahul has stated that on 6.11.2004, he was studying outside the house. At that time, the appellant called him and gave him two packets. The appellant told Rahul that he should hand over these packets to Shweta's parents. Rahul then went to the house of Shweta but the house was locked. He again went to the house of Shweta, again the house was locked, therefore, he handed over the packets to P.W. 4 Shantabhai Mestry who was the neighbour of Shweta. P.W. 4 Shantabhai Mestry states that he knew the family of Shweta as they were his neighbours. On 6.11.2004 at about 9.00 p.m. to 9.30 p.m. one boy came to his house to give some packets. The boy named Babbu resided in the same society where he

stayed. Since the door was locked, hence, Babbu requested Shantabhai to hand over packets to his neighbour. He handed over the packet to his neighbour in the same night at 12 O'clock in the midnight. At about 3 a.m. he heard loud noise of crying. Therefore, he went to the house of Shweta. The parents of Shweta told him that their daughter was murdered and therefore, they were crying.

29 P.W. 17 Vasanti has stated that when she returned home on 6.11.2004 her mother-in-law handed over one packet to her. When she opened the packet, they found one audio cassette and bunch of chits written by her daughter Shweta inside the packet. They played the audio cassette. Initial conversation recorded on the cassette was between her daughter Shweta and Paras. Thereafter in the cassette the appellant stated that he did not know whether his deeds were right or wrong but it took not less than half an hour to kill her. Thereafter, Paras stated in the cassette that "sorry Pappa, Sorry Mummy, Sorry Nisha". The evidence of Vasanti shows that the appellant used to call her Mummy and he used to call her husband Pappa and Nisha was their elder daughter. This cassette has been seized by the police and sent along with sample voice of the appellant for voice analysis. Another

cassette was also sent for voice analysis. P.W. 16 Ankur has deposed about this cassette. He has stated that he knew Shweta as well as the appellant. Ankur used to go to the house of Shweta for studies. The appellant also used to come there for studies. He has stated that Shweta used to hand over some message to him to give to the appellant and he used to pass on message to the appellant. Parents of Shweta were against Shweta and the appellant meeting, therefore, Shweta used to pass on message to him to convey the same to the appellant. On 6.11.2004 at about 5.30 p.m. accused Paras gave one cassette to him stating that it contained a special message for him and he should hear the same after an hour. Ankur then took the cassette to his residence and heard the cassette. On hearing the said cassette, he found that the appellant had stated that the appellant along with Shweta were going to commit suicide. It was further stated that Shweta had already opted for the same and she did not know whether decision taken by them was correct or not. Some other details were also given in the said cassette. All these cassettes along with voice sample of the appellant were sent for voice analysis and P.W. 22 Shri. Singh who was working in the Central Forensic Laboratory, has stated that all the cassettes were in

the voice of the appellant.

30 Mr. Kulkarni the learned advocate for the appellant submitted that the evidence of P.W. 16 Ankur cannot be believed because, Ankur has stated that the appellant called him at Ghatkopar market and Ankur met the appellant at Ghatkopar market at 5.30 p.m. when the appellant handed over one cassette to him informing him that it contained a special message for him and he should hear the same after about one hour. He submitted that the evidence of P.W. 13 Ganesh shows that the appellant made a telephone call from his S.T.D. booth at about 7.30 p.m. to 8.00 p.m. Mr. Kulkarni submitted that the hotel in which, according to the prosecution, the appellant and the deceased stayed on 6.11.2004 is situated at Vashi near APMC market, however, P.W. 16 Ankur states that the appellant met him at 5.30 p.m. at Ghatkopar market and thereafter P.W. 13 Ganesh states that Ankur was at his STD booth at about 7.30 p.m. to 8.00 p.m. He submitted that it was not possible for the appellant to travel from Vashi to Ghatkopar within one and half hour and again travel back to the S.T.D. booth of P.W. 13 which was at Nerul. Looking to the geographical location of Vashi-Ghatkopar market-Nerul, we do not find it difficult for the appellant to have left Vashi for

Ghatkopar market at 4.15 p.m. and reached Ghatkopar market at about 5.30 p.m. and thereafter reached Nerul at about 7.30 p.m. to 8.00 p.m. Judicial note can be taken that geographical distance between these three places is such that it is easily possible for a person to reach Ghatkopar market from Vashi within about 30 minutes and then from Ghatkopar market to Nerul within one hour by road. In such circumstances, we find that no benefit can be given to the appellant.

31 On going through the evidence on record, we do not find any merit in the appeal and the appeal is therefore, dismissed.

32 We quantify legal fees to be paid to advocate Mr. Vinit Kulkarni by the High Court Legal Services Committee at Rs.5000/-.

[SMT.I.K. JAIN, J.]

[SMT.V.K.TAHILRAMANI, J.]

Kandarkar