

IN THE HIGH COURT OF BOMBAY AT GOA.***CRIMINAL APPEAL NO.15 OF 2017.***

Shamsundar Anchan @ Shyam,
Son of Vaman Anchan, Major in age,
Indian National, Resident of Flat
no.646/13, Darshan Apt., Miramar,
Panaji, Goa, and presently lodged
in Central Jail, Colvale,
Mapusa, Goa.

..... Appellant.

Versus

1. State
(Through Police Inspector,
Panaji Police Station)
2. Public Prosecutor,
High Court of Bombay, Panaji Goa. Respondents.

Mr. S. Redkar, Advocate for the Appellant.

Mr. S. R. Rivonkar, Public Prosecutor for the Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Reserved on :20 April 2018.

Pronounced on:-4 May 2018.

JUDGMENT (Per Prithviraj K. Chavan,J.)

By this appeal under Section 374 (2) of the Cr.P.C.
the appellant has challenged the judgment and order of his

conviction dated 22.3.2016 by which he is sentenced to undergo imprisonment for life with fine of ₹25,000/- of the offence punishable under Section 302 of IPC and another life imprisonment for the offence punishable under Section 307 of IPC and fine of ₹50,000/-. In default he is directed to undergo sentences of one year and two years respectively.

2. The prosecution case, as emerged from the records, can be summarised as follows:-

Umesh Alure (PW9) had lodged a First Information Report with Panaji Police Station on 28.8.2010. He is brother of the deceased Sidharam Alure (for short "deceased") who were residing at Lilia Guest House, Dona Paula, Panaji. The deceased was working as a room boy-cum-receptionist of the said guest house. He was provided with a room in the basement of the guest house where these two brothers were residing. The deceased was married with Rajashri Alure (PW1) on 16.5.2010. PW1 Rajashri Alure came to cohabit with her husband in the room of guest house on 29.5.2010. They hailed from Solapur (Maharashtra).

3. Sagun Lingudkar (PW5) was looking after the paper work of the guest house which belongs to Dr. Clive Martins (PW6), a retired Surgeon of Goan origin, now settled in Australia, who had entrusted the work of his guest house as above. He used to visit India on annual or by annual basis.

4. The appellant was working as a Manager at Lilia Guest House since November, 2009. Earlier, he was arrested by Panaji Police on 29.6.2010 for misbehaving with the wife of PW5 Sagun Lingudkar and thereafter he was terminated from the service. In his place, deceased Sidharam was appointed to look after the work. It is the case of the prosecution that this had enraged the appellant who carried grudge against the deceased. On the fateful day of 28.8.2010, PW9 Umesh Alure went to Panaji for work around 8.30 hours. He received a phone call around 12.20 hours from PW8 Naresh Mandrekar that somebody had stabbed Rajashri (PW1) who was lying in a pool of blood at the guest house. He rushed to the guest house, before which, he informed his friend PW10 Vilas Gaude to reach the guest house. When he reached he noticed Rajeshri (PW1) lying in a pool of blood

and Vilas was offering her water. When he inquired with her she informed that at around 10.30 hours the appellant came to the guest house who had some discussion with the deceased Sidharam near the reception counter. She went inside. Around 12.00 hours the appellant came to her room and informed her that Sidharam was calling her at the reception. When she followed the appellant to the reception he tried to strangulate her violently and thereafter shouted "You want Sidhu, You want Sidhu" and said "I killed him and I will kill you." Thereafter the appellant stabbed her in the stomach with the sharp object due to which she started bleeding and fell on the floor. The appellant fled away from the spot. Meanwhile, the police and the ambulance arrived at the spot and shifted Rajashri to G.M.C., Bambaolim, for treatment. The deceased was found lying in room no.004 of the said guest house. On the basis of the complaint, a crime came to be registered as Crime No. 246/2010 under Sections 307 and 302 IPC.

5. PW21 Sandesh Chodankar- the Investigating Officer, rushed to the scene of occurrence. By that time, PW1

Rajashri was already shifted to G.M.C. The dead body of the deceased was identified by PW5 Sagun Lingudkar. The Investigating Officer held investigation into the Crime by recording the scene of offence panchanama (Exh.20), Inquest Panchanama (Exh. 21), Collection of blood stains (Exh.1 to 8), Clothes of the deceased (Exhs 11 to 14) and recorded the statement of the concerned witnesses. He also collected blood samples from the spot. The Finger Print Expert namely V. Rajakrishnan was summoned to collect the chance finger print, if any. The Investigating Officer noticed that the neck of the deceased was slit with some sharp weapon. The deceased wore uniform of the guest house which was a green coloured shirt and green coloured full pant. Police photographer Shri V. M. Pednekar took photographs of the scene of offence. The Investigating Officer had also collected clothes of the victim Rajashri (PW1) which she was wearing at the time of the incident. All the collected muddemal was forwarded for the purpose of Forensic Analysis, CFSL Hyderabad.

6. The accused was arrested and was referred for

medical examination. During the police custody of the appellant pursuant to his voluntary statement, the Investigating Officer had also recovered a knife, which was used by the appellant in commission of the offence. The autopsy of the deceased revealed that he died a homicidal death.

7. PW11 Dr. Andre Fernandes, who conducted the autopsy submitted his report which is at Exh. 62. After completion of the investigation, a chargesheet is laid in the Court of Judicial Magistrate First Class at Panaji by PW21 Sandesh Chodankar.

8. After committal of the case, the appellant was produced before the learned Sessions Judge North Goa, Panaji. After hearing the prosecution and the defence, the learned Sessions Judge directed a charge to be framed against the appellant under Sections 302 and 307 of IPC. Charge was explained to the appellant to which he pleaded not guilty and claimed a trial. The defence of the appellant, as emerged from his statement under Section 313 of Cr.P.C.,

as well as from the line of cross-examination is denial of commission of the offences alleged. He contended that he has been falsely implicated in this case. As regards the injuries on his hand, it is the contention of the appellant that he was beaten by police and his signature was obtained. No defence evidence has been adduced on his behalf.

9. The prosecution examined as many as 21 witnesses to substantiate the charge. After going through the evidence of the prosecution witnesses, the learned Sessions Judge found that since there was no direct evidence indicating that the appellant had committed the murder, five circumstances existed from which the prosecution had succeeded in bringing home the guilt of the accused beyond doubt. According to the learned Sessions Judge, those five circumstances are:-

- i. *The last seen theory*
- ii. *The discovery of the weapon at the instance of the accused.*
- iii. *Detection of blood group "A" of the deceased on the knife;*
- iv. *The motive; and*

v. *The false defence*

10. Having held as above, the learned Sessions Judge convicted and sentenced the appellant.

11. We have heard Mr. S. Redkar, learned Advocate for the Appellant as well as Mr. S. R. Rivankar, learned Public Prosecutor for the Respondents.

12. The learned Counsel for the appellant contended that the prosecution has failed to prove the charge beyond all reasonable doubts in the sense that evidence of the prosecution witnesses does not inspire confidence. It is contended that the presence of the appellant on the spot was improbable, as the the evidence of witnesses of the prosecution especially PW7 Allan Carmo and PW10 Vilas Gaude do not corroborate each other in the sense that both were present at the scene of offence. It is also contended that the prosecution has failed to establish the motive behind the commission of the offence. There was no complaint of the alleged misbehaviour against the appellant to the police.

Even the recovery under Section 27 of the Indian Evidence Act has not been proved by the prosecution, as there is no material on record to show that the knife was recovered at the instance of the appellant. The learned Counsel, therefore, prayed for setting aside the judgment of the trial court.

13. On the other hand, the learned Public Prosecutor strongly supported the impugned judgment by contending that there is direct evidence of victim PW1 Rajashri to whom the appellant had assaulted after committing murder of the deceased Sidharam. There was no one except the appellant, PW1 Rajeshri and the deceased at the time of the incident.

14. As far as the motive is concerned, the learned Public Prosecutor took us through the evidence of PW5 Saguna Lingudkar as well as cross-examination of PW1 Rajashri wherein it has been elicited that the appellant is a man of a bad character who was terminated from the service as he was sending vulgar messages to the wife of PW5 Sagun Lingudkar. He was even arrested by the police for committing

the said offence. PW1 Rajashri has also testified that appellant was arrested by the police for sending vulgar messages to the wife of PW5 Sagun Lingudkar. Her evidence indicates that despite his removal the appellant used to visit the guest house and extend threats to her husband and herself as well as her brother-in-law as the appellant suspected that they are instrumental for his removal from the service. The appellant used to abuse and threaten PW1 Rajashri, her husband and as well as PW9 Umesh Alure itself indicates the motive behind the commission of the offence.

15. The learned Public Prosecutor also drew our attention to the fact that the appellant came to the guest house at 10.30 am and was seen leaving the guest house by PW7 Allan Carmo. Thus, according to the learned Public Prosecutor, it has been proved beyond all doubts by the clinching evidence of all the prosecution witnesses that it was the appellant, who had committed the murder of the deceased and attempted to commit murder of PW1 Rajashri.

16. Undisputedly, the deceased died a homicidal death,

which has been substantiated from the inquest panchanama (Exh.21) coupled with the evidence of PW11 Dr. Andre Fernandes who conducted the autopsy. The evidence of PW11 Dr. Andre indicates that on 29.8.2010 on the requisition received from Police Inspector, Panaji (Exh. 61) he conducted autopsy and noticed the following injuries:-

- 1. Incised wound horizontally placed, redish and fresh with clean edges, 19 cms. x 1 cm. gaping into depth varying from 4 mm on left and front aspect of neck to 4 cms. depth on right side submandibular region of neck placed on left submandibular region, front of neck and right side of neck with tailing of 2 cms. directed backwards and downwards. The left end is placed 3 cms. below the inferior border of middle third of left side mandibul and 8 cms. above the middle third of left clavicle, crosses the midline at front of neck at the level of thyroid and cricoids cartilage and is placed 7 cms. behind from the chin and terminates at right side of neck, 5 cms. below the insertion of right ear pinna which extends into tearing of 2 cms. into linear into superficial. It has made cut to the skin, platysma muscle on the left side and on front of neck and on the right side has cut*

the skin, platysma muscle, right sternocleidomastoid, sternohyoid, omohyoid, thyrohyoid and digastrics muscles of right side neck and has cut and separated the external and internal jugular veins. The external carotid artery was intact."

2. *Incised perforating wound, reddish and fresh, entry wound 2 cms X 1 cms. outer end acutely cut, inner end less acutely cut placed 11 cms. above the dorsal left elbow flexure with exit wound of 1 cm X 5 mm., inner lower end is less acutely cut, placed on lower third of left arm, medial inner aspect 6 cms. above left elbow fracture. There is extravasation of blood in whole track of wound which is convergent and measures 7 cms. in length and is directed from back, forwards, inwards and downwards.*
3. *Incised puncture wound, reddish and fresh 1.5 cms. X 1 cm X 1 cm., horizontally obliquely placed on left side, lower outer aspect of chest, upper inner end is acutely cut and is placed 14 cms. from midline and 113 cms. above left heel."*

17. He clearly opined that the injury nos.1 to 3 are

caused by sharp pointed cutting edge weapon and are antemortem. Injury no.1 is fresh antemortem and necessarily fatal. A diagrammatic representation of the injuries sustained by the deceased was also given alongwith the autopsy report. He opined that the cause of death was due to haemorrhage and shock as a result of cut and separation of vital blood vessels in the neck. The approximate time since death is within 24 hours prior to preservation in the morgue and based on the stomach contents. The autopsy report is proved at Exh. 62. He also opined that the blood group of the deceased was 'A Rh +' which is proved at Exh. 63. Even the blood group of the accused /appellant has been proved who was examined by PW11 Dr. Andre Fernandes as 'B Rh +' (Exh. 67).

18. Nothing could be elicited from the cross examination of PW11 Dr. Andre Fernandes which would render his testimony unworthy of credit. Once the prosecution has established that the deceased died a homicidal death, the next important question would be as to whether the appellant can be said to be responsible for

intentionally and knowingly caused the death of the deceased.

19. The star witness of the prosecution and the victim PW1 Rajashri, a girl of just 20 years old who was married few months before the unfortunate incident, testified that she came to Goa with her husband after her marriage and started residing in the room. The appellant was working as a manager at the relevant time. She categorically testified that the appellant did not possess good character and was removed from the services because he had sent vulgar messages to the wife of PW5 Sagun Lingudkar.

20. The evidence of PW1 Rajashri further indicates that on 28.8.2010 she was at the reception alongwith her husband on the ground floor when the appellant came to the reception at about 10.30 hours. He started discussing with her husband, and, therefore, Rajashri(PW1) left reception and went to her room. Around 11.30 hours the appellant went to her room and informed her that her husband had called her to the reception counter. The appellant then said

that he had killed her husband and that he would kill her also. He was aggressive. He tried to strangle her. Thereafter, the appellant stabbed her in the stomach with a knife. Thereafter he left the guest house from the main door. She also testified that the appellant was wearing a white short sleeves shirt and black coloured full pant. PW1 Rajashri shouted for help however, none responded. After sometime her brother in law, PW9 Umesh Alure reached on the spot to whom she narrated the entire incident. The police reached the spot and she was shifted to GMC hospital in an ambulance. She underwent a surgery at the hospital. She came to know that her husband was killed by the appellant with the knife before attacking her. The victim had clearly reiterated that the appellant had a suspicion that they were responsible for dismissal from the service and therefore, he had attacked them.

21. During her cross-examination, nothing could be elicited which would render her testimony unbelievable. Rather, the cross-examination had substantiated the prosecution theory that the appellant did carry a grudge to

commit the offence in the light of the fact that he was removed from the service of Lilia guest house because he had sent vulgar messages to the wife of the PW5 Sgaun Lingudkar. It is brought out in the cross examination that his behaviour with the deceased, his brother and this witness was not good as he used to say bad things about them.

22. Looking to the nature of the weapon used, part of the body chosen to inflict the fatal injuries and the manner in which PW1 was assaulted by the appellant would clearly indicate that he intended to eliminate her after killing her husband. The appellant had full knowledge and intention to commit murder of PW1 Rajashri and, therefore, there is no room for any doubt that due to the grudge in his mind about losing the job for which he considered the deceased to be responsible, he tried to eliminate PW1 Rajashri also.

23. It is clear from the evidence of PW14 Dr. Poonam Goankar, who had examined PW1 Rajashri that there was a laceration of 2 X ½ cms on epigastrium, caused by sharp object within 6 hours duration with underlying abdominal

trauma. It was a grievous stabbed injury. It required surgical procedure. PW19 Dr. Dilip Amonkar who is the head of Department of General surgery in GMC supported the evidence of PW14 Dr. Poonam Gaonkar. Pw19 Dilip Amonkar, testified that he sutured the perforations on duodenum and the stomach and removed the gall bladder. According to this witness the injury was possible with a knife like the Exh.17 which was shown to him. According to him, the injury was on a vital part of the body.

24. PW5 Sagun Lingudkar, who was also an employee of the said guest house supported PW1 Rajashri about the conduct of the appellant. According to this witness, the appellant was appointed as Manager of the guest house in November 2009. The appellant proposed a marriage with the sister of PW5 Sagun Lingudkar. However, PW5 Sagun Lingudkar wanted to verify the antecedents of the appellant before taking a decision in the matter. Thereafter the appellant started sending the vulgar messages to the wife of this witness probably due to the irritation that the marriage proposal was delayed. A complaint was lodged with the

police by PW5 Sagun against the appellant. Thus, it is clear that the appellant had a motive to commit the offence. Section 8 of the Indian Evidence Act describes the motive, preparation and previous or subsequent conduct. This Section deals with mainly three aspects:

- i. A fact which shows or constitute a motive for any fact in issue or relevant fact.*
- ii. Act constituted preparation of any fact in issue or relevant fact.*
- iii. Conduct of the person whether previous or subsequent to the offence.*

25. A motive is something, which prompts a person to form an opinion or intention to do certain illegal act or even a legal acts but with illegal means with a view to achieve that intention. Here the prosecution, by its clear, cogent, convincing and unimpeachable evidence established the motive on the part of the appellant for committing the crime.

26. Coming back to the incident in question, the defence in the cross-examination even substantiated the prosecution case that on the day of the incident when the

appellant came to the guest house and was discussing with the deceased near reception area PW1 Rajashree went to her room. The presence and arrival of the appellant at the said guest house on the date of the incident at about 10.30 hours has been reiterated in the cross examination also. Not only that, it has come in her evidence that there was no other person at the guest house at the time of incident. It is also suggested that she had suffered a self-inflicted injury only to falsely implicate the appellant which no sane man will believe. Even the stabbing of the victim near the reception area has again been substantiated in cross-examination. PW1 Rajashri has duly identified her clothes which were on her person as well as the clothes of the deceased. A chudhidar kurta and pajama was on her person at the time of incident which was shown to her during the course of trial. The presence of the dead body of her husband in room no.004 in the said guest house coupled with the fact that the appellant had a discussion with him just before PW1 Rajashri was assaulted by the appellant and the fact that no one else was there including the motive as shown herein before would indicate that it was the appellant only who was responsible

for intentionally and knowingly causing the death of the deceased as well as attempting to commit murder of PW1 Rajashri.

27. The testimony of PW1 Rajashri is corroborated materially by PW7 Allan Carmo who is a builder by profession. He is a chance witness. His evidence reveals that after finishing his work at about 12.00 in the noon, he returned to his house which is near the Lilia guest house. He parked his car. While he was getting out of his car he received a call on his mobile. While talking on the mobile he saw the wife of Siddhu (PW1) Rajashri, who was calling him. Before PW7 entered the main gate of the complex, he had seen the appellant walking out of the complex and going towards Donapaula circle. The appellant was wearing a white shirt and black trousers. As PW1 Rajashri was calling him and as he was taking on the mobile he asked her to wait for a while. After finishing his call when he went to the guest house as to why she was calling out to him, he was shocked to see that PW1 Rajashri was sitting on the floor and there was a pool of blood around her. When he asked her as to what

had happened, she told him that she was assaulted by the Manager. He asked her about her husband upon which she replied that she did not know where he was; probably she was not aware of the fact that appellant had killed her husband before assaulting her. The evidence of PW7 Allan Carmo even reveal that he tried calling deceased on his mobile but it was out of range. He tried on the second mobile of the deceased but it was also out of range. He, therefore, called Naresh Mandrekar (PW8) from his mobile. It was busy. After sometime, Naresh Mandrekar(PW8) called back PW7 Allan Carmo and thereafter he was informed about the incident. After sometime, PW9 Umesh Alure arrived at the guest house and thereafter the police also came to the spot. PW9 Umesh Alure informed PW7 Allan Carmo that Sidhu was murdered and his neck was slit. This independent witness has substantially corroborated the testimony of PW1 Rajashri. This witness has no axe to grind against the appellant and there is no reason to disbelieve his evidence. The truthfulness of his testimony can be seen from his cross-examination when he clearly testified that he did not notice whether the appellant had carried anything in his hand when he was

walking towards Donapaula circle. The witness could have otherwise said that he had seen the appellant with a knife in his hand. However, one thing is clear that just after the incident, this witness had seen the appellant leaving the guest house and was walking towards Donapaula. He also makes it clear that there was no guard near the main gate of the complex. The cross-examination also reveals that when he got down from his car while talking on his mobile, PW1 Rajashri signaled him to come to her, however, he signaled her back to wait for some time. Thus, it can be seen that the appellant was last seen together with the deceased and before leaving the guest house he even attempted to commit murder of PW1 Rajashri.

28. This Court in the case of Khomu Kasar Bahadur Raul and another Vs. State and anr., reported in 2017 DLGS(B(0m.) 959 reiterated the observations of the Hon'ble Supreme Court while dealing with the aspect of "last seen together". It is observed that if a person was last seen with the deceased, he must offer an explanation as to how and when he parted company. The explanation must appear to

the Court to be probable and satisfactorily. If he does so, he must be held to have discharged his burden. But if he fails to offer explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him under Section 106 of the Indian Evidence Act.

29. Here in the case at hand, neither there is any explanation forthcoming in his statement under Section 313 of Cr.P.C. nor it has been clarified by the appellant about his presence on the spot at the relevant time. It is a settled principle of law that in a case, which rests on the circumstantial evidence, if the accused fails to offer any reasonable explanation in discharge of the burden as per Section 106 of the Evidence Act, that may provide an additional link in the chain of circumstances proved against him. No doubt, Section 106 of the Indian Evidence Act, does not shift the burden of proving criminal charge, it is always upon the prosecution. However, from the discussion of the evidence herein above, the prosecution has established the presence as well as complicity of the appellant in the offence not only of committing the murder of the deceased but

attempting to commit murder of PW1 Rajashri.

30. PW5 Sagun Lingudkar testified that he reached the guest house at around 13.15 hours. He noticed blood stains on the floor near the main door and came to know that deceased Sidhu's wife was already shifted to Bambolim. As far as the motive is concerned, as already stated above, the defence has elicited from his cross that the appellant was removed from the service following vulgar messages sent by him to his wife for which this witness had lodged a complaint with the police.

31. The owner of the guest house PW6 Dr. Clive Martins has also supported the testimony of PW5 about the removal of the appellant from his guest house due to his such conduct of sending vulgar messages to the wife of PW5 Sagun Lingudkar, PW6 Dr. Clive Martins directed PW8 Naresh Mandrekar to remove the appellant and not to appoint any other person as he intended to sell the premises.

32. PW10 Vilas Gaude who was employed by PW5

Sagun Lingudkar testified that on 28.8.2010 at 12.10 hours when he was working at a construction site at Donapaula, he received a phone call from PW9 Umesh Alure to reach the guest house and see what had happened to his sister in law (PW1) Rajashri. PW10 Vilas Gaude rushed to the guest house and saw Rajashri lying in a pool of blood near the reception counter. He offered her some water to drink. In the meanwhile PW9 Umesh Alure and Police personnel reached the spot.

33. Though the defence has extensively cross examined almost all the persecution witnesses but has failed in rebutting the evidence of any of the witnesses barring certain suggestions which are insignificant. It is a settled law that mere suggestions during the cross examination not supported by specific statements by the accused and defence evidence would have no evidentiary value. The prosecution witnesses, more particularly, PW1 Rajashri and PW7 Allan Carmo stood the test of cross examination and have by their cogent, trustworthy, unimpeachable evidence established the fact that the appellant was last seen together with the

deceased before committing his murder. We, therefore, hold that this is quite sufficient to bring home the guilt of the appellant which is substantiated by other evidence in the form of CSFL report and discovery of weapon of offence used by the appellant while committing the crime.

34. When the appellant was examined by PW11 Dr. Andre Fernandes on 29.8.2010, he noticed 6 injuries on his person which are as follows:-

1. *2 cms. X linear abraded edges incised looking wound with underlying and surrounding dark blue bruising of 1 to 2 days duration caused by hard blunt edge on hypothenar eminence of left palm.*
2. *15 cms. X 6 cms. reddish fresh bruise broad surface on front aspect of left forearm caused by hard and blunt surface or object.*
3. *11 cms. X 4 cms. reddish fresh bruise broad surface on front aspect of right elbow region to outer aspect to dorsal aspect of upper third of right forearm caused by hard and blunt surface or object.*
4. *12 x 8 cms. reddish fresh abrasion with underlying bruising reddish and fresh on*

outer aspect of left thigh upper third caused by broad surface hard blunt surface or object.

5. *3.5 cms. X 2 mm superficial laceration with reddish soft scab on with underlying reddish fresh bruising caused by hard blunt surface or object.*
6. *Patterned abrasion reddish with underlying reddish bruising 5 mm diameter circular two in numbers with intervening spacing of 3.5 cms. Present on palm of right hand caused most probably by bolts on handle of belt.*

35. It is testified by PW11 Dr. Andre Fernandes that when he asked the appellant as to how he sustained the injuries, the appellant is said to have replied that he was beaten by the police with a belt and plastic chairs. However, the expert has clearly opined that the injury no.1 by its very nature like an incise wound, would show that it must have been caused by a sharp pointed cutting edged weapon which rules out that it was caused by a belt or plastic chair. It is pertinent to note that all these 6 injuries find a mention in the arrest panchanama as well as the evidence of PW4 Michael

D'Mello who has testified that there were injuries on the palm of the appellant. Thus, the injuries cannot be said to have been caused during the custodial interrogation of the appellant by the police. False explanation of these injuries by the appellant would only lead to an inference of taking false stand by him which would be an additional circumstance in favour of the prosecution and against the appellant.

36. Turning to the aspect of discovery under Section 27 of the Indian Evidence Act, the prosecution has examined PW13 Steve Almeida and PW4 Michael D'mello. It has come in the evidence of PW13 Steve Almeida that he was summoned at Panaji Police Station. PI Sandesh Chodankar (PW21) had shown him the appellant who told his name as Shamsundar Anchan. He testified that the appellant stated before the Investigating Officer and this witness that he would show the place where the hathyar (weapon) was concealed. According to this witness, the appellant made a statement in Hindi language. The appellant was speaking partly in Hindi and partly in Konkani. His statement was accordingly recorded by the police in the presence of this

witness and thereafter it was signed by him. Thereafter in a Tata Sumo vehicle, which was driven by a policeman, they proceeded towards the creek near Mary Immaculate High School as per the direction of the appellant. The appellant asked to stop the vehicle near a school. All of them got down and went over the foot bridge by crossing the creek. The appellant thereafter took right turn and reached to one old dilapidated shop. The appellant took all of them to the Second or third shop. There was a rusty shutter. They entered the said shop. The appellant thereafter removed one polythene bag which was kept on the ledge and handed it over to PI Sandesh Chodankar (PW21). Said bag contained a knife with a wooden handle and a metal pointed blade. It was a sharp blade. The colour of the handle was dark brown or black. There were stains of blood on the blade of the said Knife. After taking its measurement it was seized by drawing a panchanama (Exh 81). The witness testified that after reading the panchanama he signed the same. It is further testified that thereafter the appellant had also stated that he would show the place where he had kept the pillow cover. The said pillow cover was of white colour with stains of

bloods which had a label of Lilia guest house. The knife and the pillow cover were sealed separately in different polythene bags. PW13 Steve Almeida has duly identified the knife and the pillow cover during the course of trial. A futile attempt has been made by the defence to rebut his testimony. However, it has been reiterated in his cross examination that apart from the Investigating Officer, panchas and the appellant, there were three to four constables who had gone to the place from where aforesaid articles were recovered. It is also reiterated that it was the appellant on whose direction the police party proceeded to the place from where the articles were seized. This witness has clearly denied the suggestion that it was a public place accessible to the tourist and the members of the public. There is no reason to disbelieve PW13 Steve Almeida. It has been sufficiently established that it was the same knife which was used by the appellant in commission of the offence. Thus, it can be seen that the appellant had exclusive knowledge of the fact that the knife and the pillow cover was concealed by him at a particular place which was discovered at his instance on his voluntarily stating so before the police while he was in

custody. If these articles were concealed by the appellant, it was for him to explain as to how they were stained with blood. His simple denial in his statement under Section 313 of Cr.P.C. would not suffice as it would lead to an inference against him.

37. The learned Counsel for the appellant has placed reliance on a judgment of the Supreme Court in case of *Anter Singh Vs State of Rajasthan* reported in 2004 (1) SC 1005.

It would be apposite to refer to para 10 of the Judgment which reads thus:-

“We shall first deal with the plea as to whether evidence relating to recovery is acceptable when non- official witnesses did not support the recovery and made departure from the statements made during investigation. In Modan Singh v. State of Rajsathan (1978 (4) SCC 435) it was observed that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was taken in [Mohd. Aslam v. State](#)

of Maharashtra (2001 (9) SCC 362). It was held even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated. But the crucial question which needs to be considered in this case is whether the prosecution has been able to show that the pistol recovered was the one which was used for commission of the offence. As rightly contended by learned counsel for the appellant there are several circumstances which affects credibility of the prosecution version. Firstly, the so- called information was recorded by the IO (PW-16), and he does not even indicate that the gun to which reference was allegedly made was the weapon of assault. Further the custody of empty cartridges purported to have been recovered from the spot has not been established. In fact, the claim is that on 11.4.1979 empty cartridges were recovered. They were sent to the forensic science laboratory on 12.5.1979. It has not been explained as to where the empty cartridges were till then lying and with whom. Similar is the situation with the two bullets claimed to have been extracted from the dead body by the doctor. It has been accepted by PW-36 that the

empty cartridges and the bullets were not deposited with the ballistic expert prior to the recovery of the pistol claimed to have been made on 29.4.1979. Significantly, though the witnesses claimed that the moulds, chappals found at the spot, the empty cartridges, the two bullets extracted and the pistol were sealed before being sent to the expert for examination and that they were sealed on the date they were recovered, but PW-23 who claimed to have taken the parcel to the laboratory categorically admitted that the packets were sealed in the Kotwali in his presence on the date he had taken for deposit with the laboratory i.e. 11.5.1979 and, in fact, the articles were deposited on 12.5.1979. Though the witness stated that different seals were used, a bare perusal of the materials on record clearly shows that only one seal was used. Additionally, PW-31 who took major part in the investigation had categorically admitted that the particular type of pistol which was allegedly seized could not have ejected any empty cartridges till all the six shots were fired and otherwise it could not be possible. In Exhibits 51 and 51A i.e. the spot map and the circumstances memo reference is made to the moulds. This was not possible because Exhibits

51 and 51A were prepared at about 9.30 a.m., while admittedly the moulds were taken much after as stated by the witnesses. Significantly in neither Exhibits 51 and 51A, reference is made to the recovery of any empty cartridges which was supposed to have been found near the dead body though reference was made to the moulds which were yet to come into existence. There was no evidence led as to when the bullets were handed over to the police by the doctor or where they were kept and in what condition. Though recovery from an open space may not always render it vulnerable, it would depend upon factual situation in a given case and the truthfulness or otherwise of such claim. In the case at hand the recovery was made from an open space visible from the place where the dead body was lying and at a close proximity. It is not clear from evidence that it was hidden in such a way so as making it difficult to be noticed. The evidence tendered is totally silent as to in whose custody were the bullets, empty cartridges and the pistol. The effect of such non- explanation was considered by this Court in [Santa Singh v. State of Punjab](#) (AIR 1956 SC 526). The Constitution Bench, inter alia, observed as follows:

"There is another element in the case which creates even greater difficulty. An empty cartridge case is alleged to have been recovered from the place of occurrence by the police on the 10th of September when they went there for investigation after receipt of the first information from Uttam Singh (P.W. 16); so also some blood-stained earth.

They were carefully packed and sealed in two separate packets and dispatched to the Police Station. The sealed parcel of the earth was sent to the Chemical Examiner at Kasauli on the 11th October, 1954, and the sealed parcel of the empty cartridge case was sent to Dr. Goyle as late as the 27th October, 1954.

Even if we accept the explanation given by the Sub-Inspector of Police that the empty cartridge case had to be kept at the police station till the rifle used was recovered so that both might be sent to the expert for his opinion, nothing has been stated why after the rifle was recovered on the 28th September, 1954, along with 24 cartridges from the house of the accused, it was incumbent for the Police to retain the parcels of rifle and empty cartridge case with them till the 11th October, 1954.

Naturally this inordinate delay raises much

suspicion and has given rise to the suggestion on the part of the accused made in the course of the cross-examination of the Sub-Inspector that the empty cartridge case ultimately sent to the expert relates to a cartridge that was fired by them at the Police Station and is not the one recovered at the spot."

38. There were several discrepancies and shortcomings in the evidence of the witnesses and the Investigating Officer in the said case. According to the Supreme Court, it has considerably corroded creditability of the prosecution version and therefore accused was acquitted. The Honble Supreme Court further observed that the various requirement of Section 27 which are as follows:-

"(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.”

39. It can thus be seen that in the case at hand all the aforesaid requirements have been fulfilled, as already discussed herein above and, therefore, this ratio would not be of any help to the appellant, on the contrary, it is against the appellant.

40. PW21 Sandesh Chodankar testified that he had forwarded the said knife (MO no.17) together with other exhibits in sealed condition to CSFL Hyderabad through

Superintendent of Police North Goa. PW18 Maya Nair, the Senior Scientific Assistant working in Biology Department testified that alongwith knife she had received in all 23 parcels in a sealed condition. She had tallied the seals with the specimen seal provided. She had categorically deposed about the detection of blood on Exh.17 knife and Exh.18 pillow cover. According to this witness the blood detected on the knife and pillow cover at Exh. 17 and Exh.18 respectively was of group 'A Rh +ve" which was of the deceased. Thus, it has been sufficiently established and proved by the prosecution that it was the same knife which was used by the appellant in committing the murder of the deceased as well as attempting to commit the murder of PW1 Rajashri.

41. The learned Sessions Judge has correctly appreciated the facts and evidence on record and reached a proper conclusion that the prosecution has established the chain of all the circumstances namely the motive behind the offence, last seen together, discovery of the weapon, false defence of the appellant and, therefore, sentenced and convicted the appellant as above. The prosecution has, thus,

established by its cogent, convincing and trustworthy evidence the chain of all the events which only points out towards the guilt of the appellant and, therefore, we do not find any reason to interfere with the impugned judgment and order of conviction.

42. Consequently, appeal stands dismissed.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.