

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 31 OF 2017

Mr. Cyrone Rodrigues, s/o Francisco Fernandes, major of age, Indian, resident of H. No. 40/1, Chinchwado, Chimbél, Goa. (Presently lodged in Judicial Custody at Central Jail, Colvale, through his next friend, Mrs. Maria do Ceu F. Fernandes e Carneiro, resident of H. No. 40/1, Chinchwado, Chimbél, Goa). Appellant

Versus

The State of Goa, Through Police Inspector, Mapusa Police Station, Mapusa, Bardez, Goa. Respondent

Mr. Ryan Menezes with Ms. Gina Almeida, Advocates for the Appellant.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent.

STAMP NUMBER MAIN NO. 3887 OF 2019

Mr. Chandrakant Talwar alias Pappu alias Appu, s/o Mr. Baswani Talwar, major of age, married, r/o St. Inez, Panaji, Goa. (currently lodged in Judicial Custody at Central Jail, Colvale, Colvale, Bardez, Goa). Appellant

Versus

The State of Goa, Through Police Inspector, Mapusa Police Station, Mapusa, Bardez, Goa. Respondent

Mr. Nigel Fernandes, Advocate under Legal Aid for the Appellant.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent.

CORAM: M.S. SONAK &

C.V. BHADANG, JJ.

RESERVED ON: 20th November, 2019.

PRONOUNCED ON: 8th May, 2020.

**Pronounced as per Chapter XI Rule 1 of Appellate Side Rules,
1960**

COMMON JUDGMENT: (Per C.V. Bhadang, J.)

Both these Appeals arise out of the conviction and sentence recorded by the learned Additional Sessions Judge at Mapusa in Sessions Case No. 9/2010. As such, they are being disposed off by this common judgment.

Criminal Appeal No. 31/2017 is filed by the original accused no. 2 (A2), while Criminal Appeal Stamp No. 3887/2019 is filed by accused no. 1 (A1) through legal aid. By separate order passed today in Stamp No. 3888/2019, we have condoned the delay in filing the said Appeal and both these Appeals are heard finally by consent of parties.

By these Appeals, the appellants are challenging their conviction under Section 365, 394, 302 and Section 201 read with Section 120-B of the Indian Penal Code (IPC, for short). The appellants have been sentenced to various sentences on the aforesaid count, which are directed to run concurrently. However, the learned Additional Sessions Judge, placing reliance on the decision of the Supreme Court in the case of **Kartar Singh Vs. State of Haryana AIR 1982 SC 1433** has refused to extend the benefit of set off

against the period already undergone, in as much as the appellants have been, *inter alia*, sentenced to imprisonment for life.

2. The prosecution case may be briefly stated thus:

That about three to four days prior to 13th October, 2009, near Primary School at Muddir Kharem Vaddem, Bardez, Goa, the appellants along with accused no. 3 (A3) and a juvenile, hatched a criminal conspiracy and as a part of the said criminal conspiracy had confined the victim (name withheld in order to protect the identity, as there are also allegations of one of the accused having committed rape on her) and also committed robbery of her ornaments and had intentionally caused her death. It is further alleged that the appellants and the co-accused along with a juvenile in conflict with law (JCL) caused disappearance of the evidence, with an intention of screening themselves, with legal punishment. According to the prosecution, the original accused no. 1 had also raped the victim.

3. On the basis of information received from one Mr. Sheikh Usman about a dead body of an unidentified lady lying near Muddir Kharem Vaddem, an FIR No. 266/2009 was registered against unknown persons on 13th October, 2009 with P.S. Mapusa. During the course of the investigation, the appellants came to be arrested on 30th October, 2010. On completion of the investigation, a charge sheet came to be filed against the appellants and two others before the Judicial Magistrate First Class at Quepem. The case was eventually committed to the Court of Sessions at Mapusa and was

registered as Sessions Case No. 9/2010. The JCL has been proceeded against before the Juvenile Justice Board (JJB, for short).

4. The learned Sessions Judge framed charge against the appellants and the co-accused under the aforesaid Sections, to which, the appellants pleaded not guilty and claimed to be tried. Incidentally, A1 was also charged under Section 376 of IPC for having raped the victim. The defence of the appellants is one of total denial and false implication. At the trial, the prosecution examined as many as fifty three witnesses. The appellants did not lead any evidence in defence.

5. The learned Sessions Judge by a judgment and order dated 29th August, 2016 found the appellants guilty of the offences punishable under Section 120-B, 365, 394, 302 and Section 201 of IPC. The learned Sessions Judge by a separate order, awarded various sentences to the appellants. A1 was however acquitted of the offence under Section 376 of IPC. A3 has been acquitted from all the offences as charged. The appellants feeling aggrieved by their conviction and sentence is before this Court.

6. We have heard Mr. Menezes and Mr. Nigel Fernandes, the learned Counsel for the appellants and Mr. Rivankar, the learned Public Prosecutor for the respondent. With the assistance of the learned Counsel for the parties, we have gone through the record and the impugned judgment.

7. Mr. Menezes, the learned Counsel for the appellant (A2) in Criminal Appeal No. 31/2017 has submitted that the case is based on circumstantial evidence, as there is no direct evidence showing complicity of the appellant (A2) in the said offence. The learned Counsel has then adverted to various circumstances relied upon by the learned Sessions Judge, in order to point out that none of them are individually established nor can they be said to be of incriminating nature. It is submitted that the circumstance about all the accused having stayed in Prabhusmaran Hotel at Mayem is not established and even otherwise, cannot be said to be of any incriminating nature. It is submitted that there is no evidence to show as to how the Investigating Officer chanced upon the said Hotel. It is submitted that the evidence about hiring of a Maruti Zen car is also shaky and evidence about the identification parade has to be discarded as being vitiated by serious irregularities. It is submitted that the evidence about the victim being last seen together in the company of the accused is also not properly established. It is submitted that abscondance as a circumstance is not proved and even otherwise is a weak circumstance, in as much as, even innocent persons, can take to their heels, in the wake of an imminent arrest based on false accusation. Lastly, it is submitted that the alleged confession by the appellant (A1) cannot be used against the appellant (A2). It is submitted that the alleged confession has also been retracted at the earliest opportunity.

8. On behalf of the appellant (A2), reliance is placed on the following decisions:

- i. *Bharat Vs. State of MP AIR 2003 SC 1433*
- ii. *Kora Ghasi Vs. State of Orissa AIR 1983 SC 360*
- iii. *Salim Akhtar @ Mota Vs. State of Uttar Pradesh 2003 AIR SC 4076*
- iv. *Shahul T. Hamid Vs. State of Goa 2013(4) Bom.C.R. 484*
- v. *Sanjay Thakran Vs. State of Goa (2007)3 SCC 755*
- vi. *Sujit Biswas Vs. State of Assam (2013)12 SCC 406*
- vii. *Jaharlal Das Vs. State of Orissa (1991) 3 SCC 27*
- viii. *Hanumant Vs. State of MP AIR 1952 SC 343*
- ix. *Sharad Birdichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116*
- x. *Kaliram Vs. State of Himachal Pradesh AIR 1973 SC 2773*
- xi. *Aloknath Datta Vs. State of West Bengal (2007) 12 SCC 230*
- xii. *Ashish Jain Vs. Makarand Singh and Others (2009) 3 SCC 770 and*
- xiii. *Raosaheb Balu Killedar Vs. State of Maharashtra 1995 Cr.L.J. 2632*

9. Mr. Nigel Fernandes, the learned Counsel for the appellant (A1) in Criminal Appeal Stamp No. 3887/2019 has made submissions on similar lines. It is submitted that the factum of the

accused having stayed at the Prabhusmaran Hotel at Mayem, Bicholim is not proved. It is submitted that the identification of appellant (A1) in the Test Identification Parade (TI Parade) is vitiated on account of the fact that the appellant (A1) was shown to the identifying witness PW-33. Even insofar as the alleged identification by PW-36 and PW-37 is concerned, it is submitted that both the accused were simultaneously included in the same TI parade, which is not permissible and thus, the evidence of the identification has to be discarded. Insofar as the circumstance of last seen together is concerned, the learned Counsel has adopted the arguments on behalf of A2. As regards abscondance, it is submitted that the appellant (A1) admittedly is not a native of Goa. Thus, there is nothing unusual in the appellant (A1) making an attempt to travel to Mumbai. It is submitted that the evidence of PW-36 does not show that a ticket was issued in the name of the appellant (A1). It is submitted that mere purchase of a ticket to travel to Mumbai, even if established, does not show that there was an attempt to abscond. Lastly, insofar as the confession is concerned, it is submitted that the same is retracted at the earliest opportunity and as such, cannot be relied as an incriminating circumstance against the appellant (A1).

10. Mr. Rivankar, the learned Public Prosecutor has supported the impugned judgment. It is submitted that the learned Sessions Judge on threadbare consideration of the prosecution evidence, has culled out various incriminating circumstances, against the appellants and taken together they form a complete chain

so as to unerringly point to the guilt of the appellants. The learned Counsel has taken us through the evidence on each of the circumstance in order to submit that they are properly proved. It is submitted that it is not an inflexible rule that the accused before recording his confession should be given time to reflect. It is submitted that what is necessary is the satisfaction of the Magistrate that the confession is voluntary and not an outcome of coercion, inducement, threat or promise. It is submitted that in a given case even a retracted confession can be acted upon, provided the Court is satisfied of its voluntary nature and truthfulness. On behalf of the State, reliance is placed on the decision of the Supreme Court in the case of **Shankaria Vs. State of Rajasthan (1978) 3 SCC 435** and **Parmand Pegu Vs. State of Assam (2004) 7 SCC 779**.

11. The learned Public Prosecutor has placed strong reliance on the decision of this Court in Criminal Appeal Nos. 35/2017 and 1/2018, which were filed by the appellants herein, challenging their conviction in similar offence of having abducted and wrongfully confined one Malti Yadav and having robbed her of her ornaments and then having intentionally caused her death. In fact, according to the prosecution, it was the modus operandi employed by the appellants to abduct women, commit robbery of the ornaments on their person and then to cause their death. This Court by a common judgment dated 11th September, 2019, dismissed the Appeals upholding the conviction of the appellants. It is submitted that this Court has accepted certain circumstances, which this Court has

found sufficient for the conviction of the appellants for a similar offence committed in respect of one Malti Yadav. Reliance is then placed on the decision of this Court in the case of **Nandlal Shyamdas Vs. State of Goa 2011(4) Bom.C.R. (Cri) 475**, in order to submit that there is absolutely no material brought on record to doubt the prosecution evidence or to extend benefit of doubt to the appellants. It is thus submitted that the conviction is also required to be upheld.

12. We have carefully considered the circumstances and the submissions made in the light of the evidence on record and the findings recorded by the learned Sessions Judge. At the outset it is necessary to note that there is no serious dispute about the identity of the dead body or about the victim having met with a homicidal death. In fact these aspects have not even been challenged on behalf of the appellants. This aspect is otherwise established on the basis of the evidence of PW-1, who acted as a panch on the spot panchanama, from where the dead body was recovered and also the inquest panchanama and the evidence of PW-4, Dr. Mandar Kantak, who conducted autopsy on the dead body. The dead body was found near the Government Primary School at Kharrem Bardez and was in a highly decomposed condition with presence of maggots all over the body. There was a rubble stone weighing about 15 Kgs., recovered from the spot with bloodstains on it. PW-4 has noticed one injury on the tempo parietal region with comminuted depressed fracture caused by blunt force impact. He states that the said injury

was antemortem in nature within 2 to 7 days prior to the preservation of the dead body in the GMC morgue. According to PW-4, the death was due to head injury as a result of blunt force impact, vide injury no. 1. It can thus be seen that the fact that the death was homicidal in nature is sufficiently established on record. Incidentally, the identification is on the basis of the evidence of PW-15, who is the brother of the victim. PW-15 had lodged a missing report stating that his sister did not come home from work on 10th May, 2009. After making an attempt to search her, he lodged the report on 12th May, 2009. It is significant to note that in his report he has stated that his sister was wearing a blue colour chudidar and black chappal. She was wearing a gold chain and other gold ornaments including a pair of earrings with chain. This witness was shown the photograph of the dead body. He identified it to be of his sister on the basis of the clothes worn, although, her face was completely mutilated. This witness has also identified the gold chain with a pendent with a letter 'E' embossed on it, a pair of earrings, one nose ring and two metal wires rounded at one end with a knot, as ornaments, which his sister was wearing. It is necessary to note that PW-15 had given the details of the clothes worn and particulars as to ornaments worn by the victim, in his missing report, much prior to the recovery of the dead body. Thus, possibility of any embellishment on this count is ruled out. Thus, notwithstanding the fact that the DNA test was inconclusive on account of a highly degraded DNA being recovered (molar tooth), we are satisfied that the identity of the dead body to be that of the victim in this case is

sufficiently established, as has rightly been held by the learned Sessions Judge. The fact that the victim met with a homicidal death is also established on record.

13. It is necessary to note that the prosecution case is entirely based on circumstantial evidence as there is no eyewitness account showing the involvement or complicity of the appellants in the alleged offence. The law relating to a trial based on circumstantial evidence is too well settled to be restated. It is well settled that in such a case the individual circumstance relied upon, which is claimed to be of an incriminating nature has to be independently established. All such circumstances taken together must form a complete chain, unerringly pointing to the guilt of the accused. The inference arising from such chain, when properly established, must not only be consistent with the hypothesis of guilt, but, must be inconsistent with the hypothesis of innocence.

14. According to the prosecution, the appellants and the other accused had hatched a criminal conspiracy to abduct and kill women and rob the golden ornaments on their person. According to the prosecution, the appellants and the other accused had taken the deceased in a rented car used by them and had robbed her of her golden ornaments and killed her. The charge against A1 for having raped the victim, has been found to be not proved and the said accused is acquitted of the said charge. Similarly, the original accused no. 3 has been acquitted of all the charges as leveled. The

JCL has been dealt with under the Juvenile Justice Act. In this Appeal, the State is also relying on the aspect of this Court having confirmed the conviction of the appellants in a similar offence in respect of one Malti Yadav.

15. The prosecution has relied on the following circumstances:

(A) All the accused stayed together at Prabhusmaran Hotel at Mayem, Bicholim from 7th October, 2009 to 13th October, 2009.

(B) The appellants (A1 and A2) hired a Maruti Zen car and a Red Alto car from Muslim Vaddo, Bicholim and the said car was used for commission of the offence.

(C) The deceased was last seen together in the company of the accused, shortly before she was found dead.

(D) Recovery of golden ornaments and other incriminating articles at the instance of the accused.

(E) Abscondance of the appellants after the commission of the crime.

(F) Confessional statements given by the appellants before the Special Judicial Magistrate, Ms. Maria Mascarenhas in the year 2010, notwithstanding their belated retraction in the year 2016.

16. The learned Sessions Judge has held all the aforesaid circumstances to be proved. It has been found that the discrepancies in the evidence of the prosecution witnesses are minor and do not strike at the root of the veracity of these witnesses. It has further

been found that the retraction of the confessional statement was belated and an afterthought. The learned Sessions Judge has also relied upon the additional circumstance that the appellants have failed to give any explanation as to the incriminating circumstances against them and have taken false defense of total denial. In these circumstances, the learned Sessions Judge has found the appellants to be guilty of the offences as charged.

17. It is necessary to note that direct evidence of a criminal conspiracy is seldom available, nor can it be insisted upon, in as much as, conspiracies are hatched surreptitiously and in seclusion. Therefore, proof of conspiracy is always a matter of reasonable inference from facts proved on record. Criminal conspiracy envisages prior meeting of the minds and hatching of a plan for the commission of the offence. Before considering individual circumstances as above, it is necessary to note that some of the circumstances including stay of the appellants at the Prabhusmaran Hotel, identification of the ornaments by PW-15 and the evidence about the confessional statements is based on the evidence of the witnesses, who were also examined in the trial in respect of murder of Ms. Malti Yadav, out of which Criminal Appeal Nos. 35/2017 and 1/2018 arose. As noticed earlier, by a judgment and order dated 11th September, 2019 to which one of us (M. S. Sonak, J.) was a party, this Court has dismissed the Appeals, holding some of such circumstances to be proved and the said finding would have a bearing on the findings to be recorded in these Appeals and their

eventual disposal. Notwithstanding this, we now propose to consider each of the circumstances, *ad seriatim*, on the basis of the evidence led in this case.

18. (A) The appellants with other accused stayed together at Prabhusmaran Hotel at Mayem, Bicholim:

The evidence of PW-12, PW-22, PW-23, PW-26 and PW-51 is relevant for the purpose. PW-12 is panch on the panchanama dated 18th October, 2009 conducted at the said Hotel in which the Hotel register and a receipt book were attached. The said record was produced by PW-23, Ranjana Karbhatkar, who is the Hotel Keeper. It has come in the evidence of this witness that as per the said record, Room No. 105 was allotted to A1. Bill No. 1587 was in the name of A1, while Bill Nos. 1590 and 1602 were in the name of Meldric Rodrigues. The learned Sessions Judge has noted that the cross examination of this witness only consists of certain suggestions.

PW-22 is again a panch on a panchanama dated 30th October, 2009 at Crime Branch, Dona Paula, Panaji. The said panchanama pertains to identification of the signature of A3, Ms. Greeshmi Talwar and obtaining of her specimen signature. In as much as the said accused is acquitted, it is not necessary to make a reference to the said evidence any further.

PW-23, Ranjana states that the Hotel is owned by her uncle Vinayak Karbhatkar. She along with her family is residing on the ground floor, while the first floor consists of the Hotel/Guest

House. It appears that one Mr. Uday Parab was working as a Receptionist, at the said Hotel, who has since expired and thus, was not available to be examined in the trial. It has come in her evidence that Parab had informed her that he had taken the license of A1 as an identity proof and has deposed to the relevant entry in the Hotel register. She further claims that Rs.1,000/- were taken as advance and Room No. 105 was allotted to the accused on 7th October, 2009. She further claimed that on 8th October, 2009, A2 had come to the Hotel with one lady and they stayed in the Hotel. She claims that the three accused along with another female checked out of the Hotel in the morning hours of 13th October, 2009. She had identified all four of them in an ID parade held in the Mapusa Court and in Margao. We would come to the aspect of the TI parade a little later. The said witness has been cross examined, in which, she has stated that some of the entries in the register were made by Mr. Parab, while some were made by her after her return from work at Mapusa. She claimed that the entries in the name of Chandrakant Talwar (A1) and Sony Talwar (A3) made on 7th October, 2009 at 7:40 p.m. were made by her. She also claims that at the time of checking out, the accused persons signed in her presence at 11:30 a.m. on 13th October, 2009. She has also identified the copy of the driving license of A1 given as the identification proof.

PW-26 is again a panch witness on obtaining of specimen signatures of the appellants. Lastly, PW-51, Mr. A. Balsami is the handwriting expert, who had compared the signatures

and the handwriting. It has come in the evidence of this witness that his office had received questioned documents, namely, questioned writings and signatures marked as Q1 to Q9. Along with that, the specimen writings of the appellant, Chandrakant Talwar (S1 to S10) and that of appellant, Cyrone Rodrigues (S11 to S40) and the specimen signatures of accused Greeshmi Talwar (since acquitted) as S41 to S45 and 46 to 50 were received in his office. After examination of the specimen and the questioned documents/signatures, he has given his report which is at Exhibit-222. The learned Sessions Judge has found and to our mind rightly so, that the evidence of this witness remains unshaken in the cross examination.

It is significant to note that while deciding Criminal Appeal Nos. 35/2017 and 1/2018 filed by the present appellants, which Appeals arose out of their conviction in Sessions Case No. 11/2010 (in respect of the robbery and murder of one Malti Yadav), this Court after considering similar evidence has held that the circumstance about the accused having stayed at the Prabhusmaran Hotel at Mayem from 07.10.2009 to 13.10.2009 is proved on record. We are bound by the said finding of fact, which is recorded on the basis of the identical evidence in the said Appeals. We see no reason to take a different view in the matter. Thus we hold that the first circumstance is proved on record.

19. (B) The appellants (A1 and A2) hired a Maruti Zen car and a Red Alto car from PW-33 and it is shown that the Red Alto car has a nexus with the commission of the offence:

In order to prove the said circumstance, the prosecution relies on the evidence of PW-7, PW-10, PW-21, PW-28, PW-31, PW-33 and PW-43. The evidence of PW-33, Mohamad Gaus Mamlekar is relevant. He has stated that on 08.10.2009, A1 had come to him at about 2:30 p.m., requesting for a car on rent. However, as he found that the licence of A1 was from Maharashtra he asked accused to bring a local witness. On the next day i.e. on 09.10.2009, A1 came along with one person (A2), who gave his name as Donjoe. As the said person was fluent in Konkani, PW-33 gave a white colored Alto car on rent to A1 after obtaining a photo copy of the licence and his phone number and signature on the said photo copy, as also the address and the phone number of A2. It is his further evidence that on 10.10.2009, A1 and A2 alongwith two ladies came to him, out of which, one of the ladies was having a child with her. He had identified A3 (since acquitted) as the lady with the child, who had accompanied A1 and A2. PW-33 further stated that A1 wanted the car to be changed as the Zen car had some problem with the door, which was not locking properly. PW-33 after verifying the same gave another car i.e. a red coloured Alto car to A1 and all the four of them went away. On 13.10.2009, the A1 and A2 along with A3 and another lady came and returned the Alto car after payment of Rs.1,150/- towards rent for which a receipt was issued. He also claimed that the original Pan Card of A1, which was retained by him was returned. He claimed that A1 asked him to drop all of them to Mapusa Bus stand. Accordingly, PW-33 asked

his nephew Muafaque Mamlekar (PW-21) to drop them at the Mapusa Bus stand. It has further come on record that accordingly, PW-21 accompanied the accused to drop them at the Mapusa Bus stand, when it was A1, who drove the car and PW-21 sat besides him. PW-21 returned after dropping them at about 8 to 9 p.m.

Here again, it is necessary to note that PW-33 Mohamad Gaus Mamlekar was examined as PW-32 in Sessions Case No. 11/2010, out of which Criminal Appeal Nos. 35/2017 and 1/2018 arose. This Court after considering his evidence has accepted that indeed it was the appellants, who had hired the white Zen car and then the red Alto car from PW-33 Mohamad Gaus Mamlekar. That is again a finding of fact recorded on identical evidence. In the present case, we also have the evidence of the recovery of Receipt No. 20, which has been established in the evidence of PW-50 and the recovery of a pair of slippers. We find that the second circumstance is sufficiently proved on record.

20. (C) The deceased was last seen together in the company of the accused, shortly before she was found dead:

In order to prove the said circumstance, the prosecution has examined PW-11, Paresh Chodankar, who is a labour contractor. Admittedly, he is a friend of PW-15, Budhaji Mandrekar, who is the brother of the deceased. It has come in the evidence of PW-15 that his sister was missing from 10.05.2009. PW-11 states that on 10.10.2009 at around 1:45 p.m., he went to Pilgaon construction site for dropping two workers. When returning back to

Bicholim and when he reached near Atish Bar at Gaonkar Waddo at about 2:15 p.m., he noticed that there was one white Zen car, which stopped at the left side of the road leading to Bicholim. He noticed that the deceased, who was wearing a blue coloured chudidar was standing near the drivers side of the car and talking with the occupants. He states that there were two occupants in the car, apart from the driver. The other two occupants which included a lady were sitting in the rear. He further noticed that the deceased sat in the front seat of car next to the driver. We have gone through the evidence of this witness, who even, the learned Sessions Judge has noticed to be a chance witness. We do not find that the evidence of this witness inspires confidence. The fact that this witness did not disclose the said fact to any one including PW-15, who is the brother of the deceased and who claims to be his friend and the fact that his statement was recorded only after the arrest of the accused is a relevant fact reflecting on the conduct of the said witness. We further find that according to this witness, he did not even stop at the spot, which would have afforded sufficient opportunity to him of having sufficient glimpse of the occupants of the car to facilitate their identification later both in the identification parade and in the Court. It is further significant to note that in the Court, this witness identified A3 to be one Steffy, who admittedly was not before the Court as she being a juvenile was proceeded against before the Juvenile Court. We do not find that the circumstance about last seen together can be said to be proved beyond reasonable doubt.

21. (D) Recovery of golden ornaments and other incriminating articles at the instance of the accused:

PW-8, Anil Shirodkar is a gold smith having his shop Meera Jewellers at Mapusa. He states that on 10.10.2009 at around 7 p.m., A2 along with A3 had come to his shop and sold gold ornaments, namely, a gold chain with a pendant having an alphabet embossed on it, a pair of gold earrings like wire with a white stone one pair of small ear studs with a white stone and one gold nose pin totally weighing 7.4 gms for Rs.6,700/-. He has further stated that on 13.10.2009, A2 and A3 again came to his shop and sold gold ornaments, namely, a mangalsutra with a pendant, one pair of gold earrings, one earrings (bugdi), totally weighing 39.2 gms for Rs.42,000/-. He states that the ornaments were sold as it was stated that the amount was required for the treatment of the child of A3 at Mumbai.

We then have the evidence of PW-45A, Ravi Shekhar Nipanikar, a panch witness and PW-48, P.I., Sunita Sawant on the point of the recovery of the ornaments at the instance of the accused, Cyrone. It is significant to note that the accused were facing prosecution in respect of murder and robbery of four other ladies. According to the prosecution, the gold ornaments recovered include the ornaments, which were part of the other crimes also. In so far as present case is concerned, PW-15, Budhaji, who is the brother of the deceased has identified the gold ornaments, which were on the person of his sister when she went missing.

There is second part of the discovery/recovery, which is effected from a room where A3 was staying at Mumbai along with one Aruna. The evidence of PW-41, Shrikar Lokre and the Investigating Officer, P.I., Rajendra Niglaye, PW-50 is relevant for the purpose. The said recovery is said to be made at the instance of A1. Although, we are not impressed by the recovery of a pair of shoes which A1 allegedly said to be those of A2 and one of the shoes having a tar stuck to one of the shoes (in as much as it is not shown that the shoes were indeed of A2 and secondly matching of the tar collected from a Primary School at Succoro can be said to be a discovery by A1), the recovery of other articles is indeed established which is of a incriminating nature. This includes a black colour Nokia Mobile belonging to the deceased and a receipt about the hiring of the two cars from PW-33. The learned Sessions Judge, in our opinion, has rightly found that even assuming that the evidence of the panch witness PW-41 is to be excluded, the same can be said to be proved on the basis of the evidence of the Investigating Officer (PW-50). Thus, this circumstance can also be said to be proved against the accused to the extent indicated above.

22. (E) The appellants absconded after the commission of the crime:

The prosecution has examined PW-36, Leena Gadekar and her husband PW-37, Shailesh Gadekar in order to show that the appellants absconded from Goa on 13.10.2009 after commission of the offence by a Bus of Narmada Travels to Mumbai. PW-36 and

PW-37 are having a travel agency by name Anand Travels at Mapusa. It has come in their evidence that the appellants with the two ladies had a booked a ticket to Mumbai for 13.10.2009, by a bus of Narmada Travels. These witnesses have given the reason as to why they had reason to note their appearance. It has come in their evidence that the appellants did not report on time for proceeding to Mumbai. They were contacted on the mobile, when they came and then proceeded to Mumbai. It is significant to note on the basis of similar evidence led in the Sessions Case relating to robbery and murder of Malti Yadav, this Court in Criminal Appeal Nos. 35/2017 and 1/2018 has held the circumstance as to the accused having absconded as proved. This Court has noticed the decision of the Supreme Court in the case of **Sujit Biswas Vs. State of Assam (2013) 12 SCC 406** to find that mere abscondance without anything further is not an incriminating circumstance by itself. Thus, this circumstance will have to be considered along with other circumstances proved on record.

The identification of the appellants in a TI parade conducted by PW-38, Mr. S. B. Faria, Special Judicial Magistrate is a circumstance relied upon by the prosecution. PW-38 had conducted a TI parade of the appellants on 14.11.2009 in the Sessions Court building at Margao. The learned Counsel for the appellants has questioned the legality of the said TI parade on several grounds, including on the ground that the same was conducted in breach of the provisions of the Criminal Manual. For instance, the appellants were jointly included and were asked to be

identified by the identifying witnesses, which is not permissible. It is also submitted that the appellants were shown to the identifying witnesses prior to the conduction of the TI parade. Here again, a reference to the judgment of this Court in Criminal Appeal Nos. 35/2017 and 1/2018 is inevitable. This Court found that in as much as the witness Mohamad Gaus Mamlekar (PW-33), is concerned, he had sufficient opportunity to see the appellants on 08.10.2009, 09.10.2009, 10.10.2009 and on 13.10.2009 and has therefore, accepted the identification of the appellants before the Court by PW-33. This Court has held that even if we assume that there were some infirmities in the TI parade, the other evidence on record is sufficient to accept the identification. This Court has therefore accepted the said circumstance also. (See para 61 of the judgment in Criminal Appeal Nos. 35/2017 and 1/2018).

In so far as the aspect of conspiracy is concerned, it is contended on behalf of the appellants that there is no evidence to show that the appellants were acting in unison or there was any prior meeting of minds, which is necessary to establish conspiracy. We have considered the circumstances as proved on record. We have already noticed that direct evidence of a conspiracy is seldom available and cannot be insisted upon. This is because conspiracies by their very nature are hatched in isolation and surreptitiously. The proof of conspiracy is always a matter of a reasonable inference arising from the proved facts and circumstances on record. In our considered view, the circumstances as proved on record including the stay of the appellants at Prabhusmaran Hotel, their hiring of the

vehicles from PW-33 are sufficient to show that the appellants were acting in unison and there was meeting of minds to commit the offence as charged.

23. (F) Confessional statements given by the appellants before the Special Judicial Magistrate, Ms. Maria Mascarenhas in the year 2010, notwithstanding their belated retraction in the year 2016:

PW-34, Ms. Maria Mascarenhas a Special Judicial Magistrate has recorded the confessional statements of the appellants in January, 2010. It is a confessional statement pertaining to multiple incidents of robbery and murder including the one in the present Appeals as well as Criminal Appeal Nos. 35/2017 and 1/2018. The selfsame confessional statements and their belated retraction in the year 2016 has been considered by this Court in the above Appeals. This Court while refusing to go by the retraction of the statements has relied upon the confessional statements as being voluntary and being found to be in consonance with the facts and circumstances proved on record. This Court has noticed the decision of the Supreme Court in the case of **Shankaria Vs. State of Rajashtan (1978) 3 SCC 435** in the matter of evaluation of a retracted confession. After applying the twin test, namely, (i) whether the confession was voluntary and (ii) if yes, whether it is true and trustworthy, this Court has found that the confession can be acted upon. (See paras 66 to 80 of the judgment in Criminal Appeal Nos. 35/2017 and 1/2018). In the circumstances of the case, we are

bound by the said finding. The aspect of the confessional statement is an additional circumstance, which we are relying.

24. We have carefully gone through the judgment of learned Sessions Judge. We do not find any reason to interfere with the same, as in our opinion, on the basis of the circumstances established on record, the charge against the appellants is proved beyond reasonable doubt. The Appeals are without any merit and are accordingly dismissed.

C. V. BHADANG, J.

M. S. SONAK, J.

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