

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 113 OF 1996

1. Rajendra Eknath Apugade
2. Arjun Vasant Falake
both r/o. Falakewadi, Taluka
Walva, District Sangli at
present lodged in Nashik
Central Jail, Nashik

.....Appellants
(Orig. Accused Nos.1 & 2)

V/s.

1. The State of Maharashtra
2. Smt. Rajj akka Shankar Katkar
R/o. Falakewadi, Tal. Walva,
Dist. Sangli

.....Respondents

Mr. Prosper D'souza appointed Advocate for appellants.
Mrs. M.H. Mhatre, APP for State

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

**Reserved for Judgment on : 25th September 2020.
Judgment Pronounced on : 6th October 2020.**

JUDGMENT (Per N.J. Jamadar, J.) :

1. This appeal is directed against the judgment and order dated 3rd February 1996 passed by the learned Additional Sessions Judge, Sangli in Sessions Case No.61 of 1995, whereby and whereunder the appellants Rajendra and Arjun (original accused Nos.1 and 2) came to be convicted for the offences punishable under sections 302 and 201 read with 34 of the Indian Penal Code, 1860 ('the Penal Code') and sentenced to suffer imprisonment for life and pay fine of Rs.10,000/-

each, on the first count, and rigorous imprisonment for five years and fine of Rs.2,000/- each, on the second count, with default stipulation for having committed murder of Shankar Govind Katkar ('the deceased') and caused disappearance of evidence of the offence with intention to screen themselves from legal punishment.

2. The background facts leading to this appeal can be stated in brief as under :-

(a) The deceased Shankar Govind Katkar was the husband of Rajjakka, the first informant. They were residing at Village Falakewadi, Taluka : Walva, District Sangli. The deceased was an horticulturist. The routine of the deceased was to collect the vegetables by the evening and sell the same on the next morning in the vegetable market at Sangli. The gunny bags containing vegetables were dispatched daily in a tempo.

(b) The deceased was actively involved in politics. The deceased was the Sarpanch of the Villagepanchayat Falakewadi for a period of eight years. Eknath Gunda Apugade, the accused No.3 led the rival political group. In the Villagepanchayat elections held in 1992-93, the Panel led by accused No.3-Eknath

Apugade was elected. Thus, there was political rivalry.

(c) On the morning of 31st October 1994 at about 5:00 a.m., as usual, the tempo came to the house of the deceased for transporting vegetables. The deceased and the first informant loaded the bags of coriander. Balasaheb Ramchandra Apugade (P.W.7), another horticulturist, was travelling in the said tempo with his vegetables. The deceased informed Balasaheb Ramchandra Apugade (P.W.7) to proceed ahead and he would follow them on his M-80 moped. After few minutes, the deceased left the house on M-80 moped on his way to Sangli via Falakewadi-Nagaon road.

(d) Usually the deceased used to return home after selling the vegetables by 9:00 a.m. On 31st October 1994, the deceased did not return home. At about 7:00 p.m., Balasaheb Ramchandra Apugade (P.W.7) came to the house of the deceased and informed the first informant that the deceased had not come to the vegetable market at Sangli and thus he had sold the bundles of coriander, and tendered the sale proceeds and the empty gunny bags to the first informant. Thereupon, the first

informant, Ramchandra Govind Katkar (P.W.6), the brother of the deceased, and others did search for the deceased in the nearby villages and the places which the deceased was expected to visit. Despite search, the whereabouts of the deceased could not be known. Hence, on 1st November 1994, Ramchandra Govind Katkar (P.W.6) lodged missing report (Exh.35) at Ashta Police Station.

(e) On the very day, Ramchandra Katkar (P.W.6) claimed to have noticed blood stains on Falakewadi-Nagaon road and apprised the police about the same. The panchnama at the said spot came to be drawn and the samples of blood-mixed and plain earth were collected thereunder.

(f) The prosecution claimed that inquiry into the missing report of the deceased was underway. The police interrogated several persons. The whereabouts of the deceased, however, could not be located. On 8th December 1994, Rajjakka, the first informant, lodged the first information report (Exh.41). In the F.I.R., the first informant alleged that there was a long standing political feud between the deceased and Eknath Gunda Apugade,

accused No.3 and his associates. In addition, the maternal aunt of the first informant Sou. Shantabai Sakharam Apugade had purchased an agricultural land from Shamrao Ghadage. In the said transaction, the deceased had played a prominent role. Baban, the son of Shamrao Ghadage, was insisting that the said land be re-conveyed. A civil suit was subjudice between her maternal aunt Sou. Shantabai and Baban Ghadage. Yet, Banda Ganpat Apugade, accused No.4, who is the brother in law of Baban Ghadage, Eknath Apugade, accused No.3, his sons; accused No.1 Rajendra and accused No.5 Ravindra, and accused No.2 Arjun, a friend of accused No.1 had threatened the deceased with dire consequences if the said land was not re-conveyed in favour of Baban Ghadage. On account of the political rivalry and dispute over the said land, Rajjakka, the first informant alleged that the accused Nos.1 to 5 had abducted the deceased.

(g) On the strength of the said F.I.R. (Exh.41), crime was registered at Ashta Police Station vide C.R.No. 71 of 1994 for the offences punishable under section 364 and 506 read with 34 of the Penal Code. Investigation commenced.

(h) During the course of investigation, the investigating officer arrested the accused Nos.1 to 5 on 9th December 1994. On the very day, the accused No.1-Rajendra made a disclosure statement to show the place where the dead body of the deceased was buried. Consequent to the disclosure statement, the investigating officer requested the Executive Magistrate, Islampur and the Medical Officer to accompany the police party. The accused No.1 Rajendra led the police party to the agricultural land bearing Survey No. 254/10, which stood in the name of accused No.3 Eknath Apugude and had standing sugarcane crop. The accused pointed out the spot which was at a distance of 30 to 32 paces inside the boundary. Upon excavation, the dead body of the deceased was found buried. The legs were amputated. Shivaji Katkar, another brother of the deceased, and Rajjakka, the first informant, identified the dead body.

(i) Since the body was in a decomposed state, the Medical Officer, who accompanied the police party, conducted the post-mortem examination at the said spot and found injuries on

skull. The Medical Officer opined that the death was caused due to ‘shock due to cranio-cerebral injury associated with cutting of both thighs’.

(j) On the very day, the accused No.2-Arjun made a discovery leading to the recovery of the weapons of offence, i.e., a sword and an iron bar, and the instruments used for digging the pit and burying the deceased. The accused No.2-Arjun made a further disclosure on 13th December 1994 pursuant to which Bajaj M-80 moped of the deceased came to be recovered from Kochi Dam (Bandhara).

(k) On 14th December 1994, the accused No.6 Suresh Shivaji Khot also made a disclosure statement to point out the scene of occurrence from where the earth was collected to spread over the blood spilled over Falakewadi-Nagaon Road. The investigating officer interrogated the witnesses and recorded their statements. After finding the complicity of the accused, charge-sheet came to be lodged in the court of jurisdictional Magistrate.

(l) Upon committal, the learned Additional Sessions Judge

framed charge against the accused for the offences punishable under section 302 and 201 read with 34 of the Penal Code. The accused abjured their guilt and claimed for trial.

(m) At the trial, to bring home the charge to the accused, the prosecution examined in all ten witnesses, including Ramchandra Katkar (P.W.6); the brother of the deceased, Rajjakka (P.W.9), wife of the deceased-the first informant, Dr. Dattatraya Appasaheb Kadam (P.W.3); the Autopsy Surgeon, Vasant Bahurao Patil (P.W.5); the Executive Magistrate, Anil Nanasaheb Falake (P.W.2) and Shivaji Vasant Apugade (P.W.4); the public witnesses to the discovery, and Deelip Ganpatrao Katake (P.W.10); the investigating officer who furnished the details of investigation.

(n) After the closure of the prosecution evidence, the accused were examined under section 313 of the Code of Criminal Procedure, 1973. The accused did not lead any evidence in their defence which consisted of denial and false implication on account of political rivalry.

(o) After evaluation of the evidence and material on record,

the learned Additional Sessions Judge was persuaded to hold that the prosecution did not succeed in establishing the guilt of accused Nos. 3 to 6. However, the guilt of accused Nos.1 and 2 was established. The learned Additional Sessions Judge was of the view that the discoveries made by accused No.1-Rajendra leading to the recovery of the dead body of the deceased from the field of his father (Eknath Apugade, accused No.3) and by accused No.2-Arjun leading to the recovery of the weapons of offence, instruments used for burying the deceased and the M-80 moped of the deceased formed strong circumstances against accused Nos.1 and 2. Since the accused Nos.1 and 2 failed to offer any plausible explanation for the exclusive knowledge regarding the facts discovered pursuant to the disclosure statements made by them, there was no other go but to draw an inference that the accused Nos.1 and 2 had committed the murder of the deceased and had buried the dead body and thrown the M-80 moped in the dam with a view to cause disappearance of the evidence in furtherance of their common intention. Thus, accused Nos.1 and 2 came to be convicted and sentenced as indicated above.

(p) Being aggrieved by and dissatisfied with the impugned

judgment of conviction and order of sentence, the accused Nos.1 and 2 have preferred this appeal.

3. We have heard Mr. Prosper D'souza, the learned counsel for the appellants and Mrs. M. H. Mhatre, the learned Additional Public Prosecutor at length. With the assistance of the learned counsels, we have carefully perused the evidence and material on record.

4. Mr. Prosper D'souza, the learned counsel for the appellants urged that the learned Additional Sessions Judge totally misdirected himself in not adhering to the well recognized principles of evaluation of circumstantial evidence. The learned Additional Sessions Judge committed a grave error in returning a finding of guilt based on the sole circumstance of discovery allegedly made by accused Nos.1 and 2 under section 27 of the Evidence Act. Amplifying the submission, it was strenuously urged that, on the one hand, the discoveries are not established to the hilt. On the other hand, the discoveries are fraught with infirmities which dismantled the prosecution case. It was further submitted that the delay in lodging the F.I.R. coupled with the contemporaneous conduct of the first informant Rajjakka (P.W.9) and Ramchandra Katkar (P.W.6) were also lightly brushed aside by the

learned Additional Sessions Judge. In the circumstances of the case, the accused could not have been convicted on the strength of the evidence which is both scanty and shaky, urged Mr. D'souza.

5. Countering the submissions on behalf of the appellants, Mrs. Mhatre, the learned APP stoutly submitted that the guilt of accused Nos.1 and 2 is established beyond the shadow of doubt. The circumstances arrayed against the accused have been fully and conclusively established. They are of definite tendency and lead to the guilt of accused Nos.1 and 2. In the absence of any explanation as to how the accused No.1-Rajendra came to know about the dead body of the deceased having been buried at his father's field and the accused No.2 Arjun having known the fact of dumping of the M-80 moped of the deceased in the Dam, no inference other than that of the guilt of the accused could be drawn, urged Mrs. Mhatre.

6. Evidently, the fate of the prosecution hinges upon circumstantial evidence. Neither the circumstances of the transaction which resulted in death of the deceased nor causing disappearance of the evidence in relation to those transactions were stated to have been noticed by any witness. The learned Additional Sessions Judge was of the view that

the circumstantial evidence was of such character that conviction could be based solely thereon. Whether this approach of the learned Additional Sessions Judge is justifiable?

7. To begin with, the aspect of homicidal death. Dr.Dattatraya Kadam (P.W.3) affirmed that as the body was in a decomposed state, he conducted post-mortem examination at the spot wherefrom the dead body of the deceased was disinterred. Dr. Dattatraya Kadam (P.W.3) informed the Court that, on external examination, the following injuries were noticed :-

“(1) Linear fracture of skull bone 12 cm. x ½ cm. cavity deep extending from glabella, left lateral forehead upto the parietal region posterior upto bregma. Fracture skull bone was ½ cm. To left from sagittal suture, margins of fracture shows tattooing.

(2) Right Lower limb at junction of Lower 1/3 and middle 1/3 of femur sharp edged cutting of bone through and through separating Lower portion of leg totally. Cut margins of femur shows tattooing. Surrounding muscle tissue decomposed at places.

(3) Left Lower limb at junction of lower 1/3 and middle 1/3 of femur sharp edged, cutting of bone through and through separating lower portion of leg totally. Cut margins of femur shows tattooing surrounding muscle tissue decomposed at places.”

On internal examination, Dr. Dattatraya Kadam (P.W.3)

noticed as under :

“(ii) Skull

Linear fracture 12 cm.x 1½ cm. cavity deep extending into anterior fossa. Fracture extending from gabella anteriorly to bregma posteriorly, cut margins shows tattooing.

“(iii) Brain-

Dura cut below fractured site of skull. Brain matter, paste-like greish, liquified due to decomposition.”

In his opinion, the cause of death was shock due to craneo-cerebral injury associated with cutting of both thighs. The aforesaid injuries were sufficient to cause death in the ordinary course of nature.

8. The nature of injuries noted by the Autopsy Surgeon justifies an inference of homicidal death. During the course of cross-examination of Dattatraya Kadam (P.W.3), stress was laid on the aspect of the body not being in an identifiable state. Though Dr. Dattatraya Kadam (P.W.3) conceded that due to onset of process of decomposition of the body, identification marks were not visible, ears were decomposed, eyes were absent, arms were liquified and bones were exposed, yet Dr. Dattatraya Kadam (P.W.3) did not cave in to the suggestion that the body was not in an identifiable state. He affirmed that Shivaji Katkar, the brother of the deceased, did identify the body to be that

of the deceased. To add to this, Rajjakka (P.W.9) testified to the fact that after the body of the deceased was disinterred, the police had shown the same to her and she had identified the dead body on the basis of the clothes which the deceased wore when he left the house on the morning of 31st October 1994, including the multi-coloured thread which was wrapped around the waist of the deceased. In this view of the matter, we are impelled to hold that the factum of homicidal death of the deceased was established by the prosecution.

9. The question that wrenches to the fore is whether the appellants-accused were the authors of the homicidal death suffered by the deceased. Undoubtedly, a conviction can be based solely on circumstantial evidence provided it is worthy of implicit reliance on the touchstone of the principles enunciated for appraisal of circumstantial evidence. The law relating to circumstantial evidence is well nigh settled by a catena of decisions. A useful reference may be made to two oft-referred decisions of the Supreme Court.

10. In the case of *Sharad Birdhichand Sarda v. State of Maharashtra*¹ the conditions precedent for basing the conviction on circumstantial

1 AIR 1984 SC 1622

evidence were expounded as under :

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

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

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

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

11. The observations of the Supreme Court in the case of ***C.Chenga Reddy and others v. State of A.P.*** ² are also instructive. They read as under :-

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

² (1996) 10 SCC 193

12. On the aforesaid touchstone, reverting to the facts of the case, the circumstances relied upon by the prosecution, and which found favour with the learned Additional Sessions Judge, can be culled out as under :-

(1) Motive;

(2) (a) Discovery made by accused No.1-Rajendra leading to recovery of the dead body and clothes of the deceased from the field of accused No.3, under Seizure Panchnama Exhs.17 and 18.

(b) Discovery made by accused No.2-Arjun leading to recovery of weapons of offence, i.e., sword and iron bar, and the instruments namely spade, *pati* (big basket) and pickaxe used for digging the pit and burying the deceased under Seizure Panchnama (Exh.20).

(c) Discovery made by accused No.2-Arjun leading to recovery of Bajaj M-80 moped from Kochi Bandhara (Dam), wherein it was drowned.

(3) Failure of the accused to offer any explanation.

13. Discoveries allegedly made by the accused Nos.1 and 2 constituted the fulcrum of the evidence led by the prosecution. The circumstances of political rivalry and animosity over the land dispute

were pressed into service in proof of the motive for the offence. The circumstance of failure to offer explanation draws support and sustenance from the knowledge of the concealment of the dead body of the deceased, the weapons of offence and the implements employed for burying the dead body and Bajaj M-80 moped. The said circumstance thus sails or falls through with proof or otherwise of the discoveries.

(I) Motive :

14. Motive plays an important role and, at times, constitutes a driving force to commit a crime. Thus, motive behind the crime is a relevant factor for which evidence is adduced. In a case where there is a clear proof of motive which compelled the perpetrator of the offence to commit the offence, it provides an additional support in basing the finding of guilt. The absence of proof of motive, however, does not render the evidence which bears upon the guilt of the accused untrustworthy for often it is the perpetrator of the crime alone who knows the motivating factor behind the crime.

15. When the prosecution case rests on circumstantial evidence only, motive for the crime, assumes greater importance. Even in the case based on circumstantial evidence, if the prosecution succeeds in

establishing each of the circumstances arrayed against the accused and persuades the court to record a finding that it was only the accused who committed the crime, the court would be justified in sustaining the guilt of the accused even in the absence of proof of motive.

16. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Amitava Banerjee alias Amit alias Bappa Banerjee Vs. State of West Bengal***³, wherein the law regarding the proof of motive, in the context of a prosecution based on circumstantial evidence, was expounded in the following words :-

“41 Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.

42 Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the Courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence.”

(emphasis supplied)

3 (2011) 12 SCC 554

17. In the case at hand, the prosecution banked upon the previous enmity between the parties rooted in political rivalry. The deceased led one group. The accused No.3-Eknath stewarded another. Enmity is a double edged tool. When enmity is premised on political affiliations, the Court is expected to be more cautious as rivalry in politics need not necessarily have inimical overtones, per se, when electoral politics is the medium of democratic government even at the grass-root level.

18. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Ramesh Baburao Devaskar & Ors. Vs. State of Maharashtra***⁴, wherein the Supreme Court administered a note of caution when enmity is pressed into service as a motive for the crime. The observations of the court in para No.26 are material and thus extracted below :-

“26 Proof of motive by itself may not be a ground to hold the accused guilty. Enmity, as is well-known, is a double edged weapon. Whereas existence of a motive on the part of an accused may be held to be the reason for committing crime, the same may also lead to false implication. Suspicion against the accused on the basis of their motive to commit the crime cannot by itself lead to a judgment of conviction.”

19. In the backdrop of the aforesaid exposition of legal position,

⁴ (2007) 13 SCC 501

re-adverting to the facts of the case, recourse is required to be made to the testimonies of Ramchandra Katkar (P.W.6) and Rajjakka (P.W.9) to appreciate the relationship between the deceased and accused party. Indisputably, the deceased was the Sarpanch of the Villagepanchayat Falakewadi from 1984 to 1992. In the elections held in the year 1992, the panel led by the accused was defeated and the panel led by accused No.3-Eknath came to power. Ramchandra (P.W.6) conceded that one Rangraochand became the Sarpanch of Villagepanchayat Falakewadi. It was brought out in the cross examination of Anil Falake (P.W.2) that accused No.3-Eknath was Sarpanch of Villagepanchayat Falakewadi from 1966 to 1976. The accused No.4 Banda was a member of the Villagepanchayat Falakewadi since 1992-93.

20. The aforesaid evidence would, at best, indicate that the deceased and the accused party were affiliated to and represented rival political groups. Is there evidence to sustain an inference that the political rivalry had taken inimical proportion?

21. There is not an iota of evidence to demonstrate that there was any prelude to the occurrence in question and the things had come to such a pass that the rival parties had taken the law in their hand and

the law enforcement agencies were required to intervene in the matter. This factor assumes significance as the political rivalry was not of recent origin. Over the years, there was fluctuation in political fortunes of the prime characters. Thus, without anything more, the mere fact that the deceased had contested the election of the Villagepanchayat and the panel led by the deceased was defeated and the rival panel led by the accused No.3-Eknath was elected would not by itself be sufficient to draw an inference of enmity which had its genesis in political rivalry.

22. The circumstance of enmity over the land dispute stands on a much weaker foundation. Even if we take the claim of Rajjakka (P.W.9), at par, the land dispute pertained to the transaction entered into by her maternal aunt Shantabai, who had purchased the land from Shamrao Ghadage. Baban, the son of Shamrao, according to Rajjakka (P.W.9), was insisting for re-conveyance of the said land. Rajjakka (P.W.9) wants the court to believe that since the deceased had played a prominent role in acquisition of the said land by Shantabai, the accused had threatened the deceased with dire consequences at the behest of Baban. Firstly, Baban is not an accused. Secondly, no credible material could be brought on record to establish

the relationship between the accused/appellants and Baban. The investigating officer Deelip Katake (P.W.10) conceded in the cross examination that he had recorded the statements of Shamrao Ghadage, Baban Ghadage and Vilas Ghadage but did not arrest them on suspicion. In the absence of cogent evidence, it would be rather hazardous to draw an inference that the accused would pick up cudgels on behalf of Baban Ghadage.

23. The contemporaneous conduct of Rajjakka (P.W.9), the first informant, and Ramchandra Katkar (P.W.6) also assumes critical significance. Rajjakka (P.W.9) was candid enough to concede that after Ramchandra Katkar (P.W.6) lodged the missing report, the police repeatedly visited her house, almost every alternate day, for inquiry. The police did record her statement. She went on to admit in no uncertain terms that the police made inquiry with her as to whether the deceased had enmity with any person. Rajjakka (P.W.9) further affirmed that she also used to visit Ashta Police Station regularly to ascertain the progress of the inquiry into the missing report. Ramchandra Katkar (P.W.6) also conceded that he used to visit Ashta Police Station every alternate day to ascertain the progress in the enquiry and that the police regularly visited Village Falakewadi and

did ask him and the first informant as to whether the deceased had inimical relations with anybody. He admitted that the police had recorded his statements in the said inquiry.

24. It would be contextually relevant to note that Deelip Ganpatrao Katake (P.W.10), the investigating officer feigned ignorance as to whether police had recorded the statements of Rajjakka (P.W.9) and Ramchandra Katkar (P.W.6) in the said inquiry. Deelip Ganpatrao Katake (P.W.10) had the audacity to assert that he did not find it necessary to take into account the statements of the witnesses recorded in the said inquiry.

25. The aforesaid admissions are required to be appreciated in the light of the fact that the grounds, on which the enmity was sought to be attributed, were well within the knowledge of both, Rajjakka (P.W.9) and Ramchandra Katkar (P.W.6). The political rivalry was since decades. Even the transaction pertaining to acquisition of land by Shantabai had taken place prior to ten years of lodging of the report. Rajjakka (P.W.9) endeavoured to impress upon the Court that the deceased was threatened by the accused on five to six occasions in connection with the said land transaction and the deceased had

apprised her about the same. Rajjakka (P.W.9) was thus fully aware of the alleged inimical relations and the causes for the same.

26. It can hardly be disputed that Rajjakka (P.W.9) and Ramchandra Katkar (P.W.6) have had multiple opportunities to disclose the said facts. Both conceded that not only the police visited Falakewadi and made inquiries with them but they also used to visit Ashta Police Station to ascertain the progress of the inquiry in the missing report. The failure to inform the police about the enmity for almost forty days of the deceased not returning home, in the circumstances, cannot be said to be inconsequential or immaterial. If the witnesses had conceived that the enmity was the cause for the disappearance of the deceased, it defies comprehension that they would have maintained stoic silence till the report came to be lodged on 8th December 1994. The fact that no event or circumstance occurred in the intervening period, which made the first informant to entertain the suspicion against the accused, further accentuates the situation.

27. In the totality of the circumstances, in our view, the material on record does not sustain an inference that the accused had a strong motive to eliminate the deceased on account of political rivalry or the

alleged land dispute. The enmity attributed to the accused on the latter count appears to be far fetched as well. Thus, we are persuaded to evaluate the rest of the circumstances with greater care and caution.

ii) **Discovery** :

28. The discovery allegedly made by accused No.1-Rajendra was sought to be established by examining Anil Falake (P.W.2), the independent witness. It is in the evidence of Anil Falake (P.W.2) that on 9th December 1994, at about 8:30 a.m., the accused No.1 made a statement that he would show the place where the dead body of the deceased was buried. It was reduced into a memorandum (Exh.16). Thereafter, accused No.1 led the police party to the sugarcane field which stood in the name of accused No.3, and pointed out the place which was at a distance of 30 to 32 paces from the outer boundary. Whereupon, the said spot was dug up. The dead body of the deceased was found therein. Anil Falake (P.W.2) testified to the fact that the process of exhuming the dead body was recorded in the Panchnama (Exh.17) and the clothes of the deceased were also seized under the Panchnama (Exh.18).

29. Anil Falake (P.W.2) wants the court to further believe that on

the very day and in the same field at about 4:35 p.m., accused No.2-Arjun made a disclosure statement and volunteered to show the place where the weapons of offence and instruments used for digging were concealed. The accused No.2-Arjun led the police party to a place which was abutting the cattle-shed and took out one sword and iron bar which were concealed under the heap of dry sugarcane leaves. There were blood stains on the sword. Thereafter, accused No.2 led the police party to his house and took out the spade, *pati* and pickaxe which were kept under the cot. Those articles were seized under the seizure panchnama (Exh.20).

30. Shivaji Apugade (P.W.4), another independent witness, affirmed that on 13th December 1994, the accused No.2-Arjun made a disclosure statement to the effect that he would show the place where the Bajaj M-80 moped was lying. Thereafter, accused No.2 led the police party to Kochi Bandhara (Dam) and pointed out the spot, in between the pillar No.12 and 13 of the bund, where the moped was immersed. Thereupon Laxman Ghongade (P.W.8), the diver, dived into the dam and located the Bajaj M-80 moped, which was thereafter pulled out.

31. The learned APP urged that the aforesaid evidence of discoveries is wholly reliable. The factum of exhuming the dead body of the deceased from the field of accused No.3-Eknath, at the pointing out by accused No.1, squarely incriminates the accused No.1. The said circumstance, according to the learned APP, is so strong that it cannot be explained on any other hypothesis than that of the guilt of accused No.1. No endeavour was made to offer any explanation, much less a plausible one, urged the learned APP. Likewise, the weapons of offence and the instruments used for digging the pit for burying the dead body were kept in a concealed state to the exclusive knowledge of accused No.2-Arjun. To add to this, Bajaj M-80 moped of the deceased was drowned in the Dam at a distant place, to wipe out the trace of the crime. No other person could have known about the said vehicle had the accused No.2-Arjun not volunteered to make the disclosure statement, submitted the learned APP.

32. The basic postulate underlying section 27 of the Evidence Act is of confirmation by subsequent events. It is based on the premise that if a fact is actually discovered consequent to the disclosure made by the accused, then the said discovery furnishes the guarantee that the information disclosed by the accused was true and, consequently, such

information can safely be allowed to be given in evidence because the truthfulness of the information is further fortified and confirmed by the discovery of articles, the instruments of crime or the body of the deceased.

33. In the case of *State of Maharashtra Vs. Damu, S/o. Gopinath Shinde and Ors.*⁵, the jurisprudential premise of section 27 was enunciated as under :

*“The basic idea embedded in [Section 27](#) of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well-settled that recovery of an object is not discovery of a fact as envisaged in the Section. The decision of Privy Council in *Pullukurri Kottayya vs. Emperor* AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the Section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.”*

34. It would be contextually relevant to note that the courts have

5 (2000) 6 SCC 269

been alive to the possibility of misuse of the provisions contained in section 27 of the Evidence Act which, in effect, lifts the embargo to the admissibility of the statements made before the police in the preceding sections; section 24 to 26. The necessity of appreciating the evidence of discovery with care and caution was expounded by the Supreme Court in the case of ***Geejaganda Somaiah Vs. State of Karnataka***⁶ in the following words :

“22 As the Section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of [Section 27](#) the Evidence Act.”

35. In the context of evidence of discoveries in the case at hand, coupled with the circumstance of non-explanation, pressed into service by the prosecution, we may refer with profit to the judgment of the Supreme Court in the case of ***State of Maharashtra Vs. Suresh***⁷, wherein the Supreme Court explained the possibilities which emanate

⁶ AIR 2007 SC 1355

⁷ (2000) 1 SCC 471

from the knowledge of the accused qua the facts discovered, as under:-

“26 We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was conceded by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities, the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in [Section 27](#) of the Evidence Act.”

(emphasis supplied)

36. In the light of the aforesaid legal position, it has to be seen whether the evidence of discoveries allures confidence and commands implicit reliance. It is imperative to note that, in the instant case, the evidence of discovery is not of subsidiary nature, which is often the case. Discoveries are not relied upon to lend support to ocular account or other circumstances. But, in the facts of the case, discoveries constitute the core of the evidence, nay the sole evidence.

37. An endeavour was made on behalf of the accused to demonstrate that the investigating machinery had known from before that the body of the deceased was buried at the said spot and the vehicle was drowned in the Dam and to falsely rope in the accused, on account of political rivalry, a farce of discoveries was made by employing pliant public witnesses.

38. The facts that F.I.R. came to be registered on 8th December 1994 and immediately on the next morning the accused were shown to have been arrested, and made discoveries almost instantaneously, were urged to throw a cloud of doubt over the genuineness of the discoveries.

39. The aforesaid submissions cannot be said to be totally unfounded. Deelip Katake (P.W.10), the investigating officer claimed that Rajjakka (P.W.9) lodged the report on 8th December 1994 at about 7:30 p.m. The accused were arrested on the very next day at about 6:30 a.m.. The accused No.1 Rajendra volunteered to make the disclosure statement at 8:30 a.m.

40. As observed above, the first informant Rajjakka (P.W.9) was fully alive to and conscious about the alleged enmity between the parties and, despite opportunities, the first informant did not name the accused as the possible suspects for almost forty days. Nor there is any material to show that any event or circumstance intervened to foster the suspicion against the accused. Thus the delay in naming the accused as the suspect is both inordinate and unexplained.

41. The aforesaid factor is required to be appreciated in the backdrop of the fact that Ramchandra Katkar (P.W.6) claimed that on the day he lodged the missing report, he had noticed the blood stains on Nagaon-Falakewadi road which the deceased was to take to reach vegetable market at Sangli on the morning of 31st October 1994. The police had drawn a panchnama to evidence the said fact and collected the samples of blood-mixed and plain earth under the said panchnama (Exh.14). The said factor would justify an inference that there was material to suspect foul play. Yet, the accused were not named as the suspects. The lodging of the F.I.R. in the evening of 8th December 1994 naming the accused Nos.1 to 5, the consequent arrest of the accused in the early hours of 9th December 1994 and almost instantaneous disclosure statement made by accused No.1-Rajendra,

within hours of the arrest, is too close for comfort. It is pertinent to note that no panchnama was drawn to evidence the arrest of the accused. In the circumstances of the case, the omission to draw panchnama and freeze the time of arrest cannot be said to be innocuous.

42. The discovery allegedly made by accused No.2-Arjun is fraught with infirmities. Anil Falake (P.W.2), public witness affirmed that accused No.2-Arjun made the disclosure statement on 9th December 1994 at about 4:35 p.m. while the police party was still in the field of accused No.3-Eknath to exhume the dead body of the deceased. Anil Falake (P.W.2) conceded in the cross-examination that accused No.2-Arjun had not accompanied them when they left Ashta Police Station pursuant to the disclosure statement made by accused No.1-Rajendra. Anil Falake (P.W.2) went on to admit that accused No.2-Arjun was not present at the place wherefrom the dead body of the deceased was taken out.

43. Mr.Deelip Katake (P.W.10), the investigating officer, on his part, admitted that when he had initially interrogated the accused at Ashta Police station, accused No.2-Arjun did not make any disclosure

statement. He claimed that the rest of the accused, (other than the accused No.1-Rajendra) were brought to the field of accused No.3 subsequently and thereafter he interrogated the accused No.2-Arjun and thereupon the latter made the disclosure statement.

44. The time lag belies the claim of the investigating officer. The panchnama whereunder the dead body of the deceased was exhumed records that it was commenced at 11:00 a.m. and concluded at 12:25 p.m. Accused No.2-Arjun allegedly made disclosure statement at about 4:35 p.m. The same witnesses were shown to have witnessed the said disclosure and that too in the field of accused No.3-Eknath. Why the rest of accused were brought to the field of accused No.3 and the public witnesses were detained despite the completion of exhumation by 12:25 p.m. remained unexplained.

45. It would be contextually relevant to note that Vasant Bhaurao Patil (P.W.5), the Executive Magistrate admitted that spectators had gathered when the dead body of the deceased was being exhumed, but they were kept at a distance of about one furlong from the said spot. In the circumstances, the evidence of discovery allegedly made by accused No.2-Arjun appears to be unworthy of credence. It would

be extremely hazardous to place reliance on the claim of the investigating officer that after about four hours of exhumation of the dead body of the deceased, the rest of the accused were brought to the said field and the accused No.2 was interrogated, in the public gaze, and the latter made the disclosure statement.

46. The accused were produced before the learned Magistrate on 9th December 1994 at 10:30 p.m. Interestingly, in the Remand Report (Exh.55), which was proved in the cross-examination of the investigating officer, the police custody of the accused was claimed on the ground that the iron rod and the instruments used for burying the dead body of the deceased namely spade, *pati* and pickaxe were to be recovered. However, the evidence led by the prosecution shows that the aforesaid articles were already recovered pursuant to the discovery made by accused No.2-Arjun at about 4:35 p.m., itself.

47. The necessary corollary is that accused No.2-Arjun cannot be fastened with the knowledge of the concealment of the weapons of assault and instruments used for burying the dead body of the deceased. The nexus between the accused and the weapons of assault and those instruments thus cannot be said to have been established.

On account of failure of the prosecution to prove the discovery leading to the recovery of the weapons of offence and the instruments, allegedly made by accused No.2-Arjun, a vital link in the chain of circumstances gets snapped.

48. The claim of recovery of Bajaj M-80 moped from Kochi Bandhara (Dam) at the pointing out by accused No.2, is also required to be accepted with a pinch of salt. The investigating officer claims to have interrogated the accused No.2 on 9th December 1994 and elicited the information pertaining to the weapons of offence and instruments. Yet, the accused No.2 is shown to have made a further disclosure statement on 13th December 1994. The time lag assumes significance, especially when the accused No.2 allegedly made the disclosure statement in the field of accused No.3 on 9th December 1994 itself. The missing report itself indicated that the deceased had proceeded to Sangli on Bajaj M-80 moped. It does not stand to reason that the investigating officer would have missed to inquire about the vehicle when he claimed to have successfully elicited most incriminatory information from the accused on the very day of arrest.

49. In the backdrop of the nature of accusation and the attendant

circumstances, the evidence is required to be appreciated on the touchstone of previous statements and probabilities. The fact that the public witnesses have subscribed to the prosecution version on the aspect of the discoveries allegedly made by accused Nos.1 and 2 cannot be taken at par where it is shown that the village was faction ridden and the public witnesses had affinity towards the deceased. All the factors, including the delay in lodging the report, despite there being an apprehension of foul play and knowledge of the circumstances which were banked upon to show enmity between the deceased and the accused party, bear upon the credibility of the prosecution.

50. The fact that there is no other evidence except the discoveries puts the Court on guard. Undoubtedly, the dead body of the deceased was disinterred from the field of accused No.3. To draw an inference of authorship of offence on the basis of ownership of the said land, sans evidence, would be a matter of surmise and conjecture and, thus, legally impermissible. There is evidence to indicate that the said field was at a close distance from Bavchi Road. It had standing sugarcane crop of about 11 ft. height. Thus, neither the possibility of access to others could be totally ruled out. Nor it could be disputed that the

standing crop provided the opportunity for surreptitious burial.

51. It was elicited in the cross-examination of the investigating officer Deelip Katake (P.W.10) that the distance between the place where the dead body was found and the spot where the blood stains were found on the Falakewadi-Nagaon Road was about 1½ k.m. There were fields on both sides of the said road leading to the place where the dead body of the deceased was found. It is not the claim that any trail of blood was found. This assumes significance as the prosecution claimed that on 1st November 1994 itself Ramchandra Katkar (P.W.6) had pointed the blood stains on the said spot on Falakewadi-Nagaon Road and the panchnama (Exh.14) was drawn.

52. The aforesaid circumstances cumulatively dissuade us from placing implicit reliance on the discoveries. In our view, in the facts of the instant case, the evidence of discoveries is fraught with insurmountable infirmities and constitutes a weak kind of evidence and is not worthy of sustaining a finding of guilt on its own. The evidence and material borne out by record, in our considered view, does not lead to the only inference that the accused had buried the dead body of the deceased in the said field. Consequently, the

circumstance of non-explanation of the incriminating circumstances also falls through.

53. Even if we construe the evidence of discovery qua accused No.1-Rajendra rather liberally, by discounting the infirmities associated with it, yet, at the highest, it would justify an inference that the prosecution case “may be true”. However, for returning a finding of guilt based on circumstantial evidence, the Court ought to be satisfied that the prosecution case “must be true”. We may gainfully refer to a Division Bench judgment of this Court in the case of ***Sopan Punjaram Mule Vs. State of Maharashtra***⁸, wherein, at the instance of the accused therein, the body of the deceased was disinterred from the house of the accused. In the facts of the said case, this Court observed as under :

“11 The above discussion would show that the circumstances referred to above do not conclusively lead to the inference that it was the appellant who committed the murder of the deceased. At the highest the said evidence may show that the prosecution case against the appellant may be true but as Gajendragadkar, J. as he then was, in para 11 of the oft-quoted case of Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637: observed :

“It is no doubt a matter of regret that a foul cold-blooded and cruel murder like the present should go unpunished. It may be as Mr. Gopal

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Singh strenuously urged before us that there is an element of truth in the prosecution story against both the appellants. Mr. Gopal Singh contended that considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence."

In our view, the said distance has not been travelled by the prosecution in the instant case."

54. The upshot of the aforesaid consideration is that the prosecution has not succeeded in establishing the circumstances arrayed against the accused fully and conclusively. Nor the circumstances are of definite tendency unerringly pointing to the guilt of the accused. They do not lead to the only hypothesis that the accused caused the death of the deceased and also caused disappearance of evidence in relation thereto. In view of the failure of the prosecution to establish the discovery allegedly made by accused No.2-Arjun on 9th December 1994, the chain of the circumstances got snapped. Resultantly, we are persuaded to hold that the evidence on record does not induce the necessary assurance to hold that the guilt of the accused is established beyond reasonable doubt. The learned Additional Sessions Judge was thus not justified in returning the finding of guilt against accused Nos.1 and 2.

55. For the foregoing reasons, the appeal deserves to be allowed, the order of conviction and sentence is liable to be quashed and set aside and the accused Nos.1 and 2 are entitled to be acquitted. Hence, the following order :-

O R D E R

- (i) The appeal stands allowed.
- (ii) The impugned judgment and order of conviction and sentence, dated 3rd February 1996 for the offences punishable under sections 302 and 201 read with 34 of the Penal Code passed by the learned Additional Sessions Judge, Sangli in Sessions Case No. 61 of 1995 stands quashed and set aside.
- (iii) The appellants viz. accused No.1-Rajendra Eknath Apugade and accused No.2 Arjun Vasant Falake stand acquitted of the offences punishable under sections 302 and 201 read with 34 of the Penal Code.
- (iv) Their bail bonds stand cancelled and sureties stand discharged.

[N.J. JAMADAR, J.]

[SMT. SADHANA S. JADHAV, J.]