

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

254

CRA-D-46-DB-2016 (O&M)

Date of Decision: 24.1.2023

Rajesh Kumar alias Goldi
and others

... Appellants

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Kapil Aggarwal, Advocate,
for appellant No.1.

Mr. M.S. Viridi, Advocate,
for appellants No.2 and 3.

Ms. Ishma Randhawa, Addl. AG, Punjab.

MANISHA BATRA, J.

1. The instant appeal has been preferred by the appellants-accused, Rajesh Kumar alias Goldi, Sushil Kumar alias Lovely and Vijay Kumar alias Sonu against judgment of conviction and order on quantum of sentence both dated 24.11.2015 pronounced in Sessions case No.59 titled as ***State Vs. Rajesh Kumar alias Goldi and others*** registered vide FIR No.76 of 20.07.2014 under Sections 376, 302, 404, 201, 120-B and 148 read with Section 149 of IPC at Police Station Sujampur, Pathankot.
2. Broad contours of the case as set up by the prosecution are

that on 20.07.2014, Meet Singh son of Uttam Singh resident of village Jakjian Lahri, District Pathankot, Punjab met a police party headed by SI Chajju Ram at Vishal Dhaba on National Highway at 12 AM and informed that he had seen dead body of a young girl lying in bushes on the side of the road existing in front of Indian Gas Agency. The police party rushed towards the disclosed place and found that dead body of a 22-23 years old girl lying there. A dupatta was tightly tied around the neck and there were strangulation marks on the neck of the dead body. The underwear and salwar of the victim were lying pulled up to thigh area. A soiled towel was also found lying near the dead body. A case under Sections 302 and 201 read with Section 34 of IPC was initially registered. On 22.07.2014, complainant Jagdeep Singh, accompanied by his uncle Sulakhan Singh identified the dead body of the victim as that of his younger sister (name withheld), whose missing report had been given by him at Police Station Cantonment, Amritsar on 20.07.2014 and recorded his statement that the accused Rajesh Kumar @ Goldy used to disturb the victim on her mobile phone and he along with his uncle was sure that the victim had been killed by the accused Rajesh Kumar. He also recorded that the gold earrings and rings worn by the victim had been taken away. On the basis of his statement, offence under Section 404 of IPC had been added. Investigation proceedings were initiated. Inquest proceedings and postmortem examination of the dead body were conducted. Request was made by the police to the doctors to clarify whether rape had been committed with the victim or not? On 25.07.2014, the accused Rajesh Kumar was arrested. He was interrogated and suffered disclosure statement admitting his involvement in the murder of the victim and also disclosed that co-accused

Lovely who was his brother had helped him in disposing of the dead body of the victim. In pursuance of his disclosure statement, he got recovered maruti car bearing registration No.PB-06F9115 used in the crime. He suffered disclosure statements on 27.07.2014 and 28.07.2014 regarding involvement of co-accused Gurmeet, Monika and Vijay Kumar alias Sonu and also that he along with his aunt Monika had sold the jewellery removed from the dead body of the victim. After receiving postmortem examination report, offence under Section 376 of IPC was added. Offences under Sections 120-B, 148 and 149 of IPC were added subsequently. The accused Monika, Sushil Kumar @ Lovely, Gurmeet and Vijay Kumar @ Sonu were also arrested. They too suffered disclosure statements admitting their involvement in the crime. Accused Sushil and Vijay got the belongings of the victim recovered. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the court for trial of the accused. The case was committed to the Court of sessions. On finding a prima facie case, the accused, Rajesh Kumar @ Goldi, was charge sheeted for under Section 376 of IPC and all the accused were charge-sheeted for commission of offences punishable under Sections 120-B, 201, 302 and 404 read with Section 120-B of IPC. They pleaded not guilty to the charges and claimed trial.

3. To substantiate its case, the prosecution examined 17 witnesses in all besides placing reliance upon certain documents. Learned Public Prosecutor also tendered in evidence FSL report Ex.PX, as per which, spermatozoa was detected on the vaginal swab of the victim. and thereafter, evidence of prosecution was closed by learned Public Prosecutor.

4. Statements of all the accused under Section 313 of Cr.P.C. were

recorded wherein they pleaded false implication and claimed themselves to be innocent. They were given opportunity to adduce defence evidence and examined 6 witnesses.

5. After hearing the contentions raised by both the parties and appraising the evidence produced on record, the learned trial Court vide judgment dated 24.11.2015 acquitted the accused Monika and Gurmeet of the charges as framed against them whereas the accused Rajesh Kumar alias Goldi was held guilty for commission of offences punishable under Sections 302, 376, 404, 201, and 120-B of IPC. Accused Sushil Kumar alias Lovely and Vijay Kumar alias Sonu were held guilty and convicted under Sections 404, 201 and 120-B of IPC. The accused Rajesh Kumar was sentenced to undergo rigorous imprisonment for life for commission of offences punishable under Sections 376 and 302 of IPC which were ordered to be continued till remainder of his natural life and was also sentenced to pay fine of Rs.10,000/- each and in default to undergo simple imprisonment for two years each under these provisions. All the three accused were sentenced to undergo rigorous imprisonment for a period of three years and were sentenced to pay fine of Rs.10,000/- for commission of offence punishable under Section 404 of IPC and in default of payment of fine, all of them were sentenced to undergo rigorous imprisonment for 3 months each; were sentenced to undergo 5 years rigorous imprisonment for commission of offence punishable under Section 120-B of IPC and to pay fine of Rs.10,000/- each and in default of payment of fine to undergo rigorous imprisonment for a period of 6 months. All three of them were also sentenced to undergo rigorous imprisonment for a period of 5 years each and to pay fine of Rs.10,000/- for commission of offence punishable under

Section 201 of IPC and in default of payment of fine, they were further sentenced to undergo rigorous imprisonment for 6 months. All sentences were ordered to run concurrently. Fine had not been paid.

6. Feeling aggrieved, the present appeal has been jointly filed by the appellants-convicts.

7. It was argued by learned counsel for the appellants Sushil Kumar and Vijay Kumar that findings as given by learned trial Court as against them were not sustainable in the eyes of law being perverse and being based on conjectures. The learned trial Court did not consider the fact that there was no direct incriminating evidence against them on record. The disclosure statement alleged to be suffered by the appellant-co-accused Rajesh Kumar was not admissible as against them. The evidence led by the prosecution as to suffering of disclosure statements by them was resting upon the testimony of a single police official witness and had not been corroborated by any other evidence either of police official witnesses or private witnesses and hence the same could not be considered to be sufficient. The recovery evidence was highly doubtful rather a false recovery was proved to have been planted upon them. The ingredients for proving the commission of offence of criminal conspiracy had not been established at all against either of them. Neither the prosecution had produced any convincing and reliable evidence on record to prove that they had misappropriated any property belonging to the deceased. He further argued that the evidence led by the prosecution with regard to causing disappearance of evidence of offence of murder of the victim as against the appellants Vijay Kumar and Sushil Kumar was also not inspiring. The chain of circumstantial evidence was not proved against them at all. Therefore, it

was urged that the findings as given by learned trial Court as against appellants Sushil and Vijay Kumar were not sustainable and it was urged that they had become entitled to be acquitted of the charges for which they have been held guilty and convicted.

8. Learned counsel for the appellants further argued that the prosecution had failed to produce any reliable evidence against the appellant-accused Rajesh Kumar to connect him with offence under Section 302 IPC. No direct evidence had come on record as against him. No convincing evidence had been produced on record to prove that the appellant-Rajesh Kumar was user of mobile phone No.9465407070 at any point of time. The prosecution had even failed to bring any convincing evidence on record to prove that the victim was user of mobile phone Nos.9478408272 and 9465109452. In the absence of proof of such evidence, a grave error had been committed by learned trial Court in holding the appellant-Rajesh Kumar guilty while relying upon call detail records of mobile phone Nos. 9465407070 and 9465109452. It was further argued that the prosecution had miserably failed to produce any convincing evidence on record to prove that the appellant-Rajesh had committed rape upon the victim. The stains of spermatozoa as found on the vaginal swab of the deceased were not sent for DNA profiling and were not compared with the DNA profiling of the appellant and no evidence had come on record to prove that the same were of the appellant so as to connect him with the offence of rape. Moreso, medical evidence did not prove that the victim was sexually assaulted. Neither any other incriminating evidence had come on record against him to prove the allegations of rape. Therefore, it was argued that the findings as given by learned trial Court as to guilt of the appellant-

Rajesh Kumar under Section 376 of IPC were also not sustainable and were liable to be set aside.

9. It was further argued by learned counsel for the appellants that the prosecution had failed to prove any such incriminating circumstance on record which could be considered to be sufficient to prove the guilt of the appellant-Rajesh Kumar. The gold jewellery allegedly removed by the appellant from the dead body of the victim was of such nature which was easily available in the market and could be planted upon the appellant. The testimony of PW-1 Jatinderpal was not reliable. The prosecution had failed to attribute any motive to the appellant-Rajesh Kumar to commit murder of the victim. There was no convincing evidence on record to prove the charges under Sections 201, 404 and 120-B of IPC as framed against the appellant-Rajesh Kumar. With these broad arguments, it was submitted that the conviction of the appellant-Rajesh Kumar was not sustainable and was liable to be set aside.

10. Per contra, it was argued by learned State counsel that the findings as given by learned trial Court were well reasoned. There was overwhelming evidence on record to prove that the appellant-accused Rajesh Kumar had committed rape upon the victim as on 19.07.2014 and had thereafter caused her death by strangulating her and was also proved to have removed jewellery from the dead body of the victim and have sold it. The circumstances also pointed out that the appellant Rajesh had thrown dead body of victim in the bushes in the area of Village Sujanpur to screen himself from punishment and to cause disappearance evidence of offence of murder. He argued that there was a complete chain of circumstances pointing out towards the guilt of the appellant-Rajesh Kumar and connected

him with the offences for which he had held guilty and convicted.

11. It was further argued by learned State counsel that the findings as given by learned trial Court as against the appellant-accused Vijay Kumar and Sushil Kumar were also based on proper appreciation of evidence produced on record. The disclosure statements suffered by the appellants Vijay Kumar and Sushil Kumar were admissible in evidence and had led to discovery of incriminating articles in the shape of belongings of the victim. These articles were duly identified by PW-12 Jagdeep to be belonging to the victim. The disclosure statement of appellant-Rajesh Kumar was admissible as against these accused under Section 30 of the Indian Evidence Act, 1872 (for short "Act") and was relevant and connected them with the offence of hatching a criminal conspiracy with the appellant-Rajesh Kumar to cause disappearance of evidence as to offence of murder of the victim. The ingredients for commission of offences punishable under Sections 120-B, 201 & 404 of IPC were fully established against them. Hence it was urged that the findings given by learned trial Court did not warrant any interference and it was urged that the appeal was liable to be dismissed.

12. The version of the prosecution is that the appellant-accused Rajesh Kumar was having a love affair with the victim. As per the case set up by the prosecution, as on 18.07.2014, the victim who was doing a course in Khalsa College, Amritsar and had been residing as a paying guest, had a conversation with her brother PW-12 Jagdeep Singh and had intimated him that she would be reaching her native village Talibpur, District Gurdaspur on 19.07.2014. On 19.07.2014, she had left Amritsar and had reached at Gurdaspur. She was user of mobile phone Nos.9478408272 and 9465109452 as on that date. She did not reach home on 19.07.2014 and had

not responded to the calls made by PW-12 Jagdeep Singh on her mobile phone. Her dead body was recovered from the area of Sujampur, District Pathankot, Punjab as on 20.07.2014 though the same could not be identified at that time. The same had been identified by the complainant Jagdeep Singh and his uncle Sulakhan Singh as on 22.07.2014. As per the evidence led by the prosecution in the form of testimony of PW-7 Dr. Lashkar who along with two other doctors conducted postmortem examination of the dead body of the victim on 22.07.2014 and as per his report, Ex.PW-7/B, two dark red coloured ligature marks, one over the front of the neck lying horizontally below thyroid cartilage and another on the right lateral side of neck were found on the dead body. Apart from this, there were lacerated wounds over the right side of forehead, multiple yellowish greenish bruises present over the anterior aspect of abdomen and two horizontally placed bruises with yellowish greenish color over the back in the lumbar area and above the right sacro iliac joint. This witness opined that the cause of death of the victim was asphyxia due to strangulation which was sufficient to cause death in the ordinary course of nature. The testimony of this witness remained uncontroverted as to cause of death of the victim and, therefore, there is no hesitation in holding that the victim was proved to have died a homicidal death.

13. The prosecution was further required to prove that the victim had been killed by the appellant-Rajesh Kumar as on 19.07.2014. There is no direct evidence as to commission of offence of murder of the victim and the prosecution sought to prove the guilt of this appellant on the basis of circumstantial evidence. It is well settled that the circumstances from which the conclusion of the guilt of an accused is to be drawn should be fully

established and should also be consistent with only one hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as to not to leave any substantial doubt in the mind of the Court. Irresistibly the evidence should lead to the conclusion inconsistent with the innocence of the accused and the only possibility that the accused had committed the crime. The circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person [See: **Sharad Birdi Chand Sarda v. State of Maharashtra**, AIR 1984 Supreme Court 1622; **Brajendrasingh v. State of M.P.**, 2012 (4) SCC 289; **Shivaji Sahebrao Bobade and another v. State of Maharashtra**, (1973) 2 SCC 793; **Padala Veera Reddy v. State of Andhra Pradesh**, 1990(2) Recent Criminal Reports 26 (SC); **Vijay Shankar v. State of Haryana**, (2015) 12 SCC 644; **Arvind @ Pappu v. State (Delhi Administration)**, 1999 (2) RCR (Criminal) 810 and **State of Rajasthan v. Rajaram**, 2003 (47) ACC 635 (SC)].

14. The primary question in this appeal is whether the circumstantial evidence produced by the prosecution to prove the guilt of the appellants satisfies the above referred legal paragraphs or not? We would firstly restrict ourselves with the question regarding involvement of the **appellant-accused Rajesh Kumar** in the offences for which has been held guilty and convicted and would discuss about the other two appellants in the later part of this judgment. To prove the complicity of the appellant

Rajesh in the crime, the prosecution had pressed into service, the following circumstances:-

- i) Disclosure statement of appellant Rajesh Kumar stated to be suffered on 25.07.2014 vide memo Ex.PW14/B leading to recovery of a car bearing registration No.PB-06F9115 vide memo Ex.PW14/C.
- ii) Disclosure statement of the appellant-accused Rajesh Kumar Ex.PW-14/D dated 27.07.2014 and recovery of a pair of gold earrings and a ring belonging to the victim and stated to be removed from her dead body after killing her and disclosure statement suffered by the appellant-Rajesh Kumar on 28.07.2014 vide memo Ex.PW14/E.
- iii) Call detail records of mobile phones Nos.9465407070, 9478408272 and 9465109452.
- (iv) Motive.

15. The first circumstance relied upon by the prosecution to connect the appellant-Rajesh Kumar with the offence of murder of the victim was suffering of disclosure statement vide memo Ex.PW14/B by him on 25.07.2014 and consequent recovery of maruti car bearing No.PB-06F9115 vide memo Ex.PW14/C. To prove this circumstance, the prosecution mainly relied upon the testimony of PW14 SI Harit Sharma, Investigating Officer. Before discussing the question of authenticity of evidence of this witness, it will be proper to refer to certain provisions of law relating to disclosure/confessional statements. Section 25 of Act mandates that no confession made to a police officer, shall be proved as against a person accused of an offence. Similarly, Section 26 of Act provides that confession

made by an accused person while in custody of the police cannot be proved against him. However, to the aforesaid rule of Sections 25 and 26 of Act, there is an exception carved out by Section 27 of Act based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly, it was safely allowed to be given in evidence. The scope and ambit of Section 27 of the Act were illuminatingly stated in **Pulukuri Kottayya and others v. Emperor**, AIR 1947 PC 67, which have become locus classicus wherein it was held that Section 27 which is not artistically worded provides an exception to the prohibition imposed by the preceding section and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of Police Officer must be deposed to and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. As observed in this case and other various judicial pronouncements of Hon'ble Apex Court and various High Courts, the well enunciated position of law is that for the applicability of Section 27 of Act, two conditions must be pre-requisite viz.:

- i) Information must be such as has caused discovery of the fact.
- ii) Information must relate 'distinctly' to the fact discovered.

16. Under Section 27 only so much of the information as distinctly relates to the fact revealing thereby discovery is admissible. While deciding applicability of Section 27 of Act, the Court has also to keep in mind, the nature of presumption under illustrations of Section 114 of the Act. The Court can, therefore, presume the existence of a fact which it thinks likely to

have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Keeping in view the above discussed position of law in mind, the question of admissibility of evidence as to suffering disclosure statement by appellant-Rajesh in presence of PW-14 is to be determined. On perusal of testimony of PW-14 it is revealed that his statement on the point of suffering disclosure statement vide memo Ex.PW14/B by the appellant-Rajesh had not been corroborated by any other evidence. PW-HC Surinder Kumar who was one of the attesting witness of both these memos had been given up by the prosecution as an unnecessary witness whereas ASI Kuljit Singh had not been examined. No independent witness is tried to have been joined by PW-14 at the time of preparing these memos. As such, the testimony of PW-14 has not been corroborated by any other evidence on this point. However, even if the same is accepted as such to be true and it is considered that the appellant had made any such disclosure and got recovered Maruti car bearing No.PB-06F9115 still this recovery cannot be considered to be of any incriminating circumstance in view of the fact that the prosecution in our opinion failed to link this vehicle with the murder of the victim. PW-14 himself produced on record Ex.PW14/ZZ a letter written by him to District Transport Officer, Gurdaspur for giving intimation as to the name and particular of registered owner of the vehicle bearing No.PB-06F9115 and as per endorsement made on this letter by the Transport Authority, the above vehicle was registered in the name of one Sawarn Kaur w/o Late Capt. Kartar Singh, r/o Village Mirpur, Tehsil Batala, District Gurdaspur and not in the name of appellant-Rajesh Kumar or any of his family members. The prosecution failed to bring any evidence on record to

prove that the registered owner of the abovesaid vehicle was related with the appellant in any manner whatsoever or she had handed over the custody of the said vehicle to the appellant. She was not even cited and examined as a witness. Unless and until the prosecution produced any direct evidence on record to show that infact this vehicle was used by the appellant in the crime, it could not be connected with the murder of the victim but no such evidence was produced. Therefore, by producing evidence with regard to recovery of maruti car bearing registration No.PB-06F9115 in our considered opinion, the prosecution failed to connect the appellant-Rajesh Kumar with the subject crime.

17. The next circumstance as set up by the prosecution was evidence as to suffering of disclosure statement by appellant-Rajesh Kumar vide memo Ex.PW14/D on 27.07.2014 to the effect that he had removed one pair of gold earrings and one gold ring worn by the victim from her dead body and then had gone to the shop of a Gold Smith situated at Main Bazar, Gurdaspur along with co-accused Monika i.e. his aunt and had sold the same on 20.07.2014 and another disclosure statement (Ex.PW14/E) stated to be suffered on 28.07.2014 to the effect that the said gold jewellery had been sold to Gold Smith namely, Jatinder Kumar for a sum of Rs.6000/-. To prove these allegations, the prosecution had rested its case upon the testimony of Investigating Officer PW-14 SI Harit Sharma who supported the version of the prosecution on this point. It may, however, be mentioned that PW ASI Kuljit Singh who was one of the attesting witnesses to memos Ex.PW14/D and Ex.PW14/E had not been examined by the prosecution and PW HC Rajesh Kumar who was one of the attesting witness to memo Ex.PW14/E had also been given up as an unnecessary witness. Then PW-6

HC Jaspal Singh who was second attesting witness to the memo of disclosure statement Ex.PW14/D did not utter even a single word in his sworn affidavit Ex.PW6/A regarding suffering of any disclosure statement by the appellant-Rajesh Kumar on 27.07.2014. As such the testimony of PW-14 that the appellant-accused Rajesh Kumar had suffered disclosure statements vide memos Exs.PW14/D & PW14/E respectively disclosing that he had sold the gold jewellery belonging to the victim has remained uncorroborated. Further, no recovery was alleged/proved to be effected at the instance of appellant-Rajesh Kumar in pursuance of disclosure statements PW14/D & PW14/E respectively nor any memo of recovery of such jewellery was prepared at the instance of this appellant. However, on a careful appreciation of evidence produced on record, we are of the opinion that the fact that gold jewellery belonging to the victim was removed from her person and had been sold/pledged by the appellant Rajesh to PW-1 Jatinderpal, Gold Smith at Gurdaspur nonetheless stood proved from other evidence produced on record. PW-1 Jatinderpal deposed that on 20.07.2014, the appellant-Rajesh Kumar along with co-accused Monika had come to him and had pledged one ring and one pair of earrings for a sum of Rs.6000/- with him. He proved Ex.P1 carbon copy of the bill issued by him. Though the complete cash book voucher of which Ex.P1 was forming a part had not been brought by this witness however, on overall assessment of his testimony, it is revealed that he had been subjected to pertinent questions of cross-examination but nothing could be extracted from his testimony to show that he was not speaking the truth and the appellant-Rajesh Kumar had not come to his shop on 20.07.2014 and had not pledged the jewellery as told by him. He deposed about identifying the appellant Rajesh at the police

station on 29.07.2014. As such, there is no reason to disbelieve his statement which proves that just next day after the murder of the victim one pair of earrings and one ring had been pledged by the appellant-Rajesh Kumar with PW-1 for a sum of Rs.6000/-. PW-12 Jagdeep Singh had identified the ring Ex.MO/8 and earrings Ex.MO/9 as the jewellery belonging to his sister i.e. the victim and could not be controverted on that point. PW-8 Neeraj Gupta, Proprietor of Raj Jewellers, Gurdaspur proved bills Ex.PW8/A and PW8/B regarding purchase of one pair of earrings and one ring respectively by the parents of the victim and his statement also remained unshattered on the point of genuineness of these bills. The conduct of the appellant-Rajesh of disclosing the name of PW-1 Jatinderpal as the Gold Smith with whom he had pledged the jewellery belonging to the victim is relevant by virtue of Section 8 of the Act and is admissible irrespective of the fact that the statement stated to be made by him contemporaneously with or antecedents to such conduct falls within the purview of Section 27 of the Act or not and as such it emerges that though the testimony of PW-14 as to suffering of disclosure statement by appellant admitting that he had removed jewellery belonging to the victim and had pledged the same with PW-1 cannot be considered to be admissible in evidence but the same can certainly be considered to show conduct of the appellant and is relevant. The remaining evidence produced on record in the form of testimony of PW-1, PW-8 and PW-12 was sufficient to prove that the jewellery Ex.MO/8 and Ex.MO/9 was belonging to the deceased and was worn by her and further that the appellant-Rajesh Kumar had pledged the same with PW-1 shortly after her homicidal death i.e. on 20.07.2014 and in our considered opinion, this was an important incriminating circumstance connecting the appellant-

Rajesh Kumar with the crime of murder of the victim.

18. The prosecution further relied upon evidence in the form of call detail record of cell numbers bearing Nos.9478408272, 9465109452 & 9465407070. As per the prosecution case, the victim was using cell Nos. 9478408272 & 9465109452 whereas the appellant Rajesh Kumar had been using cell phone No.9465407070. The prosecution version was that there used to be exchange of calls between the cell phone Nos.9465407070 and 9465109452 and as on the date of occurrence i.e. on 19.07.2014 also, several calls had been exchanged between these two numbers and at one point of time i.e. at 3:28 PM, the tower location of both these cell numbers was the same and thereafter, no call was made or received on the cell phone No. 9465109452 used by the victim. Even the location of the mobile phone No. 9478408272 was also found under the same tower at the relevant point of time. The learned trial Court after appreciating the evidence produced on record had observed that the cell phone Nos. 9465109452 and 9478408272 stated to be used by the victim and cell phone No. 9465407070 stated to be used by the appellant-Rajesh Kumar were not proved to have been issued in their names but had simultaneously held that the combined reading of tower location record of all these mobile phones showed that the appellant-Rajesh Kumar and the victim had remained in almost same locations on 19.07.2014 at Gurdaspur from 3:28 PM till around 6 PM and thereafter the cell phone numbers used by the victim had become inoperative. It was also observed that the tower location of mobile phone No.9465407070 proved that at about 8:30 PM, the appellant had started his journey from Gurdaspur to Pathankot and on the same night at about 9:30 PM, the location of his cell phone was revealed to be near the place where the dead body of the victim

was recovered which showed that it was the appellant who had eliminated the victim and had thrown her dead body in that area. On an assessment of evidence produced on record in the form of testimonies of PW-2 Bodh Raj and PW-17 Alok Kumar Kaul both employees of BSNL and copies of consumer application forms Ex.PW2/A, Ex.PW2/B and Ex.PW17/A and call detail records Exs.P2 to P4 produced by them it undoubtedly stands proved that the cell phone No.9465109452 was issued in the name of Sushil Kumar son of Raj Kumar, resident of ITI Colony, Gurdaspur who is infact none other than the co-appellant-accused Sushil Kumar i.e. real brother of appellant Rajesh and the cell phone No. 9478408272 was issued in the name of one Sushil Dutta son of Arun Kumar resident of Pathankot whereas the cell phone No.9465407070 was issued in the name of one Ashok Kumar son of Firoj Masih, resident of ITI Colony, Gurdaspur. The learned trial Court on the basis of tower location record of all these cell phone numbers had observed that location of appellant and deceased was the same w.e.f. 3:28 PM as on 19.07.2014 and that the location of cell phone used by the appellant-Rajesh Kumar was near the place of recovery of dead body at about 9:30 PM on that date.

19. It was strenuously argued by learned counsel for the appellant-Rajesh Kumar that the learned trial Court had committed a grave error in connecting him with the offence of murder of the victim on the basis of call detail records of the above-mentioned mobile phone numbers simplicitor which were neither proved to be issued in the name of the deceased nor or the appellant Rajesh Kumar and were in the names of some other persons. There could be no denial of this fact, that these cell phone numbers were not issued in the name of the deceased or appellant Rajesh Kumar. However,

nonetheless we are of the considered opinion that the evidence produced on record proved that the cell phone No.9478408272 and 9465109452 were used by the victim and cell phone No. 9465407070 was used by the appellant Rajesh Kumar on 19.07.2014. In this context, it may be mentioned that PW-9 MHC Wilson Masih, Amritsar City had proved Ex.PW9/A copy of DDR entry No.24 dated 20.07.2014 made on the basis of information given by PW-12 Jagdeep Singh regarding missing of his sister from 19.07.2014. In this report, PW-12 is shown to have disclosed the cell phone number of the victim as 9478408272. PW-12 Jagdeep Singh was not at all controverted by the defence side on the point that the victim had been using cell phone No.9478408272. Therefore, even in the absence of any evidence coming on record to prove that the victim was the recorded official consumer of the cell phone No.9478408272, it can reasonably be presumed that she had been using the abovesaid cell phone number. With regard to cell phone number 9465109452, which as mentioned above is infact shown to be issued in the name of co-appellant Sushil Kumar and with regard to cell phone No.9465407070 issued in the name of Ashok Kumar, it can be stated that though the prosecution failed to bring any connecting evidence on record to prove that the victim and the deceased respectively were consumers of these cell numbers, however, one important fact which cannot be ignored is that the appellants themselves had summoned and had relied upon testimony of DW-3 Jagtar Singh Kanth who was posted as SP (Investigation) in Gurdaspur in the year 2014 and had conducted investigation on the application moved by Pawan Kumar, husband of accused Monika. This witness proved his report Ex.DW3/A as per which he had conducted investigation/inquiry on the complaint of Pawan Kumar and

had found that the murder of the victim was committed by the appellant-Rajesh Kumr alone and the co-accused Gurmeet, Monika and Vijay were innocent. On a perusal of contents of this report, it is revealed that DW-3 had categorically mentioned therein that the victim used the cell phone No.9465109452 and the appellant-Rajesh Kumar had called her on that phone from mobile phone No.9465407070. In this report, it was also mentioned that the call detail record of both the above-mentioned mobile phones had revealed that the appellant-Rajesh Kumar and the victim were in close contact and used to have conversations for long duration of time with each other and further that as on 19.07.2014, the victim had left Amritsar wherein she was staying, for Gurdaspur and had reached Gurdaspur at about 3:30 PM and the location of the cell phone used by the appellant was also of the same tower. As per his report, subsequently the location of cell phone of the appellant was found to be around the same area where the dead body of the victim had been thrown. By choosing to rely upon the report Ex.DW3/A, the appellant Rajesh Kumar is proved to have admitted the fact that in fact he had been using the cell phone No.9465407070 and the victim had been using cell phone No.9465109452 which was issued in the name of appellant-accused Sushil Kumar who is real brother of the appellant-Rajesh Kumar. Though the Investigating Officer did not collect any evidence on that point and committed a lapse in this regard but the benefit of that lapse cannot be given to appellant-Rajesh and rather it can be inferred from the circumstances that since the appellant-Rajesh Kumar and the victim were having love affair, therefore, the sim card No.9465109452 issued in the name of the brother of the appellant-Rajesh Kumar had been provided by the latter to the victim to facilitate conversations between them.

20. The testimonies of PW-2 Bodh Raj and PW-17 who had produced consumer application forms Ex.PW2/A and Ex.PW2/B consumer application forms of mobile phone Nos.9465109452 and 9465407070 and Ex.PW17/A of the mobile phone No.9478408272 and the testimony of PW-2 Bodh Raj who had proved Ex.P-2 to P-4 call detail records and details of tower location of all three mobile phone numbers and testimony of PW-17 who had produced consumer application form of mobile phone No.9478408272 have remained unshattered. PW-2 had also produced in evidence Ex.P-5 requisite certificates under Section 65-B of the Act to prove authenticity/correctness of the call detail record Ex.P-2 to P-4. From the call detail record Ex.P-2 it is revealed that as on 19.07.2014 the location of phone No.9478408272 was found in the area of GNDU (Guru Nanak Dev University), Amritsar till 11:42 AM and then it was found to be in the area of Regent Cinema and bus stand, Amritsar in between 1:15 PM to 1:28 PM and it was found near coaxial building, Gurdaspur at 6:43 PM. Then on a perusal of Ex.P-3 qua detail record of mobile phone No. 9465109452 and Ex.P-4 qua detail record of mobile phone No. 9465407070 it is very much clear that there was frequent exchange of calls between both these numbers. Even during the period from 04.07.2014 till 19.07.2014 more than 100 calls are shown to have been exchanged between these numbers. Then, on 19.07.2014 also as many as seven calls are shown to have been exchanged between these numbers from 11:24 AM till 3:28 PM. The location of both these cell numbers is shown to be in the area of Gurdaspur between 3:17 PM to 3:28 PM and in the area of Coaxial building in between 4 PM to 5:45 PM. All this goes to show that the victim had left Amritsar on 19.07.2014 and had reached Gurdaspur in the noon of 19.07.2014. During that period

not only several calls were exchanged between the phones used by the victim and the appellant but the location of their phones was also found to be in the same area for quite some time. Though the appellant-Rajesh Kumar in his supplementary statement recorded under Section 313 of Cr.P.C. denied that he was user of mobile phone No. 9465407070 and it was issued in his name but he remained silent on the point that victim was user of mobile phone No. 9465109452 which was not only issued in the name of brother of the appellant but was also proved to be used by the victim and several calls were exchanged between these two numbers on the day of occurrence. It was also not his version that he was not having love affair with the victim and further that had not met her on 19.07.2014. It is well settled proposition of law that silence of accused in his statement recorded under Section 313 of Cr.P.C. about matters which he is expected to explain leads to an adverse inference against him. Therefore, the circumstance that the victim had been using the mobile phone issued in the name of brother of the appellant and there were regular and several calls between these numbers not only during the month of July 2014 but on the day of occurrence also unerringly and undoubtedly point out towards the fact that the appellant and victim had met as on 19.07.2014 and thereafter the dead body of the victim was recovered from the vicinity wherein as per the location of cell phone of the appellant-Rajesh, he was also found to be present on the night of 19.07.2014 and this circumstance can certainly be stated to be an important incriminating circumstance as against the appellant.

21. Learned counsel for the appellant argued that the prosecution failed to produce any evidence to prove that the appellant-Rajesh Kumar

had motive to kill the victim. So far as the motive is concerned, as discussed above, the prosecution case was that there was a love affair between the appellant-Rajesh Kumar and the victim and the appellant was offended with the victim on the issue of performing marriage between them and also suspected infidelity against her and due to that reason killed her. No direct evidence has come on record on that point. PW-12 while recording his statement before the police on 22.07.2014 had alleged that the victim had complained that the appellant used to harass her and pressurize her to marry with him. In his sworn deposition also he stated so. Though the testimony of PW-12 on this point can be stated to be hearsay in nature only and on the basis of the same, no motive can be attributed to the appellant but in our opinion, inability on the part of the prosecution to establish motive in such a case like the present one which is based on a circumstantial evidence cannot be considered to be fatal. In this regard, reliance can be placed upon the observations made by Hon'ble Apex Court in **Sukhpal Singh v. State of Punjab**, 2019 SCC Online SC 178. The evidence on record establishes that it was the appellant-Rajesh Kumar who had committed the murder of the victim and, therefore, absence of proof of motive cannot be stated of any consequence in such circumstance. In view of the discussion as made above, we feel no hesitation in observing that though the prosecution failed to bring any cogent, convincing and reliable evidence of such nature on record which could be acted and relied upon beyond doubt to prove that the appellant-Rajesh Kumar had suffered disclosure statements admitting his involvement in the crime of murder of the victim and had got discovered such facts or such recoveries which could be connected with the crime. However, sufficient incriminating circumstance in the form of evidence as

to removal of jewellery belonging to the victim from her dead body and sale thereof by the appellant-Rajesh Kumar in favour of PW-1 and in the form of call detail records of the mobile phones respectively used by the victim as well as the appellant-Rajesh Kumar, have come on record which unerringly point out towards the fact that the appellant-Rajesh Kumar was having a love affair with the victim and used to regularly conversate with her and as on 19.07.2014, the victim had met him and thereafter she was found to be dead and her dead body was recovered on 20.07.2014 from the same area wherein the presence of accused was also established as on the night of 19.07.2014. All these circumstances unerringly point towards the involvement of the appellant-Rajesh Kumar in the murder of the victim. With these observations, we are inclined to hold that the findings given by learned trial Court as of the accused for commission of offence punishable under Section 302 of IPC do not warrant any interference and deserve to be upheld.

22. Now coming to the charge under Section 376 of IPC, the learned trial Court had held the appellant-Rajesh Kumar guilty and convicted him thereunder on the basis of the evidence produced on record to the effect that semen was detected on the vaginal swabs taken from the dead body of the victim. At the cost of repetition, it may be stated that it was the version of the prosecution itself that there was love affair between the appellant-Rajesh Kumar and the victim. The victim had herself come to meet the appellant-Rajesh Kumar at 19.07.2014 from Amritsar to Gurdaspur. Several calls had been exchanged between them on that day and even earlier also on their phones. Medical evidence produced on record in the form of testimony PW-7 Dr. Lashkar proves that there was no evidence

of the victim having been sexually assaulted. The injuries which were found on the dead body of the victim were also not such that could be stated to have been sustained while resisting the act of sexual intercourse being committed upon the victim. No injury was found on the vagina, breast or thighs of the victim. The victim was having her menstruation as on 19.07.2014 and it was due to that reason blood mixed fluid was found to be coming out from the vagina while conducting postmortem examination on the dead body of the victim. To prove the guilt of the appellant for commission of offence committing rape upon the victim, the prosecution was required to prove that it was the appellant who had ravished the victim and further that she was subjected to physical intercourse against her will, without her consent, by obtaining her consent by putting her in fear of death or hurt or with her consent when she was unable to understand the nature and consequence of the act to which she gave consent. No evidence of any such nature had however, been, produced by the prosecution on record. Strangely, even the semen detected on the vaginal swab of the victim had not been subjected to DNA profiling with the DNA sample of the appellant for the purpose of proving that the seminal stains detected on the vaginal swab of the victim were that of the appellant-accused Rajesh Kumar and none else. In these circumstances, the finding as given by learned trial Court as to holding the appellant-accused Rajesh Kumar guilty for commission of offence punishable under Section 376 of IPC cannot be stated to be sustainable and accordingly, the same are set aside. Resultantly, the appellant-accused Rajesh Kumar has become entitled to be acquitted of charge under Section 376 of IPC.

23. Further, the circumstance that the location of mobile phone

used by the appellant-Rajesh Kumar on the night of 19.07.2014 was found to be of the same area from where the dead body of the victim had been recovered, strengthens the prosecution plea that it was he who had thrown the dead body of the victim in that area obviously to cause disappearance of evidence of murder of the victim and to screen himself from legal punishment and, therefore, we see no reason to interfere with the findings of guilt of appellant Rajesh Kumar as recorded under Section 201 of IPC. Further, so far as charge under Section 404 of IPC is concerned, as discussed above, it stands proved that the appellant-Rajesh Kumar had pledged the jewellery worn by the deceased at the time of her death with PW-1 Jatinderpal, Gold Smith on 20.07.2014 and PW-1 had handed over the same to the police which was so identified by the brother of the victim. The act and conduct of the appellant-Rajesh Kumar of pledging the jewellery of the victim with PW-1 is sufficient to prove that it was he who had removed this jewellery from the dead body of the victim after her death and had misappropriated the same with the dishonest intention to convert the same to his own use by taking a sum of Rs.6000/- from PW-1. As such, the learned trial Court had committed no error in recording findings of guilt of the appellant-Rajesh Kumar under Section 404 of IPC and accordingly the same are upheld.

24. Let us now discuss the question of involvement of appellant Vijay and Sushil in the crime. As mentioned above, the learned trial Court had come to the conclusion that there was sufficient evidence against the appellant-Rajesh Kumar to prove that he had actually murdered the victim. So far as the appellants-Vijay Kumar and Sushil Kumar are concerned, it was held qua them that they had entered into a criminal conspiracy with the

appellant-Rajesh Kumar after the murder of the victim and in pursuance thereof, had misappropriated property belonging to the victim from her dead body and caused disappearance of evidence connected with the offence of rape and murder by helping the appellant in throwing dead body of the victim in the bushes of Village Sujanpur. They had not taken any active part in the murder of the victim namely there was no *actus reus* on their part. Therefore, the moot question in this appeal qua both these appellants is as to whether the prosecution has been able to prove their involvement in this case with the aid of Section 120-B of IPC.

25. The evidence of criminal conspiracy is defined under Section 120-A of IPC as per which when two or more persons agreed to do, or caused to be done, an illegal act or an act which is not illegal by illegal means, such an agreement is designated as conspiracy. It is manifestly clear that for holding a person as a conspirator, there has to be an existence of an agreement between two or more persons either to do an illegal act or to do a legal act through illegal means. An offence of conspiracy cannot be deemed to have been established on mere suspicion, surmises or inferences which are not supported by cogent or acceptable evidence. Independent evidence of criminal conspiracy is generally not available and its existence is a matter of inferences which are normally deduced from the acts of the parties in pursuance of performance in common between the conspirators. To prove criminal conspiracy, there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence or where the factum of conspiracy is sought to be inferred from the circumstances, the

prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference or an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. Reference in this regard can be made to **Central Bureau of Investigation, Hyderabad v. K.Narayana Rao**, (2012) 9 SCC 512.

26. In the present case, there is no witness to the conspiracy alleged to be hatched by these appellants with the appellant-Rajesh Kumar. We have, therefore, to see from the circumstantial evidence or other evidence produced as to whether the charge of conspiracy is proved against them or not. The conviction of the appellants Vijay Kumar and Sushil Kumar is recorded by the learned trial Court mainly on the basis of disclosure statement alleged to have been suffered by the appellant Rajesh Kumar vide memo Ex.PW14/D and disclosure statements stated to be suffered by the appellant-Sushil Kumar vide memo Ex.PW14/U and by appellant-accused Vijay Kumar vide memo Ex.PW14/R leading to recovery of belongings of the victim. Now it is to be examined as to whether conviction had rightly been recorded by the learned trial Court on the basis of such evidence.

27. Learned counsel for the appellants vehemently argued that the statements suffered by the appellant-co-accused Rajesh Kumar against these two appellants and the confessional statements alleged to be recorded by these appellants cannot be considered to be admissible in evidence as they

were admittedly recorded after the arrest of these appellants and when they were in police custody. He further argued that these disclosure statements did not even fall within the ambit of Section 10 of the Act. On a careful scrutiny of the evidence available on record, we are of the considered view that the prosecution has failed to prove that the appellants-Sushil Kumar and Vijay Kumar had conspired with the appellant Rajesh for causing disappearance of dead body of the victim after her murder or for removing her belongings. Firstly, referring to the evidence as to suffering of disclosure statement by appellant-Rajesh Kumar as to involvement of both these appellants in the crime, it may be mentioned that as per the prosecution version, the appellant Rajesh Kumar had suffered disclosure statement on 25.07.2014 vide memo Ex.PW14/B wherein while making other disclosures, he stated that while he was having a verbal altercation with the victim after committing rape upon her, then the appellant Sushil Kumar alias Lovely had reached there and then both of them had hatched a conspiracy and had strangulated the victim and threw her dead body. The appellant-Rajesh Kumar was then alleged to have retracted from his previous statement Ex.PW14/D and was alleged to have recorded his disclosure statement vide memo Ex.PW14/E on 28.07.2014 to the effect that he himself had committed murder of the victim in the garage of his house and then had called the appellant-Sushil Kumar alias Lovely who was his real brother at home and the appellant-Vijay Kumar alias Sonu also come there by chance and with the help of them he had taken the dead body of the victim towards Village Sujanpur side and had thrown the same and had also handed over belongings of the victim to both of them. As already discussed, both these disclosure statements have been held by us to be not admissible

in evidence due to the reason that no new or distinct fact linking the appellant-Rajesh Kumar with the subject offence was proved to have been discovered in pursuance thereof. Therefore, these disclosure statements cannot be stated to be admissible as against the appellants-Sushil Kumar and Vijay Kumar also. It is even otherwise well settled proposition of law that though the confession of a co-accused can be taken into consideration but it is not in itself a substantive evidence and is a very weak type of evidence and in the absence of other acceptable corroborative evidence, it is not safe to convict the co-accused on the basis thereof. Reference in this regard can be made had to the observations made by Hon'ble Apex Court in authorities cited as **Hari Charan Kurmi and another v. State of Bihar**, AIR 1964 SC 1184 and **Ram Chander and another v. State of U.P.**, AIR 1957 Supreme Court 381. Both these citations were relied upon by Hon'ble Apex Court in a recent pronouncement cited as **Subramanya v. State of Karnataka**, 2022 AIR (SC) 5110 wherein it was observed that confession of a co-accused was a evidence of very weak type and did not come within the definition of evidence contained in Section 3 and could not supporting point or the sole basis of conviction. Applying this proposition of law in the peculiar circumstances of the case when the disclosure statement stated to be suffered by the appellant-Rajesh Kumar even otherwise is not proved to be admissible in evidence, we are inclined to hold that this piece of evidence did not help the prosecution in connecting the appellants Sushil Kumar and Vijay Kumar with the subject offences and for the purpose of holding that the appellants had hatched any conspiracy with the co-appellant Rajesh Kumar.

28. It is also required to be mentioned that Section 10 of the Act

which is an exception to the general rule that while permitting the statement made by one conspirator to be admissible as against other conspirators, restricts it to be the statement made by one conspirator only during the period when the agency existed. The principle is no more *res integra* that any statement made by an accused after his arrest whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Act. In **State of Gujarat v. Mohammed Atik and others**, (1998) 4 SCC 351 it was observed that once the common intention between the conspirators ceased to exist, then any statement made by a former conspirator thereof cannot be regarded as one made in reference to his common intention with the other conspirators. In other words, the post arrest statement made to a police officer whether it is a confession or otherwise, touching his involvement in the conspiracy would not fall within the ambit of Section 10 of the Act meaning thereby that if one of the conspirators makes any statement in reference to involvement of other conspirators/accused in a crime while being in custody of the police, such statement would not be considered to be relevant. Therefore, the statement alleged to have been made by the appellant-Rajesh Kumar vide memos Ex.PW4/A and Ex.PW14/D respectively qua the involvement of appellants-Sushil Kumar and Vijay Kumar in the act of throwing away dead body of the victim cannot be considered to be relevant and falling within the ambit of Section 10 of the Act. Reliance in this regard can also be placed upon **Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra**, AIR 1965 SC 682 wherein it was observed that Section 10 of the Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of common intention between the

conspirators. If so, once the common intention ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made 'in reference to their common intention'. In other words, a post arrest statement made to a police officer whether it is a confession or otherwise, by an accused, touching his involvement in the conspiracy would not fall within the ambit of Section 10 of the Act. In view of this discussion, we are inclined to hold that the disclosure statements stated to be suffered by the appellant Rajesh Kumar as against the appellant-Sushil Kumar and Vijay Kumar could not be considered to be relevant and admissible in evidence and could not be acted and relied upon to prove that they had hatched any conspiracy with each other thereby proving their complicity in the crime.

29. So far as the disclosure statements stated to be suffered by the appellant Vijay Kumar vide memo Ex.PW14/R on 04.08.2014 thereby leading to recovery of one black colour bag/kit, two suits and a sum of Rs.1200/- vide memo Ex.PW14/S allegedly belonging to the victim and kept concealed in a trunk of his room and disclosure statement stated to be suffered by the appellant-Sushil Kumar on 05.08.2014 leading to recovery of one wrist watch and two mobile phones vide memo Ex.PW14/U belonging to the victim are concerned, it may be mentioned that though as per prosecution case, these memos were attested by ASI Kuljit Singh and HC Surinder Kumar and HC Rajesh Kumar apart from PW-14 SI Harit Sharma, Investigating Officer, however, none of these three witnesses was examined by the prosecution for the reasons best known and the version of prosecution on this point rests upon the singular statement of PW-14 SI Harit Sharma. Undisputedly, there is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of

acceptance and the presumption that every person acts honestly applies as much in favour of the police official as any other person. However, rule of prudence requires more careful scrutiny of their evidence. On assessing the testimony of PW-14 on this principle, we find that apart from the fact that his statement has not been corroborated by any other evidence on the point that appellants-Sushil Kumar and Vijay Kumar suffered disclosure statements and got recovered articles belonging to the victim, rather the same stands falsified on this point from the testimony of PW-6 HC Jaspal Singh who admittedly on 20.07.2014 was present at the spot from where the dead body of the victim had been recovered. During cross-examination, this witness stated that he had accompanied the police party to the place where the dead body was lying on 20.07.2014 and stated that he had stayed there for about two and half hours. He stated that the surrounding area of the said spot had been searched by the police and from a distance of about 10-15 ft. from that place, two ladyiessuits, one watch, one purse and two mobile phones were recovered by the police party. Though PW-14 denied that any such recovery was effected from the spot. However, the testimony of PW-6 had remained unshattered on that point. The prosecution did not seek any opportunity to recall and re-examine this witness so as to confront/contradict him on that part of his testimony wherein he had stated that the belongings of the deceased were recovered from nearby the spot where the dead body was lying. His statement, therefore, proves that the recovery of female purse/bag, two mobiles, one watch and suits had not been effected at the instance of either of the two accused namely Vijay Kumar alias Sonu and Sushil Kumar alias Lovely and the same had been planted upon them to involve them in the subject crime and, therefore, the

evidence led by PW-14 on this point cannot be acted and relied upon beyond doubt. No other evidence could be produced on record by the prosecution to connect the appellants-Sushil Kumar and Rajesh Kumar with the offences punishable under Section 120-B of IPC, 201 and 404 of IPC and, therefore, in our opinion, the prosecution had failed to bring any cogent and convincing evidence either circumstantial or direct of such nature which could be considered to be sufficient to prove the involvement of the appellants-Sushil Kumar and Vijay Kumar. Therefore, the findings as to guilt of both these accused for commission of offences punishable under Sections 120-B, 201 & 404 of IPC are not sustainable and they become liable to be reversed and set aside. At this juncture, it is considered to be relevant to mention that though the appellant-Rajesh Kumar had also been held guilty and convicted under Section 120-B of IPC but on applying the same reasonings as applied in the case of appellants-Vijay Kumar and Sushil Kumar who were allegedly co-conspirators, we have no hesitation to hold that the prosecution failed to prove that the appellant-Rajesh Kumar had entered into any criminal conspiracy with these appellants or with any other person at any point of time. Therefore, so far as the charge under Section 120-B of IPC is concerned, the same cannot be stated to be sustainable as against appellant-Rajesh Kumar.

30. In **Uppa alias Manjunatha v. State of Karnataka**, (2013) 14 SCC 729 it was held by Hon'ble Apex Court that when an accused is held guilty and sentenced to imprisonment, confirmation of sentence by the High Court is justifiable only in the event of giving sound reasons upon analysis of material evidence. On re-appreciating the entire evidence produced on record and in view of reasoning as recorded above, we are of the opinion

that the circumstances established on record rule out any possibility that apart from the appellant-Rajesh there could be any other person who had committed the murder of the victim. The circumstances from which an inference of guilt is drawn as against the appellant-Rajesh are cogently and firmly established and unerringly point towards his guilt of committing murder of the victim and also prove that after causing death of the victim, he had removed jewellery from the dead body of the victim and had pledged the same for a sum of Rs.6000/- thereby criminally misappropriating the same and had also thrown her dead body in the bushes in the area of Village Sujanpur to cause disappearance of evidence of offence of murder against him and to screen himself from legal punishment and thereby was proved to have committed the offences punishable under Sections 201, 302 and 404 of IPC. Therefore, the findings as to guilt of the appellant-Rajesh Kumar for commission of offences punishable under Sections 201, 302 and 404 of IPC as recorded by learned trial Court are upheld and affirmed and appeal filed by the appellant Rajesh assailing conviction under these sections is dismissed. However, as per the discussion as made above, the guilt of the appellant-Rajesh for commission of offences punishable under Sections 120-B and 376 of IPC has not been established beyond doubt and, therefore, the findings as given by learned trial Court as to guilt of the appellant-Rajesh under these sections are reversed and set aside. Consequently, he is acquitted of charges under Sections 120-B and 376 of IPC and his appeal is accepted to that extent.

31. It is further held that the prosecution failed to produce sufficient, cogent and convincing evidence of such nature on record which can be acted and relied upon beyond doubt to prove that the appellants-

accused Vijay Kumar and Sushil Kumar had entered into any criminal conspiracy with the appellant-Rajesh, had caused disappearance of any evidence of the offence relating to the murder of the victim and had criminally misappropriated any property belonging to the victim by removing the same from her dead body after her death. Therefore, the appeal is allowed qua the appellants-Vijay Kumar and Sushil Kumar and they are acquitted of the offences for which they had been held guilty and convicted. They be released forthwith if in custody.

32. Before concluding, we also consider it appropriate to deal with one more argument as raised by learned counsel for the appellant-Rajesh Kumar who had submitted that the learned trial Court could not award rigorous imprisonment for life to be continued till remainder of natural life of the appellant. The learned trial Court while holding the appellant-Rajesh Kumar guilty for commission of offence punishable under Section 302 of IPC had awarded rigorous imprisonment for life which is to continue till remainder of his natural life. There is force in the argument of the appellant as in view of decision reported in **Union of India v. V. Sriharan @ Murugan and others**, 2016 (7) SCC 1, the power to impose a modified punishment providing for any specific term of incarceration or till the end of convict's life as an alternate to death penalty can be exercised only by the High Court or the Supreme Court and not by any other inferior Court. Therefore, the impugned order of sentence as recorded by learned trial Court to the extent to which it awards sentence for imprisonment of the remainder of the life to the appellant-Rajesh Kumar for offence punishable under Section 302 of IPC, cannot be sustained. Accordingly, we modify the sentence so imposed upon the appellant-Rajesh Kumar from rigorous

imprisonment for remainder of his natural life to rigorous life imprisonment.

No interference on the order of sentence qua remaining offences is required.

(RITU BAHRI) JUDGE	(MANISHA BATRA) JUDGE
24.01.2023 manju	
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No