IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 379 of 2006

Mst. Sahera Begum
-Vs-
The State of West Bengal

For the Appellant	: Mr. Navanil De Mr. Rajeshwar Chakraborty Mr. Srinjan Ghosh Mr. Subhrajit Dey MS. Monami Mukherjee
For the State	: Mr. Joydeep Roy Ms. Sujata Das
Heard on	: 16.11.2023, 29.11.2023, 19.01.2024
Judgment on	: 20.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment dated 19.04.2006 and order dated 20.04.2006 passed by the Learned Additional Sessions Judge, 6^{th} Court, Midnapore (W) convicting the appellant under Section 201 of the Indian Penal Code and sentenced her to suffer simple imprisonment for a term of 3 years and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for 2 months more in connection with Sessions Trial Case No. XLV/September/2002.

2. The prosecution case in brief was that on the basis of a written complaint written by one Asgar Ali, Kharagpur (Local) P.S. Case No. 156 dated 20.07.1994 was started. It was alleged that on 19.07.1994 at about 03/03:30 am, Asgar Ali went to bed. All of a sudden, he heard the shout of his elder brother namely Sk. Jamal Uddin. Asgar Ali woke up and headed towards the house of his elder brother namely Sk. Jamal Uddin. Sk. Jamal Uddin caught hold of Asgar Ali and stated before him that Ohara Ali had struck him in his stomach with a knife and ran away. Thereafter Jamal Uddin fell down. He was bleeding profusely. The complainant with other local people took him to the hospital but on his way to hospital, Sk. Jamal Uddin succumbed to his injuries. It was further alleged that the wife of Sk. Jamal Uddin namely Sahera Begum (present appellant) had an illicit relationship with Sohara Ali and both the accused persons conjointly have murdered Sk. Jamal Uddin.
3. Based on the complaint Kharagpur L. P. Case No. 156/94 dated 19/20.07.1994 was instituted. Investigation pursued and on completion charge-sheet was filed.
4. Charges under Section 302/34 of the Indian Penal Code were framed against the accused persons on 05.01.2002 and the charges were read over and explained to them to which they pleaded not guilty and claimed to be tried.
5. In order to bring home the charges, the prosecution examined as many as 12 witnesses whereas the defence examined none.
6. The Learned Advocate for the appellant submitted as follows:-

i. At the outset, the Learned Trial Court by its judgment dated 19th April, 2006, observed:

> *"But in this case, we did not find any direct evidence as to the commission of offence by the accused Sahera but on considering the evidence on record it is found that the accused Sahera Begum has committed an offence under Section 201 of the Indian Penal Code"*

ii. The Learned Trial Judge opined:

> "*But in this case, we did not find any direct evidence as to the commission of offence by the accused Sahera but on considering the evidence on record it is found that the accused Sahera Begum has committed an offence under Section 201 of the Indian Penal Code"*

iii. The appellant namely Sahera Begum was convicted for commission of offence under Section 201 of the Indian Penal Code and was sentenced to suffer simple imprisonment for 3 years and to pay a fine of Rs.500/- in default further simple imprisonment for 2 months.

The Learned Trial Judge convicted the present appellant on the ground that she had an intention to remove the blood stained or any blood mark from the wearing apparels of the deceased or from the mud by pouring water.

Although the complainant, i.e., P.W.1, did not mention anything about such a fact in his written complaint. Per contra, P.W.1, in his cross-examination, stated that he had mentioned such a fact in the written complaint. However, P.W.1 mentioned in his deposition that he tried to bring water and poured it upon the deceased. He further deposed that the appellant, namely Sahera Begam, poured water from the pitcher on the head of the deceased.

On the other hand, P.W.2 namely Osman Ali was a co-villager of the complainant(P.W.1). Though he was declared hostile by the prosecution yet he stated a surprising fact in his cross-examination that when he went to the house of the deceased, he found that the appellant was pouring water on his mouth.

P.W.6 namely Sk. Abdul Sattar, who wrote the written complaint, stated in his cross-examination that when he went to the house of the deceased at that time Jamal(deceased) and Asgar (P.W.1/Complainant) and others stated to him that some unknown person assaulted Jamaluddin i.e., the deceased and after assault the miscreant fled away. Surprisingly, P.W.6 was not declared hostile by the prosecution. Therefore, if the deceased was assaulted by some unknown miscreant, then there is no question of screening the unknown offender from legal chastisement by pouring water on the head of the deceased.

P.W.8, being the relative of the deceased, who was later declared hostile by the prosecution, stated in her cross-examination that she found the appellant was pouring water on the head of the deceased by a dishhanri. Further, she uttered the same fact before the Learned Trial Court when she was asked by the Learned Trial Judge.

Thereby, the statements of the prosecution witnesses are clearly contradictory in nature, and thereby, the alleged story of pouring water upon the deceased cannot be relied upon at all. If P.W.1 tried to bring water and poured it upon the deceased, then how would the present appellant be convicted for removing the blood stained or any blood mark from the wearing apparel of the deceased or from the mud by pouring water?

iv. The appellant states that the Learned Trial Judge convicted her on the ground that she had an intention to remove the blood stained or any blood mark from the wearing apparels of the deceased or from the mud by pouring water. The story of pouring water on the head of the deceased first emerged from the deposition of P.W.1. Although P.W.1 being the complainant did not utter anything about such a fact in his written complaint.

From the aforesaid it can be seen that as such there are some yawning infirmities in the first information report filed by the complainant i.e., P.W.1 and in the deposition before the Court. In the deposition before the Court, he has tried to improve the case by deposing that he had seen the appellant poured water from the pitcher on the head of the deceased. The aforesaid was not disclosed in the F.I.R. Per contra, in the cross-examination, he stated that he mentioned such a fact in the F.I.R. At this stage, it is to be noted that P.W.1 has specifically and categorically stated that he tried to bring water and poured it upon the deceased. Therefore, in the facts and circumstances of the case, it is not safe to convict the appellant solely on the evidence of P.W.1, who deposed for the first time in court, which has no legal value as it was never stated before the investigating officer.

v. In this regard, The Hon'ble Supreme Court in the case of Darshan Singh v. State of Punjab, reported in 2024 SCC OnLine SC 17 was pleased to observe in Paragraph- 32:

"If the PWs had failed to mention in their statements u/s 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance."

vi. The appellant states that P.W.8, who is the neighbour of the deceased and the complainant, stated in the cross-examination that she found the appellant was pouring water on the head of the deceased by a dishhanri, but the prosecution disbelieved the version of P.W.8, and she was declared hostile by the prosecution.

vii. The appellant further states that except P.W.1 and P.W.8, no other witness uttered a single word regarding such a fact either in their statement recorded under Section 161 of the Code of Criminal Procedure by the investigating agency or before the Learned Trial Judge which casts a shadow of doubt upon the prosecution story of pouring water on the head of the deceased.

viii. At this juncture, the appellant wants to extract Section 201 of the Indian Penal Code for better appreciation:

> *"**201. Causing disappearance of evidence of offence, or giving false information to screen offender** - Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,*
>
> *if a capital offence shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*
>
> *if punishable with imprisonment for life and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*
>
> *if punishable with less than ten years imprisonment and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."*

ix. The first paragraph of the section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation.

Section 201 of the Indian Penal Code deals with the following 2 types of offences:

(1) Where the offender causes the evidence of the commission of the offence to disappear.

(2) Where the offender gives any information respecting the offence which he knows or believes to be false.

To bring home an offence under Section 201 of the Indian Penal Code, the ingredients to be established are:

(i) committal of an offence;

(ii) person charged with the offence under Section 201 of the Indian Penal Code must have the knowledge or reason to believe that an offence has been committed;

(iii) person charged with the said offence should have caused disappearance of evidence; and

(iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false.

It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 of the Indian Penal Code, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown.

x. In the aforesaid context, the appellant may profitably quote the following observations made by the 3 Judges Bench of the Hon'ble Apex Court in Paragraph-14 in Palvinder Kaur Vs. State of Punjab, reported in (1952) 2 SCC 177-

> *"In order to establish the charge under Section 201 of the Indian Penal Code, it is essential to prove that an offence has been committed-mere suspicion that it has been committed is not sufficient that the accused knew or had reason to believe that such offence had been committed, and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false."*

xi. In view of the aforesaid judgment, the Hon'ble Apex Court in the case of V.L. Tresa v. State of Kerala, reported in (2001) 3 SCC 549, was pleased to observe in Paragraph -14:

> *"Having regard to the language used, mere suspicion would not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown. The foremost necessity being that the accused must have the knowledge or have reason to believe that such an offence has been committed. This observation finds support in the oft-cited decision of this Court in Palvinder Kaur v. State of Punjab."*

xii. Subsequently, the Hon'ble Supreme Court in the case of Padmini Mahendrabhai Gadda v. State of Gujarat, reported in (2017) 14 SCC 587, observed two different views in regard to Section 201 of the

Indian Penal Code. In Paragraph- 19 and 27, the Hon'ble Justice N.V. Ramana was pleased to observe:

> *"19. Criminal trial can never be a fanciful flight of imagination. While considering the charge under Section 201 of the Indian Penal Code, it is mandatory for the prosecution to prove that the accused actively participated in the matter of disappearance of evidence and with an intention to screen the offender. To convict the accused for the offence punishable under Section 201 of the Indian Penal Code, it is necessary that all the ingredients are satisfied pointing out at the guilt of the accused and a mere suspicion is not sufficient. Accused can never be convicted on the basis of probabilities or on assumptions and presumptions. In the light of the above, it has to be examined whether the appellant has committed the offence punishable under Section 201 of the Indian Penal Code.*
>
> *27. In view of the above discussion, I am of the considered opinion that the trial court went wrong in convicting the appellant without there being any finding with regard to the mens rea of the accused as settled by this Court in several cases. Particularly, when a specific finding is recorded by the trial court that there is no evidence for convicting the accused under Section 201 IPC, it ought not to have convicted her for the same more on assumptions and presumptions"*

xiii. Per contra, in Paragraph-47, the Hon'ble Justice Prafulla C. Pant was pleased to observe:

> *"In the light of the circumstances, from the evidence on record, in my opinion it is clearly established that by making false statement by the appellant to her own brother PW 3 (complainant) as to whereabouts of the deceased, and not allowing PW 34 Ami to use the bathroom attached to the bedroom (where dead body was concealed), the appellant has given false information to screen*

offender (A-1). As such, she was rightly held guilty by the courts below in respect of charge of offence punishable under Section 201 IPC. Some observations of the trial court against its own finding as to guilt of A-2 are not relevant for the decision of this Court, particularly when judgment of the trial court stands merged in the judgment of the High Court which is impugned before us and, as such, the appellant cannot be acquitted from the charge of offence punishable under Section 201 IPC. I agree with the principle of law laid down by this Court, as referred to by My Lord Hon'ble N.V. Ramana, J. but finally in each case the facts and evidence of that particular case are to be seen to come to the conclusion as to whether the ingredients of a particular offence have been made out or not."

xiv. It was further humbly submitted that the strongest suspicion against an accused person will not amount to legal proof to convict under Section 201 of the Indian Penal Code. There must have been the intention of screening the offender. Moreover, the intention to screen the offender must be the primary and sole object of the accused which is totally lacking in the present case.

7. The Learned Advocate for the State submitted that the appellant was arrested from her house who had tried to erase the evidence of crime committed by the co-convict and had secretly hidden the offending weapon which later on was recovered at her instance following the provisions under Section 27 of the Indian Evidence Act. The prosecution was successful in proving its case and the appeal shall be dismissed.

8. A circumspection of prosecution witnesses revealed as follows:

i. PW-1 in his deposition stated that his elder brother and PW-1 used to reside separately in two houses. The two houses were intervened by a village path. Breadth of the said road was 5 ft. As he was sleeping in his house, he heard a clamour from the house of his elder brother Jamal which awakened him while his elder brother Jamal who was calling by his name Asgar – *"Asgar asbi, Asgar asbi"*. On hearing such call he went to the house of his elder brother Jamal. As he was about to enter into his house, his elder brother fell upon him and stated to him that Sorab @ Sohorab @ Soharab fled after assault. Thereafter PW-1 made the victim sit on the floor of the room and tried to bring water and poured upon his elder brother. His 'boudi' Saira @ Sahera Begum poured water of pitcher on the head of his elder brother. Meanwhile, the adjoining people namely Osman Ali, Akbar Ali, Joynal Ali, Kamiruddin Ali, Sattar Ali and others assembled. They also saw the condition of his elder brother Jamal. He saw his elder brother in stabbed condition and blood was oozing from the belly of his elder brother. The persons who assembled also saw his elder brother in injured condition and blood was oozing out from the belly of his elder brother. He and his elder brother narrated the fact to the persons who assembled there that Soharab assaulted him with a knife in the abdomen. At that time the persons who assembled there apprehended accused Soharab Ali and people tried to shift his elder brother to Basantapur nursing home by a trolley. Thereafter, on the way to Basantapur nursing home his elder brother succumbed to his injury on Bombay Road i.e. NH-6. PW-1 lodged the written complaint at Kharagpur local police station. He narrated the fact to Abdul Sattar who wrote the written complaint as per his instruction on his presence. After writing it was read over and explained to PW-1. Knowing it to be correctly written he put his signature on it. He knew the handwriting and signature of Abdul Sattar. Written complaint was marked as Ext. 1. Police made inquest report in his presence. PW-1 identified his signature on the inquest report which was marked as Ext. 2. Police arrested Soharab and Sahera Begum from the village as they were apprehended by the villagers. Police interrogated accused Soharab Ali and Sahera Begum in their presence. Police recovered one knife from the house of his elder brother Jamal at the instance of accused Soharab Ali and his 'Boudi' who were accused in this case. Police seized the knife by preparing a seizure list. PW-1 identified the knife which was marked as Mat Ext. I. In the seizure list accused Soharab and his 'boudi' put their respective L.T.I.s. Signatures of the witnesses in the seizure list was marked as Ext. 3. On the fateful night in the house of his deceased elder brother, his elder brother and his 'boudi' along with one son and one daughter were present.

ii. During cross-examination PW-1, inter alia, stated that he did not keep any information about the worldly affair of his deceased elder brother Jamal. In their village there was no person known by the name of Soharab Ali besides the accused. After demise of his elder brother the son and the daughter were living with him and they were not living with accused Sahera Begum. He would produce the son and daughter of his deceased elder brother. He could not state the date on which the incident took place. They informed the matter to the panchayet Pradhan who also came there. PW-1 did not mention in the written complaint that he was pouring water to the mouth of his elder brother. It is a fact that he did not mention in the written complaint that on hearing his 'shout' the adjoining villagers namely Osman Ali, Akbar Ali, Joynal, Sk. Kamiduddin and Sattar Ali came to the house of his deceased elder brother. PW-1 then stated he did not remember whether he stated that Soharab assaulted his elder brother with a knife on his belly. He did not remember at present whether he stated in the written complaint that accused Soharab @ Saharab @ Sorab Ali assaulted his elder brother with a knife as there was an illicit relationship with his 'boudi' Sahera @ Saira Begum and accused Saharab @ Soharab Ali.

iii. PW-1 on 03.03.2006 in his examination-in-chief stated on the previous day, he identified one knife fitted with black coloured butt. However, it was wrongly identified by him in Court as the incident took place long before. He identified that knife. The said knife was fitted with red coloured but the said knife wasd marked as Mat Ext. II.

iv. PW-2 was declared hostile on the basis of a petition file by the Learned P.P. – in – charge. He was permitted to cross-examine.

v. PW-2 in his cross-examination stated when he went to the house of Jamaluddin he found Jamaluddin was lying outside his house and the place where he was lying was stained with pool of blood. When he went to the house of Jamaluddin he found Saira @ Sahera Begum was pouring waster in his mouth. PW-2 in his cross-examination further stated that they also asked Jamaluddin about incident and Jamaluddin stated then one unknown person assaulted him. PW-1 went to the house of Jamaluddin after his 4/5 minutes arrival. PW-2 had not seen that any knife was seized at the house of Jamaluddin at the instance of any person in presence of police. So long police were there they were present.

vi. PW-3 was declared hostile by the prosecution.

vii. PW-3 in his cross-examination stated he was not examined by Investigating Officer. The house of Soharab @ Saharab was situated from the house of Jamal at a distance of 1½ - 2 bigha. In their village there were two persons in the name of Soharab.

viii. PW-4 was declared hostile by the prosecution.

ix. PW-4 in his cross-examination stated on fateful day he did not converse with Asgar Ali or Jamaluddin. Neither Jamaluddin nor Asgar stated anything to him regarding the incident.

x. PW-5 in his deposition stated that he found a stab injury on the belly of Jamaluddin.

xi. PW-6 in his deposition stated on hearing a shout he woke up from sleep and went to the house of Jamaluddin and he did not find any injury in his body. The location of injury was tied up with a cloth. He wrote the petition of complaint as per direction of darogababu not as per instruction of Asgar Ali. He identified his signature and handwriting in the written complaint which was marked Ext. 1. In the written complaint there was no endorsement to the effect that he wrote the written complaint as per instruction of darogababu of Kharagpur local police station.

xii. During cross-examination PW-6 stated when he went to the house of Jamaluddin at that time Jamal and Asgar and others stated to him that some unknown person assaulted Jamaluddin and after assault the miscreant fled away.

xiii. PW-7 in his deposition stated one Krishnendu Hota, constable no.1304 produced sample of Blood of the deceased duly labelled and sealed in a phial and one cotton lungi before the I.O., Sekhar Roy at the P.S. and I.O. seized those articles by preparing seizure list in their presence. He was a witness in the seizure list. He identified his signature in original seizure list which was marked as Ext. 4. Later on he took sample of blood and knife to the FSL Calcutta.

xiv. During his cross-examination PW-7 stated he had no personal knowledge about the incident besides being a seizure list witness in respect of seizure of sample of blood and lungi and carrying the sample of blood and blood stained knife to the FSL. No article was seized in his presence.

xv. PW-8 was declared hostile by the prosecution.

xvi. During cross-examination PW-8 stated when he went to the house of Jamaluddin, he had no capacity to speak or to say anything. After his arrival the adjoining people assembled there. PW-8 further stated he saw that Saira @ Sahera Begum was pouring water on the head of Jamaluddin by a dishhanri in the light of a torch.

xvii. PW-9 in deposition stated after endorsement he took up investigation. He sent reminder to F.S.L. Laboratory through the Learned S.D.J.M. for F.S.L. report. On 24.1.96 he received F.S.L. report in his official course of business. The F.S.L. report marked as Ext.5. The report of the Serologist marked as Ext.6 (2 pages). On 1.4.96 as per order of his superior he submitted charge-sheet being no.48/96 under Sections 302/34 I.P.C. against the accused persons.

xviii. During cross-examination PW-9 stated he could not say anything as because the knife was not sent by him nor it was seized by him. That day he had not seen the seized knife in Court. He further stated besides sending reminder to F.S.L. and submission of the charge-sheet he did nothing as to the investigation of the case.

xix. PW-10 was declared hostile by the prosecution.

xx. During cross-examination PW-10 stated deceased Jamaluddin and de-facto complainant Asgar Ali were his 'bhagnas'. He did not know the cause of death of Jamaluddin. He also did not know by whom he was killed. He did not remember what he stated to the I.O. however, he was examined by the I.O.

xxi. PW-11 in his deposition stated he was present at that time. I.O. prepared a seizure list and put his signature in the seizure list as a witness. He identified his signature in the seizure list which was marked as Ext. 4/1. He identified that phial containing blood sample of the deceased. Seal was pasted over the said phial. He could not recognize his signature nor he could say whether he put his signature over the phial or not. This phial was marked as Mat. Ext. III.

xxii. During cross-examination PW-11 stated as yet the phial was full of blood. In the seized phial he did not find any sign to show that blood of deceased Jamaluddin was taken.

xxiii. PW-12 in his deposition disclosed he held inquest over the dead body of Jamaluddin as identified by the de-facto complainant and other witnesses. The inquest report prepared and signed by him in duplicate carbon process. The inquest report was marked as Ext.2/2. He sent the dead body of Jamaluddin through constable no.1304 Krishnendu Hota for holding post-mortem examination. On that day i.e. on the date of visiting the place of occurrence he examined the witnesses namely Jainal Ali, Osman Ali, Sk. Kamiruddin, Sk. Rafiq Ali and Mst. Uddenessa Bibi and recorded their statements under Section 161 Cr.P.C. As per statement of accused Saira @ Sahera Begum he recovered the offending weapon. She stated to him that in pursuance of the instruction of accused Saharab @ Soharab she kept the offending weapon i.e. knife in the basket over a wooden plank in the middle room of the deceased. She further stated to him that she would be in a position to find out the same if she was taken by the police to that place for recovery of the offending weapon. The relevant portion of the statement is marked as Ext.9 (objected to). As per statement of accused Saira @ Sahera Begum PW-12 along with police personnel and public witnesses in presence of two accused persons namely Saira @ Sahera Begum and Soharab Ali he recovered the offending weapon i.e. one knife fitted with red coloured but as produced by accused Saira @ Sahera Begum by preparing a seizure list. He identified the knife marked as Mat Ext. II. PW-12 indentified the seizure list which was prepared and written and signed by him. The seizure list had already been marked as exhibit. Two accused persons namely Saira @ Sahera Begum and Saharab @ Soharab Ali also put their L.T.I.s in the seizure list. Copy of the seizure list was supplied to the accused persons. The entire seizure list was marked as Ext.3/2. Those were the L.T.I.s of the accused persons. The L.T.I.s were taken by him. In the seizure list there was mention that seized a red butted wooden knife. He did not seize any black butted wooden knife. On 21.07.1994 he forwarded the accused persons to the Court. On 21.7.1994 constable No.1304 K. Hota returned to the P.S. after P.M. examination of Sk. Jamaluddin and produced sample blood of deceased containing in a phial and wearing cotton lungi. He seized those articles by preparing a seizure list. He identified Mat. Ext. III. The seizure list was written and signed by him. The seizure list marked as Ext. 4/2. On 29.8.1994 he received the P.M. report in official course of business. The P.M. report which was marked as Ext.10. On 5.1.95 he sent the knife and sample blood of the deceased contained in a glass made phial to FSL Calcutta through S.D.J.M., Sadar under escort of constable 1478 Sanjoy Chowdhury.

xxiv. PW-12 in his cross-examination stated he entered in the house of Sk. Jamaluddin. He did not seize any blood stained beddings or any wearing apparels of Sk. Jamaluddin or any sort of blood from the earth from the house of Sk. Jamaluddin, when he visited the house of deceased Jamaluddin. He did not find any scattered condition of the house of Jamaluddin either in the bed or in any other house hold materials. Many witnesses assembled at the P.O. when he visited the P.O. In the C.D. there was no reflection at first where he found accused Saira @ Sahera Begum. There was no note in the C.D. where he met Saira @ Sahera Begum. There was also note in the C.D. where he met accused Soharab Ali. Specially there was no note in the C.D. at what time he examined the accised persons namely Saira @ Sahera Begum and Soharab Ali. In the seizure list there was no mention from the particular place wherefrom he seized the offending weapon but it had been mentioned that the offending weapon was seized from the house of Sk. Jamaluddin (deceased). In the seizure list there was no mention that as per statement of accused Saira @ Sahera Begum he seized the offending weapon. In the seizure list there was no note that accused Saira @ Sahera or accused Soharab led him to recover the offending weapon from the house of deceased Jamaluddin. In the seizure list there was no mention that the offending weapon was hidden over the plank in a basket. In the seizure list there was no mention that accused Saira @ Sahera and accused Soharab showed him the place where the offending weapon was hidden. In the seizure list there was no mention that copy of the seizure list was handed over to the accused persons. He further stated in the C.D. there was no mention as to the numbers of rooms in the house of Sk. Jamaluddin. In the sketch map there was no mention in which room the incident took place.

9. Section 27 of the Indian Evidence Act states as follows:-

> *"**27. How much of information received from accused may be proved.—**Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

10. Section 32 (1) of the Indian Evidence Act states as follows:-

> *"**32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. —** Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —*
>
> > ***(1) When it relates to cause of death.—****When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.*

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

11. In the case of ***Dinesh Kumar Kalidas Patel Vs. State of Gujarat***[1], the Hon'ble Supreme Court held as follows:-

*"**6.** In Palvinder Kaur [Palvinder Kaur v. State of Punjab, (1952) 2 SCC 177 : AIR 1952 SC 354 : 1953 Cri LJ 154] , this Court held as follows: (AIR p. 356, para 14)*

"14. In order to establish the charge under Section 201 of the Penal Code, 1860, it is essential to prove that an offence has been committed—mere suspicion that it has been committed is not sufficient—that the accused knew or had reason to believe that such offence had been committed and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false."

The conviction in this case was ultimately set aside on the aforementioned legal position and the facts.

…

***8.** Relying on Palvinder Kaur [Palvinder Kaur v. State of Punjab, (1952) 2 SCC 177 : AIR 1952 SC 354 : 1953 Cri LJ 154] , this Court in Suleman Rehiman [Suleman Rehiman Mulani v. State of Maharashtra, AIR 1968 SC 829 : 1968 Cri LJ 1013] , made the following observation: (Suleman Rehiman case [Suleman Rehiman Mulani v. State of Maharashtra, AIR 1968 SC 829 : 1968 Cri LJ 1013] , AIR p. 830, para 6)*

"6. The conviction of Appellant 2 under Section 201 IPC depends on the sustainability of the conviction of Appellant 1 under Section 304-A IPC. If Appellant 1 was rightly convicted under that provision, the conviction of

[1] (2018) 3 SCC 313

Appellant 2 under Section 201 IPC on the facts found cannot be challenged. But on the other hand, if the conviction of Appellant 1 under Section 304-A IPC cannot be sustained, then, the second appellant's conviction under Section 201 IPC will have to be set aside, because to establish the charge under Section 201, the prosecution must first prove that an offence had been committed not merely a suspicion that it might have been committed—and that the accused knowing or having reason to believe that such an offence had been committed, and with the intent to screen the offender from legal punishment, had caused the evidence thereof to disappear. The proof of the commission of an offence is an essential requisite for bringing home the offence under Section 201 IPC — see the decision of this Court in Palvinder Kaur v. State of Punjab [Palvinder Kaur v. State of Punjab, (1952) 2 SCC 177 : AIR 1952 SC 354 : 1953 Cri LJ 154] ."

It is necessary to note that the reason for acquittal under Section 201 in the above case was that there was no evidence to show that the rash and negligent act of Appellant 1 caused the death of the deceased. Hence, the court acquitted Appellant 2 under Section 201. The observation at para 6 has to be viewed and analysed in that background.

9. *In Ram Saran Mahto v. State of Bihar [Ram Saran Mahto v. State of Bihar, (1999) 9 SCC 486 : 2000 SCC (Cri) 254] , this Court discussed Kalawati [Kalawati and Ranjit Singh v. State of H.P., (1953) 1 SCC 86 : AIR 1953 SC 131 : 1953 Cri LJ 668] and Palvinder Kaur [Palvinder Kaur v. State of Punjab, (1952) 2 SCC 177 : AIR 1952 SC 354 : 1953 Cri LJ 154] . It has been held at paras 13 to 15 that conviction under the main offence is not necessary to convict the offender under Section 201 IPC. To quote: (Ram Saran Mahto case [Ram Saran Mahto v. State of Bihar, (1999) 9 SCC 486 : 2000 SCC (Cri) 254] , SCC pp. 490-91)*

> *"13. It is not necessary that the offender himself should have been found guilty of the main offence for the purpose of convicting him of offence under Section 201. Nor is it absolutely necessary that somebody else should have been found guilty of the main offence. Nonetheless, it is*

imperative that the prosecution should have established two premises. The first is that an offence has been committed and the second is that the accused knew about it or he had reasons to believe the commission of that offence. Then and then alone can the prosecution succeed, provided the remaining postulates of the offence are also established.

14. The above position has been well stated by a three-Judge Bench of this Court way back in 1952, in Palvinder Kaur v. State of Punjab [Palvinder Kaur v. State of Punjab, (1952) 2 SCC 177 : AIR 1952 SC 354 : 1953 Cri LJ 154] : (AIR p. 356, para 14)

> *'14. In order to establish the charge under Section 201 of the Penal Code, it is essential to prove that an offence has been committed—mere suspicion that it has been committed is not sufficient—that the accused knew or had reason to believe that such offence had been committed and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false.'*
>
> *15. It is well to remind that the Bench gave a note of caution that the court should safeguard itself against the danger of basing its conclusion on suspicions however strong they may be. In Kalawati and Ranjit Singh v. State of H.P. [Kalawati and Ranjit Singh v. State of H.P., (1953) 1 SCC 86 : AIR 1953 SC 131 : 1953 Cri LJ 668] a Constitution Bench of this Court has, no doubt, convicted an accused under Section 201 IPC even though he was acquitted of the offence under Section 302. But the said course was adopted by this Court after entering the finding that another accused had committed the murder and the appellant destroyed the evidence of it with full knowledge thereof. In a later decision in Nathu v. State of U.P. [Nathu v. State of U.P., (1979) 3 SCC 574 : 1979 SCC (Cri) 733] this Court has repeated the caution in the following words: (SCC p. 575, para 1)*

‘1. Before a conviction under Section 201 can be recorded, it must be shown to the satisfaction of the court that the accused knew or had reason to believe that an offence had been committed and having got this knowledge, tried to screen the offender by disposing off the dead body.’

10. *In V.L. Tresa v. State of Kerala [V.L. Tresa v. State of Kerala, (2001) 3 SCC 549 : 2001 SCC (Cri) 573] , this Court has discussed the essential ingredients of the offence under Section 201 IPC at para 12: (SCC p. 555)*

“12. Having regard to the language used, the following ingredients emerge:

(I) committal of an offence;

(II) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed;

(III) person charged with the offence under Section 201 IPC should have caused disappearance of evidence or should have given false information regarding the main offence; and

(IV) the act should have been done with the intention of screening the offender from legal punishment.”

11. *In Sukhram v. State of Maharashtra [Sukhram v. State of Maharashtra, (2007) 7 SCC 502 : (2007) 3 SCC (Cri) 426] , this Court discussed Kalawati [Kalawati and Ranjit Singh v. State of H.P., (1953) 1 SCC 86 : AIR 1953 SC 131 : 1953 Cri LJ 668] , Palvinder Kaur [Palvinder Kaur v. State of Punjab, (1952) 2 SCC 177 : AIR 1952 SC 354 : 1953 Cri LJ 154] , Suleman Rehiman [Suleman Rehiman Mulani v. State of Maharashtra, AIR 1968 SC 829 : 1968 Cri LJ 1013] and V.L. Tresa [V.L. Tresa v. State of Kerala, (2001) 3 SCC 549 : 2001 SCC (Cri) 573] among others. The essential ingredients for conviction under Section 201 IPC have been discussed at para 18: (Sukhram case [Sukhram v. State of Maharashtra, (2007) 7 SCC 502 : (2007) 3 SCC (Cri) 426] , SCC pp. 510-11)*

"18. The first paragraph of the section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation. To bring home an offence under Section 201 IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence; and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown."

12. In ***Ram Saran Mahto and Anr. Vs. State of Bihar***[2], the Hon'ble Apex Court observed as follows:-

*"**11.** The first paragraph of the section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation. The two indispensable ingredients for all the three tiers in Section 201 are:*

(1) The accused should have had the knowledge that an offence has been committed or at least that he should have had reasons to believe it.

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[2] (1999) 9 SCC 486

(2) He should then have caused disappearance of evidence of commission of that offence.

The prosecution cannot escape from establishing the aforesaid two basic ingredients for conviction of the accused under Section 201.

12. *The gravest degree contemplated in Section 201 is punishable with the maximum sentence of imprisonment for seven years. The minimum requirement for the offence to reach the said peak degree is that the offender should have caused disappearance of evidence of another offence which is punishable with death, and that should be established in addition to the above-mentioned two basic ingredients. Even if the two basics are established, and the prosecution failed to establish the next requirement, the court cannot convict the accused for the highest tier specified in the section.*

13. *It is not necessary that the offender himself should have been found guilty of the main offence for the purpose of convicting him of offence under Section 201. Nor is it absolutely necessary that somebody else should have been found guilty of the main offence. Nonetheless, it is imperative that the prosecution should have established two premises. The first is that an offence has been committed and the second is that the accused knew about it or he had reasons to believe the commission of that offence. Then and then alone the prosecution can succeed, provided the remaining postulates of the offence are also established."*

13. In ***Pandurang Kalu Patil and Anr. Vs. State of Maharashtra***[3], the Hon'ble Supreme Court held as follows:-

*"**5.** Even the recent decision in State of Maharashtra v. Damu [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] this Court followed Pulukuri Kottaya [AIR 1947 PC 67 : 48 Cri LJ 533] with approval. The fallacy committed by the Division Bench as per the impugned judgment is possibly on account of truncating the word "fact" in Section 27 of the Evidence Act from the adjoining word "discovered". The essence of Section 27 is that it was enacted as a proviso to the two preceding sections (see Sections 25 and 26) which imposed*

[3] (2002) 2 SCC 490

a complete ban on the admissibility of any confession made by an accused either to the police or to anyone while the accused is in police custody. The object of making a provision in Section 27 was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or non-confessional. Nonetheless, the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. A fact can be discovered by the police (investigating officer) pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery, or even production of object by itself need not necessarily result in discovery of a fact. That is why Sir John Beaumont said in Pulukuri Kottaya [AIR 1947 PC 67 : 48 Cri LJ 533] that (AIR p. 70, para 10) "it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced". The following sentence of the learned Law Lord in the said decision, though terse, is eloquent in conveying the message highlighting the pith of the ratio : (AIR p. 70, para 10)

> *"Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant."*

14. In ***Manjunath and Ors. Vs. State of Karnataka***[4], the Hon'ble Supreme Court held as follows:-

> *"11.3.1 In the well-known case of Sharad Birdhichand Sarda v. State of Maharashtra,[6] principles in respect of the application of section 32 have been noted as under:—*
>
> *Per S. Murtaza Fazal Ali J.,-*
>
> *"21. …*

[4] 2023 SCC OnLine SC 1421

(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."

…

11.5.2 On a similar note, this Court in Panneerselvam v. State of T.N.[12] has observed:—

> *"Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness."*

11.5.3 However, a note of caution has also been sounded. If such a declaration does not inspire confidence in the mind of the court, i.e., there exist doubts about the correctness and genuineness thereof, it should not be acted upon, in the absence of corroborative evidence.

…

11.6 The Court must be satisfied that at the time of making such a statement, the deceased was in a "fit state of mind". In Shama v. State of Haryana,[15] a fit state of mind has been held to be a prerequisite, alongside the ability to recollect the situation and the state of affairs at that point in time in relation to the incident, to the satisfaction of the court.

11.6.1 In Uttam v. State of Maharashtra[16], it was discussed that it is for the court to determine, from the evidence available on record, the state of mind being fit or not.

11.6.2 In order to make a determination of the state of mind of the person making the dying declaration, the court ordinarily relies on medical evidence.[17] However, equally, it has been held that if witnesses present, while the statement is being made, state that the deceased while making the statement was in a fit state of mind, such statement would prevail over the medical evidence.[18] The statement of witnesses present prevailing over the opinion of the doctor has been reiterated in Uttam (supra).

11.6.3 It has also, however, been held in Laxman (supra) that the mere absence of a doctor's certificate in regard to the "fit state of mind" of the dying declarant, will not ipso facto render such declaration unacceptable. This position had been once again recognised in Surendra Bangali @ Surendra Singh Routele v. State of Jharkhand[19].

…

11.7.2 This Court, in Jagbir Singh v. State (NCT of Delhi)[22], in this respect, concluded as under:—

> ***"32.*** *We would think that on a conspectus of the law as laid down by this Court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a somersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered."*

…

11.9.1 It was observed in the State of Maharashtra v. Krishnamurti Laxmipati Naidu[25] that if the dying declaration, while being brief, contains essential information, the courts would not be justified in ignoring the same.

11.9.2 In fact, the Constitution bench in Laxman reiterated this principle, stating:—

> *"Marely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity."*

…

11.10.1 In fact, in Kans Raj v. State of Punjab[27] it was held:—

> *"11. …To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement." and;*
>
> *In Sudhakar v. State of Maharashtra[28], this Court categorically observed:—*
>
> > *"5. If it is in writing, the scribe must be produced in the court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. However, in cases where the original recorded dying declaration is proved to have been lost and not available, the prosecution is entitled to give secondary evidence thereof."*

12. *Ocular evidence undoubtedly fares better than other kinds of evidence and is considered evidence of a strong nature. The principle is that if the eyewitness testimony is "wholly reliable", then the court can base conviction thereupon. This applies even in cases where there is a sole eyewitness.*

26. *Further discovery made, to be one satisfying the requirements of Section 27, Indian Evidence Act it must be a fact that is discovered as a consequence of information received from a person in custody. The conditions* *have been discussed by the Privy Council in Pulukuri Kotayya v. King Emperor*[38] *and the position was reiterated by this Court in Mohd. Inayatullah v. State of Maharashtra*[39]*, in the following terms:—*

"12…It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery…"

…

27.2 Also, in Nikhil Chandra Mondal v. State of W.B.[41] *the Court held:—*

***"20.** The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement of the accused as required under Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach adopted by the trial court was in accordance with law. However, this circumstance which, in our view, could not have been used, has been employed by the High Court to seek corroboration to the extra-judicial confession."*

***29.** Our conclusions, therefore, are thus:*

29.1 The dying declaration, although undoubtedly a substantive piece of evidence upon which reliance can be placed, in the present facts is rendered nugatory as the person who took down such declaration was not examined, nor did the police officer (PW19) endorse the said document *with details of who took down the declaration. It is also not clear as to in front of which of the relatives of deceased was the same taken down."*

15. In ***State Vs. Parveen Sharma and Anr.***[5], it was held as follows:-

"28. In *State of Himachal Pradesh* v. *Raj Kumar*, AIR 2014 SC 1929, the Supreme Court, has reiterated and reproduced the "five golden principles" of proof of a case based on circumstantial evidence. The same has been reproduced hereunder:

"9. In *Sharad Birdhichand Sarda* v. *State of Maharashtra (1984) 4 SCC 116, this Court laid down the five principles as regards the proof of a case based on circumstantial evidence. This Court has reiterated those principles time and again. They are:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

xxx xxx xxx

(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."

29. In *Dhan Raj @ Dhand* v. *State of Haryana* (2014) 6 SCC 745, the Supreme Court whilst setting aside a judgment and order of conviction passed by the Punjab and Haryana High Court had observed as under:

"2. The High Court in the present matters convicted the accused Appellants on the basis of circumstantial evidence by the impugned judgment. It has been well established by leading judicial precedents that where the prosecution's case is based on circumstantial evidence, only the circumstantial evidence of the highest

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[5] 2015 SCC OnLine Del 8149

order can satisfy the test of proof in a criminal prosecution. In order to base conviction on circumstantial evidence the circumstantial evidence put forth by the prosecution should establish a complete unbroken chain of events so that only one inference is drawn out from the same. If more than one inference can be drawn then the accused should be entitled to the benefit of doubt. …"

"14. We would refer to the decision of this Court in Madhu v. *State of Kerala (2012) 2 SCC 399 the facts of which are relevant in the present case. In the said case, the body of the deceased was found near her home with her ornaments on her person missing. On the basis of the information furnished by the accused recovery of the said ornaments was made. This fact coupled with the sighting of the accused near the place of crime was the basis for conviction. However, this Court reversed the conviction on the ground that said recovery and sighting of the accused near the deceased do not lead to the sole conclusion that murder was committed by the accused only. In State of Rajasthan* v. *Talevar (2011) 11 SCC 666 also it was held that where the only evidence against the accused is recovery of stolen property, then although circumstances may indicate that theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of stolen property had committed murder. Also the recovery of looted articles at the instance of the accused could not be relied upon in absence of any details as to when and where such recovery was made and in absence of any confession of commission of offence by the accused. Besides, the seizure of the goods was not corroborated by any independent witness in the present case."*

"17. We have noticed in Madhu v. *State of Kerala (supra) facts of which were discussed earlier, that this Court inspite of the factum that the accused were sighted close to the place of occurrence at around the time of occurrence reversed the conviction as guilt was not established. In the present factual matrix, it is only an interested witness stating that the accused had come asking for the deceased. This factum alone does not establish guilt as no other evidence is found that they were near the Bizdipur area where the crime was committed or had visited the house of the deceased.*

18. For establishing the guilt on the basis of circumstantial evidence, it is also to be taken into account that the chain of circumstantial evidence must be completed. It appears from the facts that the said chain of circumstantial evidence cannot be concluded in the manner sought to be done by the prosecution. The circumstances must be conclusive in nature. In the instant case, after analyzing the facts, it appears to us that there is a gap between the circumstances tried to be relied upon to hold the Appellants as guilty. Thus, we find many loopholes in the case of the prosecution and grounds on which the High Court has convicted the Appellant-accused.

19. We would refer to the decision of this Court in Munish Mubar v. *State of Haryana (2012) 10 SCC 464 wherein Dr. Justice Chauhan has very aptly and succinctly stated the following: (SCC p. 473, para 28)*

"28. …The circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit us to arrive at any other inference but one indicating the guilt of the accused."

A court has to examine the entire evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from the evidence is the guilt of the accused. If more than one inference can be drawn then the accused must have the benefit of doubt as it is not the court's job to assume and only when guilt beyond reasonable doubt is proved then it is fair to record conviction. In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any chance of surmise or conjecture and must also be consistent with the guilt of the accused.

20. None of the circumstances relied upon by the prosecution and accepted by the High Court can be said to be the probability of the Appellants' guilt or involvement in the commission of the crime. …"

16. The deposition of PW-1 with regard to the aspersion cast on the character of the present appellant to have been illicitly involved with the co-convict Soharab Ali had been a mere vague assertion in absence of corroborative evidence which otherwise would have been difficult for the prosecution to prove to be an act of connivance, conspiracy to commit the murder of the victim along with co-convict.

17. PW-1 in his examination-in-chief stated to have taken steps to assist the victim to sit on the floor of room and tried to bring water and pour the same on his elder brother. The present appellant, thereafter, poured water of the pitcher on the head of the victim/Jamaluddin. The said act of pouring of water on the head of the victim and such circumstances along with the concurrence of PW-1 could not be an act to shield or wash away the evidence as opined by the Learned Trial Court.

18. The document marked as Ext. 9 i.e. statement of appellant recorded under Section 161 of the Cr.P.C. is contrary to the prosecution case wherein the confessional statement mentioned the victim to have been assaulted in chest instead of stomach. The confession of the appellant in police custody was devoid of evidentiary value. The provisions of Section 27 of the Indian Evidence Act as aforementioned could not be proved by the prosecution. The place and time of arrest of the present appellant was not mentioned by the Investigating Agency. Seizure list marked Ext. 3/2 mentioned the offending weapon to have been recovered from the house of the victim/Jamaluddin at the instance of the same and the present appellant. PW-8 had been the signatory to the seizure list concerning aforesaid seizure. PW-8 was declared

hostile who thereafter stated that police did not seize the Mat. Ext. I i.e. the offending weapon from the house of victim/Jamaluddin. The offending weapon was not sent to obtain expert opinion with regard to fingerprint on the same.

19. The manner in which the seizure of the offending weapon and arrest of the present appellant was conducted raised suspicion with regard to false implication of the present appellant. PW-2, PW-3, PW-4, PW-8 and PW-10 who were the neighbours of the victim had been declared hostile by the prosecution. None of them indicated illicit relationship between the present appellant and co-convict.

20. It was a natural instinctive act for present appellant to pour water on the victim supported by the de-facto complainant who himself endeavoured to seek for water to pour it on the victim. Such act cannot be attributable to render disappearance of offence deliberately on the part of the appellant. Moreover, the neighbouring witnesses who appeared at the place of occurrence apprehended the co-convict completing the chain of circumstantial evidence and the statement of the victim in terms of Section 32(1) of the Indian Evidence Act cannot be considered to be nugatory. However, the recovery of the offending weapon and the arrest of the present appellant from the spot if at all could not attribute criminal intent of the present appellant to ascribe culpability to the same on the basis of an assumptive and suspicious allegation exclusively by PW-1.

21. Under the facts and circumstances of the case, any absence of proof of commission of the offence by the appellant beyond reasonable doubt, the

prosecution has failed to prove its case and accordingly the appeal is allowed.

22. Accordingly, the instant criminal appeal being CRA 379 of 2006 stands disposed of.

23. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

24. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)