

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Uday Kumar

C.R.A 234 of 2017

Durjodhan Pramanik & Ors.

Vs.

The State of West Bengal

For the Appellants : Mr. Sudipta Maitra, Sr. Adv.
Mr. Sourav Chatterjee, Sr. Adv.
Mr. Pawan Kumar Gupta, Adv.
Mr. Sougata Mitra, Adv.
Mr. Vijay Varma, Adv.
Ms. Sofia Nesar, Adv.
Mr. Nikhil Gupta, Adv.
Mr. Subhadeep Maitra, Adv.
Mr. Santanu Sett, Adv.
Ms. Soma Chakraborty, Adv.
Ms. Subhasri Chatterjee, Adv.
Mr. Dwaipayan Biswas, Adv.

For the Respondent : Mr. Debasish Roy, Ld. P.P
Ms. Amita Gaur, Adv.

Hearing concluded on : 28th March, 2025

Judgment dated : 25th April, 2025

Uday Kumar, J: -

1. This appeal is directed against the judgment of conviction dated 07.02.2017 and order of sentence dated 08.02.2017 passed by the learned Additional District and Sessions Judge, 3rd Court Purulia, in connection with Sessions Case No. 220 of 2014, Sessions Trial Case No. 30 of 2014, corresponding to G.R. Case No. 509 of 2014, which arose out of Balarampur Police Station Case No. 26 of 2014 dated 12.05.2014 under Sections

363/365/302/201/34 of the Indian Penal Code, 1860 (hereinafter referred to as I.P.C.).

PROSECUTION CASE IN BRIEF

2. The prosecution's case revolved around the tragic disappearance and subsequent brutal murder of one Jayanta Kumar in the backdrop of a pre-existing land dispute between families giving rise to framing of charges and culminated in the conviction of the appellants for offences under Sections 364/302/201/34 of the Indian Penal Code, 1860. Pursuant to a complaint resulting in Balarampur P.S. Case No. 23 of 2014 lodged by Manbhula Kumar (PW-4), alleging offences against certain accused persons, since Jayanta Kumar went missing on the night of 11th May 2014 while *en-route* to his new house. His father, Mahabir Kumar (PW-1), reported his disappearance, leading to the registration of the aforesaid complaint.

3. The investigation unfolded with the arrest of the Appellant, Durjodhan Paramanik, who allegedly confessed to the crime and implicated his co-appellants. Pursuant to these purported disclosures, the beheaded torso of Jayanta Kumar was recovered from Ekra Forest. Subsequently, the severed head, a weapon (tangi), and other personal belongings were recovered from different locations. The prosecution's case rested primarily on the chain of recoveries linked to the alleged confessional statements of the accused in police custody, along with alleged motive of prior enmity.

4. Pre-existing land dispute between the families of the accused and the deceased, fostered an atmosphere of animosity, which was further exacerbated by the lodging of Balarampur P.S. Case No. 23 of 2014 against the accused, alleging serious offences. In this charged environment, Jayanta Kumar, being concerned for the safety of his sister-in-law Manbhula Kumar (PW-4) after the alleged incident of 9th May 2014, decided to stay with her. He did not reach his new house after leaving

his ancestral home on the night of 11th May 2014. The accused became weary of false and fabricated allegations found themselves under the scanner once again.

5. The Officer-in-Charge of Balarampur Police Station assigned Sub-Inspector Jal Kumar Mandi to investigate the matter. On 11th May 2014, in the evening, SI Mandi visited the location and handed over certain documents to Jayanta Kumar, the younger son of the complainant Mahabir Kumar (PW-1), who happened to be present at the scene.

6. Jayanta later returned to his ancestral home in Deoli. Meanwhile, Bikash Kumar and his mother had taken their elder son to Bansgarh Hospital for treatment. Manbhula remained alone in the newly constructed house, gripped by fear following the previous night's traumatic incident. Eventually, Jayanta decided to spend the night at the new house to ensure her safety. He left after dinner, intending to walk a short distance - roughly a kilometre - from the old house to the new one, which he never made.

7. The following morning, on 12th May 2014, Mahabir Kumar arrived at the new house and immediately inquired about Jayanta's whereabouts. Manbhula informed him, with growing concern, that Jayanta did not return the previous night. Alarmed, Mahabir proceeded to the Purulia Court to attend matters relating to the on-going title suit. Upon returning he frantically searched for his son at all possible locations, but there was no trace of him. Desperate and distraught, Mahabir approached the Balarampur Police Station and lodged a written complaint at 4:05 PM that same day. In response, a fresh case -Balarampur P.S. Case No. 26 of 2014— was registered under Sections 363/365/34 of the IPC, naming Tapan Paramanik, Goutam Rajak, Maliram Paramanik, Meghnath Paramanik, Dhananjay Kumar, Jamini Kumar, Samir Mardiyana, Ranjit Mardiyana, Muchiram Majhi, Nepal Majhi, Durjodhan Paramanik, Muruli Majhi, Pradip Majhi, Kaliram Singh Babu, and Majibul Ansary as accused persons.

8. The investigation was initially entrusted to PW-14, S.I. Jal Kumar Mandi. However, upon instructions from the Superintendent of Police, Purulia, it was re-assigned to PW-16, Sisir Kumar Saha, the Circle Inspector of the Balrampur Camp at Ekra Mouza to unfold the gruesome murder of Jayanta Kumar.

9. As the investigation progressed, the police examined the complaint, visited the site near the electric transformer in Deoli village - suspected to be the location of the crime - and prepared a rough sketch map (Exhibit 13). They also inspected another location, where a gunny bag containing a human torso was found later on (Exhibit 16). On the night of 14th May 2014, acting on source-based intelligence, PW-14 arrested Durjodhan Paramanik from Dava More.

10. During interrogation, Durjodhan made a chilling confession. He admitted that he and several others had intercepted Jayanta near the ICDS centre at around 9:30 p.m. on 11th May, as Jayanta on his way to the new house. They attacked him brutally using iron rods and wooden sticks. Jayanta succumbed to his injuries on the spot. The group then stuffed his lifeless body into a jute sack, carried it to Ekra forest near Ichhadih village, and dumped it in a ditch to conceal the crime. Durjodhan agreed to lead the police to the site and disclose the whereabouts of his accomplices.

11. On the morning of 14th May 2014, guided by Durjodhan, police recovered the torso of Jayanta Kumar from a ditch in the Ichhadih jungle. An inquest was carried out in the presence of Manbhula Kumar, Swapan Paramanik, and other witnesses. The remains were then sent for post-mortem. A day later, on 15th May, further recovery was made from the crime scene: a pair of bloodstained black plastic sandals (No. 8), an iron rod and a stick believed to be the weapons used, bloodstained soil samples, and control earth - all of which were seized for forensic analysis.

12. On 17th May 2014, PW-16 arrested two more accused, Haladhar Paramanik and Dayal Paramanik, and recorded their statements. Acting on their disclosures, police recovered the severed head of Jayanta Kumar, along with his wearing apparel, a plastic bag, papers, dot pen and the murder weapon - a *tangi* (axe) - from the Bandhghutu pond near Ekra forest. The recovery was made in the presence of Bikas Kumar, Sabita Kumar, and several local villagers.

13. Further investigation led to the recovery of a mobile phone used by another accused, along with additional weapons including an iron rod, a stick, a SIM card, and other incriminating articles. These recoveries were made on the basis of statements provided by Balai Paramanik, Kanai Paramanik, and Nimai Paramanik, and were duly seized.

14. Upon the conclusion of the investigation, PW-16 submitted a detailed charge sheet on 18th July 2014, charging the accuseds under Sections 363/365/302/201/34 of the Indian Penal Code.

15. Charges under Sections 364/302/ 201/34 of the IPC were formally framed and explained to the accused on 28th November 2014 to which they pleaded not guilty, thus commencing Sessions Trial Case No. 30 of 2014.

16. During the trial, the prosecution presented sixteen witnesses in support of the charges.

17. Ultimately, on 7th February 2017, the Learned Trial Judge convicted Durjodhan Paramanik, Haladhar Paramanik, Kanai Paramanik, Dayal Paramanik, Nimai Paramanik, and Balai Paramanik under Sections 364/ 302/201/34 of the IPC. On the following day, 8th February 2017, they were sentenced as follows: life imprisonment and a fine of Rs. 5,000 each (with three months' simple imprisonment in default) under Section 302/34 IPC; three years' rigorous imprisonment and a fine of Rs. 3,000 each (two months' simple imprisonment in default) under Section

201/34 IPC; and two years' imprisonment along with a fine of Rs. 2,000 each (one month's simple imprisonment in default) under Section 364/34 IPC.

18. The Trial Court judgment was primarily based on the confessional statements of the accused, which were deemed to be corroborated by physical evidence and witness testimonies. However, the accused Jamini Kumar was acquitted, as the prosecution failed to substantiate the charges against him.

19. Mr. Sudipta Maitra, Learned Senior Counsel for the appellants at the inception submitted the judgment and sentence suffered from the followings:

- i. The Trial Court failed to recognize that the chain of circumstantial evidence was incomplete and did not unerringly point toward the guilt of the accused.
- ii. The Court improperly relied on confessional statements recorded by the investigating officer while the accused persons were in custody. Statements that were inadmissible in law as the conditions under Section 27 of the Indian Evidence Act were not met.
- iii. There were glaring discrepancies, particularly concerning the arrest of Durjodhan Paramanik and the timing of recoveries, which were contrary to the settled position of law.
- iv. The Trial Court overlooked material contradictions and inconsistencies in the evidence that significantly undermined the prosecution's case.

20. Mr. Sudipta Maitra, Learned Senior Counsel for the appellants, further argued that the conviction rest solely on alleged confessional

statements lacking evidentiary value and had been obtained in violation of legal safeguards. He contended that the prosecution failed to establish the admissibility of these statements and that there is no independent or credible corroboration. He emphasizes that the recovery of the decapitated body preceded Durjodhan's alleged confession, thus undermining the applicability of Section 27 of the Indian Evidence Act. Reliance was placed on the decision cited in ***Subramanya v. State of Karnataka, (2023) 11 SCC 255*** and ***Bakhshish Singh v. State of Punjab, (1971) 3 SCC 182*** to support the argument that mere pointing out the location of a dead body did not constitute substantive evidence of guilt and that strict adherence to Section 27 was necessary.

21. Mr. Maitra further submitted that the prosecution's reliance on motive arising from prior disputes was insufficient to establish guilt in a case based on circumstantial evidence. He argued that the chain of circumstantial evidence presented by the prosecution was incomplete, inconsistent, and fragmented, citing ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***. He also highlighted the absence of eyewitnesses, the lack of forensic linkage between the recovered weapon and the injuries, and the failure to produce independent witnesses to the recovery process. Finally, he argued that the Trial Court erred in treating the alleged confessions as substantive evidence without considering procedural irregularities and the possibility of coercion.

The advocates representing the appellants argued that the Hon'ble Supreme Court in ***Meharaj Singh (L/Nk.) v. State of U.P.(1994) 5 SCC 188*** to argue that delay in lodging the FIR can lead to embellishment and distort the

spontaneity of the account, raising doubts about its authenticity. They further placed ***Chotkau v. State of U.P.*** (2023) 6 SCC 742 where the Hon'ble Supreme Court elucidated on the effects of transmitting the FIR to court where such delay raises concerns about the authenticity of the FIR, as it may indicate fabrication or afterthought. The absence of timely transmission and reference in the inquest report can suggest that the FIR was ante-timed to appear as promptly lodged. To elucidate on the principles guiding the jurisprudence on circumstantial evidence, the learned advocate cited ***Guna Mahto v. State of Jharkhand***(2023) 6 SCC 817 where it was held that the prosecution must prove the accused's guilt beyond reasonable doubt, with all circumstances pointing solely to the accused. Mere suspicion, no matter how grave, cannot replace solid evidence linking the accused to the crime.. In ***Mani v. State of T.N.*** (2009) 17 SCC 273 it was held that the discovery of the blood stained clothes and blood stained *koduvalon* on the basis of the discovery statement was a weak kind of evidence and could not be wholly relied upon and conviction in such a serious matter could not be based upon the discovery. In ***Mustkeem v. State of Rajasthan***(2011) 11 SCC 724 the Hon'ble Supreme Court held that based on the disclosure statement of the appellants, weapons alleged to be used in the commission of the offence and clothes stained with human blood were recovered, the Hon'ble Supreme Court held that such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In ***Sangili v. State of T.N.*** (2014) 10 SCC 264, the recoveries made were doubtful and the Hon'ble Supreme Court held that the chain of events should be such that no other conclusion, except the guilt of the accused person, is discernible without any

doubt. In ***Laxman Prasad v. State of M.P.*** (2023) 6 SCC 399, it was held that the recovery of the weapon of assault and the blood-stained clothes did not indicate that the appellant had committed the offence. In ***Uppala Bixam v. State of A.P.*** (2019) 13 SCC 802, the Hon'ble Supreme Court held that the recovery of the dead body based on the confessions of the appellant was not sufficient to establish his guilt. The Hon'ble Supreme Court in ***Kalinga v. State of Karnataka*** (2024) 4 SCC 735, held that extra judicial confessions are a weak type of evidence, and the chain of circumstantial evidence must be completed. In ***Mahendra Singh v. State of M.P.*** (2022) 7 SCC 157, the Hon'ble Supreme Court held that when a witness is neither wholly reliable nor wholly unreliable, the court must look for corroboration in material particulars by reliable testimony, direct or circumstantial. Further on the point of disclosure statement, the Hon'ble Supreme Court in ***Manoj Kumar Soni vs State of Madhya Pradesh 2023 SCC Online SC 984*** and ***Vinobha vs State of Kerala 2025 SCC Online SC 178*** held that Courts have been hesitant to place reliance solely on the disclosure statement of the Co-accused and such statements must be accompanied with supporting evidence.

22. Per contra, the learned Counsel for the State supported the judgment of conviction, asserting that the Trial Court meticulously appreciated the evidence. It was argued that the voluntary disclosures by the appellants led to the recovery of crucial evidence, forming a complete chain of circumstances establishing their guilt. It was contended that the motive of the deceased's disappearance, and the recoveries made pursuant to the disclosures, along with the medical evidence, collectively prove the appellants'

guilt beyond reasonable doubt. Reliance was placed on ***State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125*** and ***Pulukuri Kottaya v. Emperor, AIR 1947 PC 67*** to support the admissibility of the disclosures under Section 27 of the Evidence Act, arguing that the recoveries strengthened the confessional statements. It was also emphasized that the incriminating nature of the discovery of the body from a secluded location presumably known only to the appellants, lent credence to the inference that they alone had the requisite knowledge, thereby forming an incriminating circumstance pointing to their involvement in the crime.

23. The Learned Advocate for the State also argued that although there were no eyewitnesses to the incident, the surrounding circumstances - such as the previous enmity between the parties over land, the sudden disappearance of the deceased, and the recovery of incriminating material pursuant to the disclosures made while in police custody - collectively established the guilt of the appellants beyond reasonable doubt.

24. We have carefully considered the submissions made by the learned counsel for the appellants and the learned counsel for the State and discretely assailed the evidence on record and the findings of the learned Trial Judge. The entire case is based upon circumstantial evidence and statement of Durjodhan Paramanik leading to the recovery of incriminating substances. In respect of circumstantial evidence the law as evolves from the various decisions of the Hon'ble Supreme Court are relevant consideration:

- a. The Hon'ble Supreme Court held the following in ***Vadivelu Thevar v. State of Madras AIR 1957 SC 614,***

10.Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.....

b. In **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116** the following was held by the Hon'ble Supreme Court:-

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental

distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.

154. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.*

155. *It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus:*

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

- c. In **Bodhraj v. State of J&K (2002) 8 SCC 45**, the Hon'ble Supreme Court held the following:-

9. *Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain*

inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

10. *It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, 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 other person. (See Hukam Singh v. State of Rajasthan [(1977) 2 SCC 99 : 1977 SCC (Cri) 250 : AIR 1977 SC 1063] , Eradu v. State of Hyderabad [AIR 1956 SC 316 : 1956 Cri LJ 559] , Earabhadrapa v. State of Karnataka [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : AIR 1983 SC 446] , State of U.P. v. Sukhbasi [1985 Supp SCC 79 : 1985 SCC (Cri) 387 : AIR 1985 SC 1224] , Balwinder Singh v. State of Punjab [(1987) 1 SCC 1 : 1987 SCC (Cri) 27 : AIR 1987 SC 350] and Ashok Kumar Chatterjee v. State of M.P. [1989 Supp (1) SCC 560 : 1989 SCC (Cri) 566 : AIR 1989 SC 1890]) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab [AIR 1954 SC 621 : 1954 Cri LJ 1645] it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.*

11. *We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A.P. [(1996) 10 SCC 193 : 1996 SCC (Cri) 1205] wherein it has been observed thus : (SCC pp. 206-07, para 21)*

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of

evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

12. *In Padala Veera Reddy v. State of A.P. [1989 Supp (2) SCC 706: 1991 SCC (Cri) 407 : AIR 1990 SC 79] it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests : (SCC pp. 710-11, para 10)*

“10. (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

13. *In State of U.P. v. Ashok Kumar Srivastava [(1992) 2 SCC 86 : 1992 SCC (Cri) 241 : 1992 Cri LJ 1104] it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.*

14. *Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence : (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal*

accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

15. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

16. In *Hanumant Govind Nargundkar v. State of M.P.* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] it was observed thus : (AIR pp. 345-46, para 10)

“10. ... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

- d. The Hon'ble Supreme Court held the following in ***Hanumant v. State of M.P. (1952) 2 SCC 71:-***

11. ...In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson to the jury

in *R. v. Hodge* [*R. v. Hodge*, (1838) 2 Lew 227 : 168 ER 1136] where he said:

“The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”

12. *It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.*

e. The Hon'ble Supreme Court held the following in ***Sahadevan v.***

State of T.N. (2012) 6 SCC 403-

The principles

16. *Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:*

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.*
- (ii) It should be made voluntarily and should be truthful.*
- (iii) It should inspire confidence.*
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent*

circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.

25. The crucial breakthrough in the case occurred after the arrest of appellant Durjodhan Paramanik. As per PW-14, Durjodhan was apprehended on the night of 14.05.2014 at Dava More. During interrogation, he disclosed his willingness to lead the police to the location where Jayanta's body was hidden, as well as to help recover the weapons used in the assault and to trace the severed head thrown into a nearby pond.

26. Acting on this aforesaid information, the Officer-in-Charge of Balarampur P.S. directed S.I. Pankaj Singh (PW-11) to proceed immediately to Ichhadih Pahar with a family member or local resident to assist in the identification of the body. PW-11 left for the site early that morning, accompanied by Manbhula Kumar (PW-4) and Swapan Paramanik (PW-2).

27. Upon reaching Ekra Forest, the police team, along with Durjodhan, located the ditch where the beheaded body lay concealed. The body was recovered in the presence of PW-14, constable Narayan Chandra Mahanti (PW-8), two *Doms*, and the two witnesses. PW-4 identified the body as that of her *dewar* (husband's younger brother), i.e. Jayanta, based on physical characteristics and clothes. PW-2 also corroborated the identification.

28. PW-11 confirmed that he received orders between 6:30-7:00 a.m. and reached the forest by 8:00 a.m. He was present during the recovery and

identification. PW-4, in her testimony, described being brought to the forest in a police jeep, where she witnessed the body being recovered in the presence of the police, PW-2, and the accused Durjodhan. She identified the body based on familiar clothing and build, remained at the site for nearly two hours, and signed the inquest report (Exhibit 2/1), which she affirmed during cross-examination.

29. PW-2 similarly testified that he accompanied police and PW-4 to the jungle and witnessed the recovery. He signed the inquest report (Exhibit 2), though in cross-examination, he clarified that he saw the body only after it had been shown to him and stayed at the site for about 10-15 minutes.

30. PW-8, a constable who accompanied the investigating team, confirmed that the body was recovered from a ditch based on Durjodhan's lead. He testified two female relatives identified the body and that he later transported it to the hospital for post-mortem under challan (Exhibit 6).

31. PW-14 conducted the inquest at the site in connection with Balarampur U.D. Case No. 15/2014, which commenced at 9:55 a.m. and it took an hour to conclude. His observations, as recorded in the inquest report (Exhibit 2), noted advanced decomposition and beheading caused by a sharp-edged weapon. PW-2 and PW-4 acknowledged their signatures on the inquest report.

32. The body was sent for autopsy, and PW-15, Dr. Amal Nath, performed the post-mortem at 3:00 p.m. on the same day. His findings confirmed that the body was indeed decomposed, with the head severed cleanly, and multiple fractures present in both legs and the upper right arm.

33. Dr. Nath opined that the decapitation was caused by a sharp weapon such as a *tangi*, while the other injuries were consistent with assault by blunt objects. All injuries were ante-mortem and homicidal in nature. The deceased was found wearing a white *ganji* and *Khairul*-colored *jangiya*. His report was marked Exhibit 19. The following injuries were:

- a. Incised wound sharp margin transverse 7" X 1" X bone deep left side of the face Mandible and nasal bone cut.
- b. Incised wound sharp margin transverse 2" X ½" X bone deep parietal region posterior aspect.
- c. Small cut injury right angle of mandible.

34. The Trial Court relied heavily on the alleged recovery of the deceased's body, weapons, and other incriminating articles, as well as the statements of the accused made in police custody, to establish the chain of circumstances. However, a close scrutiny of the record revealed significant discrepancies in the evidence of the prosecution witnesses

35. It is noteworthy that PW-14 admitted in his cross-examination that Exhibit-14, the statement of Durjodhan Paramanik, was recorded after the recovery of the dead body of Jayanta Kumar. Pertinently, no body or weapon was recovered based on this statement, and no subsequent statement of Durjodhan was recorded. Contrary to the provisions enumerated in Section 27 of the Indian Evidence Act, as the law mandates that the fact must be discovered in consequence of the statement and not the other way around.

36. Further, PW-14 deposed that Durjodhan Paramanik was arrested on the night of 14.05.2014, while the inquest, seizure, and post-mortem

reports show that the recoveries occurred in the morning, which raised suspicion mismatch further discrediting the admissibility of the alleged statement and recovery.

37. Additional contradictions emerge in the evidence surrounding the recovery of the beheaded body. PW-14 claimed to have first seen the body at 9:55 AM on 14.05.2014 and stated that he forwarded this information to the O.C. of Balarampur Police Station via R.T. message. In response, the O.C. had instructed PW-11, S.I. Pankaj Singh, to proceed to the spot with the deceased's relatives for identification. However, PW-11 claimed he received such instructions between 6:30 and 7:00 AM and had already reached the site before 8:00 AM - well before the alleged discovery at 9:55 AM. No R.T. message was seized or produced in evidence to verify such communication.

38. The contradiction deepened when PW-2 Swapan Paramanik testified that he stayed at the site for merely 10-15 minutes, while PW4 Manbhula Kumar claimed she remained for about two hours. Such variance in key eyewitness accounts further weakened the prosecution's case.

39. PW-4 stated that the police came with Swapan and Durjodhan to escort her to the jungle. Swapan confirmed this. However, PW-11 stated he only accompanied Swapan and Manbhula. If PW-14 was already at the jungle with Durjodhan, it was highly improbable that he was also present in PW-11's police jeep. The inconsistency surrounding Durjodhan's presence - whether in the police jeep or already at the site - remained unresolved and cast serious doubt on the narrative.

40. Even the identification of the body is riddled with contradiction. PW-8, Narayan Chandra Mahanti, claimed that two women - one being the

deceased's mother - identified the body. However, it was on record that the mother of the deceased was undergoing treatment at Bansgarh Hospital during that time. These contradictions were not only glaring but fatal to the credibility of the prosecution's case.

41. Perhaps the most striking contradiction was PW-14's claim that he saw the body at 9:55 AM and simultaneously started the inquest proceeding at that very time. In contrast, PW-2 and PW-4, who were allegedly brought for identification only after the O.C. received the R.T. message post-9:55 AM, could not have arrived in time for the inquest. Such variant possibility of their presence at the scene during the inquest further renders the prosecution's version unreliable. Either the witnesses are mistaken, or the Investigating Officer's timeline is fabricated - in either case, the credibility of the prosecution is gravely doubtful.

42. Additional discrepancies regarding the failure to produce Durjodhan Paramanik before a Magistrate within 24 hours, lack of proper judicial endorsement on his statement, delay in filing FIR, and inconsistencies in the reference to the U.D. Case on vital documents such as the inquest, post-mortem, and seizure lists - all indicate procedural irregularities that vitiate the prosecution's case. PW-1's silence before PW-10 on the following day at the hospital also erodes the reliability of her testimony.

43. According to PW-1, the victim, Jayanta Kumar, left his old house around 10:30 p.m. to go to his new house, approximately one kilometer away therefrom. He never returned. This account was reiterated by PW-1 in Court and remained consistent throughout the investigation. The mystery of

Jayanta's disappearance began to unfold on 14.05.2014, when PW-4, Manbhula Kumar, and PW-2, Swapan Paramanik, weretaken near a ditch within the Ekra Forest near Ichhadih Pahar wherein the beheaded body was discovered. A few days later, on 17.05.2014, the severed head was recovered from a pond near Badhghutu, and identified by family members PW-7 (Bikas Kumar) and PW-10 (Sabita Kumar). Medical and investigative evidence-including inquest reports, post-mortem findings, and testimonies of PW-14 (the first Investigating Officer), PW-15 (the autopsy surgeon), and PW16 (the second I.O.)-revealed that Jayanta Kumar was brutally assaulted with rods and lathis, fracturing both legs and the right upper arm. His death was ultimately caused by beheading with a sharp-edged weapon, most likely a *tangi*. On the same day of the recovery, PW-14 collected blood-stained and control earth from the site at 11:15 a.m. and prepared a seizure list (Exhibit 11), witnessed by SI Pankaj Singh (PW-11) and constables Bidyut Kr. Kanri (PW-12) and Sandip Dey (PW-13). The following day, on 15.05.2014, PW-14 visited the area near an electric transformer on the outskirts of Village Deoli, following further disclosures made by Durjodhan. There, he recovered a black plastic sandal with bloodstains, along with additional blood-stained control earth. These were seized under a separate seizure list (Exhibit 5) in the presence of Bikas Kumar (PW-7) and Sabita Kumar (PW-10), the deceased's brother and mother, respectively. During cross-examination, PW-14 admitted that no independent local witnesses were present during such recovery and seizure, apart from the victim's close relatives.

44. While the prosecution presents a seemingly straightforward sequence of events linking the appellants to the crime, a closer scrutiny of the

record reveals several material inconsistencies, procedural lapses, and gaps in the investigation that raise serious doubts regarding the veracity of the prosecution's case.

45. Notably, PW-14, the first Investigating Officer, admitted in cross-examination that there was no direct evidence connecting the accused persons to the actual assault on the deceased. He relied solely on the disclosures made by the accused post-arrest, without any independent corroboration.

46. Although the appellants were arrested on the night of 14.05.2014 and allegedly made confessional statements the same day, no public witnesses were present during such critical disclosures. The prosecution failed to produce any signed memo of confession under Section 27 of the Indian Evidence Act.

47. The prosecution further did not produce or examine any of the *Doms* who allegedly helped to recover the body from the ditch. Their absence removes a key link in establishing the authenticity of the recovery operation.

48. The second Investigating Officer, PW16, deposed that the *tangi*—allegedly the murder weapon—was recovered pursuant to Durjodhan's confession. Yet, strangely, the first Investigating Officer, PW-14, who handled the initial stages of the case, claimed he had no knowledge of this recovery. This inconsistency cast serious doubt on the chain of custody of offending weapon.

49. The claimed recovery of weapons and personal articles of the deceased was made in absence of any independent or neutral witnesses. Most seizure witnesses, including PW-7 and PW-10, were family members of the

deceased, thereby affecting the evidentiary value of these recoveries. The sandals seized on 15.05.2014 near the electric transformer were allegedly blood-stained and belonged to the deceased. However, no forensic evidence or DNA analysis was conducted to conclusively establish the veracity of the same.

50. Similarly, no chemical analysis report was brought on record regarding the blood-stained earth collected from the ditch. No attempt was made to match the blood found at the scene with the victim's blood group or DNA. It is also pertinent that there is no photograph or videographic evidence of the site where the body has been found, or of the recovery process, despite the presence of a full police team and relatives.

51. The testimonies of PW-4 and PW-2 regarding the identification of the body also show discrepancies. While PW-4 claimed to have spent nearly two hours at the site and to have identified the body based on clothing and features, PW-2 stated he remained at the site for just 10–15 minutes and saw the body only after being shown to the same. The delay in recovering the severed head - only on 17.05.2014, three days after the torso was found - remains unexplained. Though the pond where it was discovered was allegedly identified by the accused Haladhar and Dayal, no corroborating evidence or witnesses were produced to confirm this. The *tangi* was allegedly recovered on 17.05.2014 from a pond near Bandhghutu village. However, no effort was made to link this weapon forensically to the decapitation, nor were fingerprints or other trace evidence were produced. The clothes allegedly worn by the deceased and recovered along with the body were not sent for forensic examination to detect blood or DNA traces that could support the prosecution

case. No mobile call records or tower location data were obtained or produced to trace the movements of the deceased or the accused around the time of the incident. None of the villagers from Ichhadih or surrounding areas, where the body and head were recovered, were examined as witnesses, though they could have independently corroborated the events or provided valuable leads. The dead body was discovered in a forest area within a protected wildlife zone. Yet, there was no evidence of any coordination with forest officials or records showing who had access to that area. Although the FIR mentioned the deceased left his house to go to his new house, no evidence was produced to show that the deceased had reached or attempted to enter the new premises. There was also no investigation into who saw him last or where he might have been intercepted. Finally, the entire case rests on circumstantial evidence—primarily the alleged confession of the accused and the recoveries made pursuant to it. The prosecution failed to establish an unbroken chain of circumstances that would conclusively point to the guilt of the appellants.

52. PW-14 in his cross-examination further deposed he had not investigated as to whether the Title Suit or other cases as was told by complainant in his statement were still continuing or not or whether date was fixed on 12.05.2014 or not. Exhibit-13 was for houses of Jayanta Kumar which were old house and new house. In the rough sketch map, no ICDS centre was shown by PW-14 but one Kali temple under construction was denoted by letter 'I'. PW-14 prepared the rough sketch map seeing these things at place of occurrence. In the rough sketch map two paths were shown to go to the new house of Jayanta from old house. By letter 'O' had indicated electric transformer in the rough sketch map. The rough sketch map was

prepared on 12.05.2014. On 15.05.2014 PW-14 seized blood stained earth and plain earth and one show near the electric transformer, i.e., Exhibit-5. When he sent the dead body for the post mortem examination, then the body was wearing white Barmunda pant and white T-shirt. After P.M. examination, PW-14 seized one white colour T-shirt, one white colour short pant and one Langot. Doctor Babu had handed over the articles to police constable. The challan for the dead body PW-14 had not mentioned that whether the wearing apparels had contained blood stains. PW-14 had not investigated as to whether or not the son of Bikash and mother of Jayanta were admitted for treatment at Bansgar hospital on the previous night of incident. The paper which was given by Manbhula Kumar at the time of recovery of body after it was noted in reference to the U.D case but it was not in the case record.

53. *“In the statement of Durjadhan Paramanik, i.e., PW-14 has been paged three times. This statement is after the recovery of body of Jayanta Kumar. From the statement of Durjadhan Paramanik neither body nor any offending weapons has been recovered. When I recorded the statements before the Court. On this paper there is no mark for seen or signature by CJM, Purulia.”*

54. At first beheaded body was noticed at 9:55 hours on 14.05.2014. After the recovery of body one R.T message was sent at P.S. and one Pankaj Singh brought Manbhula Kumar and Sukumar Paramanik for the identification of body. House of Jayanta Kumar was at a distance about 5 km from the place where body was found. From this place Balarampur P.S. was at a distance about 6-7 km. Deoli village was another direction and Balarampur P.S. was another directions from this place where body was

found. PW-14 had not seized the said R.T message or copy of R.T message in this case. After the statements, no other statements of Durjadhan Paramanik had been recorded. Witness Mahabir Kumar had told PW-14 that when Jayanta went from his old house to new house then he had worn white Barmunda. Mahabir had not told PW-14 that Manbhula told him that as per the direction of Durjadhan, the police had recovered dead body of Jayanta. Mahabir had not also told PW-14 that Nepal Majhi had threatened his son with death or that before one day before incident, dacoity had been committed at his house. He had not called for the TIP report of the seized sandel during his investigation period. There were residents of several people in Deoli village. He had not cited any other persons except the mother of Jayanta and the elder brother of Jayanta as the witness to the seizure of sandle. After the P.M. examination, PW-14 did not seize any Barmunda pant. The houses of Tarapada Singh and others were near the electric transformer. From the statements of Sabita Kumar and Bikash Kumar, it did not reveal that the sandle, blood-stained earth and plain earth were seized articles that were shown by Durjadhan Paramanik.

55. PW-16 deposed in his evidence that he had interrogated the accused persons during his remand. From their statements, he came to know for their guilt and they told him to help him to recover beheaded body, head where those had been concealed as well as offending weapons. Thereafter on their information along with O.C. Balarampur P.S. and other forces with two accused persons namely Haladhar Paramanik and Dayal Paramanik they proceeded along with one Bikash Kumar, brother of the deceased and Sabita Kumar being PW-10, mother of deceased. They reached with other at Ekra

Mouza near village Bandhghutu. Accused Haladhar Paramanik and Dayal Paramanik showed them a pond and they searched the pond and they brought out one beheaded head of Jayanta Kumar deceased that was in a white bag including some documents, papers and a dot pen. They also had brought out one Tangi from the pond. Thereafter Bikash Kumar and Sabita Kumar identified beheaded as of Jayanta Kumar and also identified the recovered documents and paper as well as the dot pen which were in the said bag. He also recorded the statements of Haladhar Paramanik and Dayal Paramanik after the recovery of the alamats. The relevant portion of statements of Haladhar Paramanik and Dayal Paramanik were marked as Exhibits-22 and 23 (with objection). PW-16 prepared inquest report over beheaded and sent the same for P.M examination. The said inquest report prepared by him bore his signature under carbon copy marked as Exhibit-4/3. The carbon copy of the challan for sending the beheaded head for P.M examination bore his signature under carbon process copy marked as Exhibit-9/1. PW-16 had made arrangement for taking photographs at that time through a photographer. In the photographs, photographs of the accused would be found proving that they were present. During further examination, PW-16 deposed that during P.C period leading to confessional statements of accused Balai Paramanik, Nimai Paramanik, Kanai Paramanik, Jamini Kumar, they reached Erka-Ichhadih jungle as shown by accused Nimai Paramanik and was produced by him. PW-16 recovered one bamboo lathi and gunny bag under seizure list. The said seizure list prepared by him bore his signature marked as Exhibit-24 which was used to carry the dead body. (with objection). On 21.05.2014 he also recovered one iron rod with

blood stain leading to statement of P.C accused Kanai Paramanik from the spot. On that day he also recovered one iron rod with blood stain leading to statement of P.C accused Balai Paramanik. PW-16 prepared seizure list separately for the items. The said seizure list prepared by him bore his signature marked as Exhibit-25 and 26. He also recovered one mobile phone hand set having IME No.8601020113030811 and another IME No.86010201130399 containing with Airtel SIM having contact No.9932839608 as produced by Jamini Kumar. He seized those under seizure list prepared by him which bore his signature marked as Exhibit-27.

56. With regard to the confessional statements, PW-16 disposed in his cross-examination that the accused individuals did not disclose the exact location where the articles would be found in the jungle, but did admit that it was within Ekra-Ichhadih forest. The seized items were labeled but there was no note to this effect in the seizure list. Furthermore, PW-16 deposed that he resumed his investigation on 17/05/2014, and the beheaded body was recovered before. He states that while he had examined Haladhar Paramak and Dayal Paramanik, he had not recorded their statements. Furthermore, on the seizure list dated 17.05.2014, there was no mention of a beheaded head. The seizure list was also silent on what article was discovered first and on whose confessional statement the articles were found. He did not mention in the seizure list whether the items had stains of blood on them. Despite the medical report stating that he received a set of trousers along with the head, PW-16 admits that no full trousers were sent to the medical officer. PW-16 stated that Bikash Kumar did not admit in his statement that Dayal brought out a pen and Haladhar brought out a head or both accused shown head and

shown it is head of Jayanta Kumar. Moreover, witness Sabita Kumar had not deposed that the head of her son was found in plastic bag. He prepared the seizure list Exhibit 24-26 on 21/05/2014, however the seizure list did not contain the signatures of independent witnesses. PW-16 deposed that he arrested accused persons Nimai Paramanik, Kanai Paramanik, and Jamini Kumar Paramanik on 18.05.2014, with Kanai and Nimai being apprehended prior to Jamini. He stated that neither Nimai nor Kanai implicated Jamini Kumar in their statements. Jamini was arrested solely on the basis of his name being mentioned in the written complaint. His statement was recorded at the village on 18.05.2014, wherein he expressed willingness to assist in recovering a mobile phone but did not disclose its location. PW-16 admitted that he did not search the house of Lakhikanta Kumar on 18.05.2014 and the case diary does not explain this omission. Acting on Jamini's statement, PW-16 visited Lakhikanta's house on 21.05.2014. PW-16 further admitted that the seizure list dated 21.05.2014 does not state that Jamini Kumar retrieved the mobile from the possession of Lakhikanta's wife or daughter. He did not record the statement of Mira Kumar or obtain signatures from other witnesses of the village. Additionally, the seizure list lacked details regarding the sealing and labelling of the seized items. He also recorded a further statement of witness Mahabir Kumar on 02.06.2014, wherein Mahabir stated that 13 other FIR-named persons were not involved in the incident. Although PW-16 verified their non-involvement, he did not cite them as witnesses. He referenced Balarampur P.S. Case No. 36 dated 30.07.1999 under Sections 324/325/307/34 IPC against accused persons Bikash Kumar, Mahabir Kumar, and Sabita Kumar, in which a charge-sheet had been filed.

57. To the question of recovery under section 27 of the Evidence Act in the case of ***Himachal Pradesh Administration Vs Om Prakash*** reported in ***AIR 1972 SC 975***, in paragraph 9 thereof, the Apex Court amongst other observed as follows, "in our view the evidence relating to recoveries is not similar to that contemplated under section 103 of the Criminal Procedure Court where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situate. In an investigation under section 157 the recoveries could be proved even by the solitary evidence of the investigating officer if his evidence could otherwise be believed. We cannot deal a matter of law or practice lay down that where recoveries have to be effected from different places on the information furnished by the accused different sets of persons should be called into witness them".

58. In the decision cited in ***(2017) 2 C Cr LR (SC) 52***, it is observed that "it is no longer *res integra* that the "fact discovered" as envisaged under Section 27 of the Act, in consequence of any information received from a person in the custody of a police officer, embraces the place from which any object is produced and the knowledge of the accused as to this provided the information given relate distinctively to the fact, as had been held by the Privy Council in ***Pullukuri Kotayya and others Vs. King Emperor, AIR 1947 PC 67***. This enunciation, hallowed by time, has been oft quoted with approval by this court in as plethora of subsequent pronouncements while interpreting the scope and purport of the above legal provision." "Amongst others in ***Bodhraj @ Bodha and others vs State of Jammu & Kashmir (2002) 8 SCC 45***, it has been elucidated that the doctrine is founded on the principle

that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, while in the custody of a police officer, such a discovery is a guarantee that the information supplied by the prisoner is true. It had been held that the information may be confessional or non inculpatory in nature, but if it results in discovery of facts, it becomes a reliable information."

59. In the decision cited in **2011 CRI L.J. 1604** it is observed that the Hon'ble Apex Court in the case of **Nisar Khan v. State of Uttaranchal (2006(2) SCC (Cri) 568)** held as under :

*"It is now well settled principle of law that the recovery pursuant to the disclosure statement made by the accused under Section 27 of the Evidence Act is admissible in evidence. In **Dhananjay Chatterjee Vs. State of West Bengal (1994 (2) SCC 220 : 1994 SCC (Cri) 358)** it is held that "the entire statement made by an accused person before the police is inadmissible in evidence being hit by Section 25 and 26 but that part of hit statement which led to the discovery of the articles is clearly admissible under Section 27 of the Act. It is also held that the Court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. it is further held that the discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence".*

60. In **Golakonda Venkateswara Rao Vs. State of A.P. (2003 (9) SCC 277 : 2003 SCC (Cri) 1904) : (AIR 2003 SC 2846)** this court reiterated

the view and held that the discovery statement of an accused leading to recovery of crime articles from concealed place, even though the discovery statement and the recovery memo did not bear the accused's signature the fact of recovery from the well and dug out was from a place which was pointed out by the appellant and, therefore, such discovery was voluntary. That the recovery was in consequence to the information given was fortified and confirmed by the discovery of the apparel worn and skeletal remains of the deceased and, therefore, the information and statement cannot be held to be false. ***In Praveen Kumar v. State of Karnataka (2003 (12) SCC 199 : 2004 SCC (Cri) Supp357)*** the same view has been reiterated".

61. The following cases further elucidate on the law laid down by the Hon'ble Supreme Court with regard to Section 27.

- a. The Hon'ble Supreme Court held the following in ***Boby v. State of Kerala, (2023) 15 SCC 760:-***

29. *It could thus be seen that Section 27 of the Evidence Act requires that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to the said fact. The information as to past user, or the past history, of the object produced is not related to its discovery. The said view has been consistently followed by this Court in a catena of cases.*

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40. *A perusal of para 71 of Suresh Chandra Bahri case [Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] would reveal that the Court has reiterated that the two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an*

accused of any offence and (2) he must also be in police custody. The Court held that the provisions of Section 27 of the Evidence Act are 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 consequently the said information can safely be allowed to be given in evidence.

41. *In the facts of Suresh Chandra Bahri case [Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] , the Court found that there was, in fact, a confessional statement of the disclosure made by the appellant Gurbachan Singh which was confirmed by the recovery of the incriminating articles. As such, the Court believed the disclosure statement and the evidence led in that behalf.....*

b. In **Mohd. Bani Alam Mazid v. State of Assam, 2025 SCC**

OnLine SC 391, the Hon'ble Supreme Court held the following:-

35. *Section 27 of the Evidence Act deals with such information received from the accused which may be proved. Section 27 of the Evidence Act is couched in the language of a proviso and immediately follows Section 26. It is, therefore, necessary that the two sections are discussed conjointly. While Section 26 deals with confession made by an accused while in custody of police, Section 27 as noted above deals with such information received from the accused which may be proved. Section 26 of the Evidence Act, without the Explanation which is not relevant, is as follows:*

26. Confession by accused while in custody of police not to be proved against him. - No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

35.1. *What Section 26 of the Evidence Act says is that no confession made by any person while he is in the custody of a police officer shall be proved as against such person unless it is made in the immediate presence of the Magistrate. This is an exception to the absolute bar of Section 25 which declares that no confession made to a police officer shall be proved as against a person accused of any offence. Section 27 on the other hand is a qualification of Section 26 and reads as under:*

27. How much of information received from accused may be proved. - Provided that, when any fact is deposed to as discovered in consequence 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.

35.2. *Section 27 provides that when any fact is deposed to as discovered in consequence 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.*

36. *The contours of Section 27 was examined by the Privy Council in the case of Pulukuri Kottaya v. King-Emperor⁷, whereafter it was observed that the discovery of fact contemplated under Section 27 of the Evidence Act arises by reason of the fact that information given by the accused exhibited his knowledge or mental awareness as to its existence at a particular place. Relevant portion of the aforesaid decision is extracted hereunder:*

S. 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 the discovery of a fact in consequence of information received from a

person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be 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 can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.

37. *This Court in Vasanta Sampat Dupare v. State of Maharashtra⁸ referred to the observations made by the Privy Council in Pulukuri Kottaya (supra) and culled out the following principles:*

23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in Pulukuri Kotayya v. King Emperor has held thus:

... it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. 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. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

38. *In the case of Asar Mohammad v. State of Uttar Pradesh⁹, this Court referred to the word 'fact' appearing in Section 27 of the Evidence Act and held that such a fact need not be self-probatory. The word 'fact' contemplated in Section 27 of the Evidence Act is not limited to 'actual physical material object.' Discovery of fact arises by reason that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place which includes discovery of the object, the place from which it is discovered and the knowledge of the accused as to its existence.*

- c. The Hon'ble Supreme Court held the following **Suresh Chandra Tiwari v. State of Uttarakhand, 2024 SCC OnLine SC 3531:-**

9. *Before we proceed to test the correctness of the findings returned by the trial court as well as the High Court, we must bear in mind that the prosecution case rests on evidence circumstantial in nature. As to when on strength of such evidence an accused can be convicted, the legal principles, as propounded in a series of decisions⁷ of this Court, may be summarized thus:*

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established;*
- (ii) the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;*

(iii) the circumstances taken cumulatively should form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused;

(iv) the circumstances should be consistent only with the hypothesis regarding the guilt of the accused; and

(v) they must exclude every possible hypothesis except the one which is sought to be proved.

20. Adding on to the aforesaid legal principles, in *Devi Lal v. State of Rajasthan*⁸, a three-judge bench of this Court held that in a case based on circumstantial evidence where two views are possible, one pointing to the guilt and the other to his innocence, the accused is entitled to the benefit of one which is favorable to him.

21. Besides that, before recording conviction, the court must be satisfied that the accused 'must be' and not merely 'may be' guilty. In *Shivaji Sahabrao Bobade v. State of Maharashtra*⁹, this Court, elaborating upon the above principle, observed that the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions. Therefore, even if the prosecution evidence generates strong suspicion against the accused, it cannot be a substitute for proof.

22. Bearing in mind the aforesaid legal principles, we would examine and consider - (a) whether the circumstances relied by the prosecution have been proved beyond reasonable doubt; (b) whether those circumstances are of a definite tendency unerringly pointing towards the guilt of the accused; (c) whether those circumstances taken cumulatively form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused; (d) whether they are consistent only with the hypothesis of the accused being

guilty; and (e) whether they exclude every possible hypothesis except the one to be proved.

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37. Otherwise also, the disclosure statement (Exb. Ka-18) was not admissible in evidence because the alleged discovery was not made pursuant to that statement. Disclosure statement was recorded at the police station whereas recovery was made from the place pointed out by the accused enroute to the police station. It was, therefore, a case of recovery from the place allegedly pointed out by the accused and not based on a disclosure statement. In *Geejaganda Somaiah v. State of Karnataka*¹¹, this Court has cautioned the courts about misuse of provision of Section 27 of the Evidence Act, 1872 while observing as under:

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

(Emphasis supplied)

- d. The Hon'ble Supreme Court held the following in **Randeep Singh v. State of Haryana, 2024 SCC OnLine SC 3383:-**

16. The law on disclosure under Section 27 is well settled right from the classic decision of the Privy Council in the case of *Pulukuri Kotayya v. King-Emperor*². In the case of *K. Chinnaswamy*

*Reddy v. State of A.P.*³, this Court relied upon the decision of the Privy Council and in paragraph 9 held thus:

“9. Let us then turn to the question whether the statement of the appellant to the effect that “he had hidden them (the ornaments)” and “would point out the place” where they were, is wholly admissible in evidence under Section 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments. The Sessions Judge in this connection relied on Pulukuri Kotayya v. King-Emperor [(1946-47) 74 IA 65] where a part of the statement leading to the recovery of a knife in a murder case was held inadmissible by the Judicial Committee. In that case the Judicial Committee considered Section 27 of the Indian Evidence Act, which is in these terms:

“Provided that, when any fact is deposed to as discovered in consequence 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.”

This section is an exception to Sections 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police “whether it amounts to a confession or not” which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27. The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under Section 27 and laid stress on the words “so much of such information...as

relates distinctly to the fact thereby discovered” in that connection. It held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It was further pointed out that “the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact”. It was further observed that—

“Information as to past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered.”

This was exemplified further by the Judicial Committee by observing—

“Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ 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. If however to the statement the words be added ‘with which I stabbed A’, these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

(emphasis added)

Section 27 is an exception to Sections 25 and 26. It permits certain parts of the statement made by the accused to a police officer while in custody to be proved. Under Section 27, only that part of the statement made by the accused is admissible, which distinctly relates to the discovery. It becomes admissible when a fact is discovered as a consequence of the information received from the accused. What is admissible is only such information furnished by the accused as relates distinctly to the facts thereby discovered. No

other part is admissible. By Exhibits 'P55' and 'P56', it is alleged that the accused showed the places where the deceased was abducted, where he was murdered and where his body was thrown. In this case, even the inadmissible part of the statement under Section 27 of the Evidence Act has been incorporated in the examination-in-chief of PW-27. The learned trial judge should not have recorded an inadmissible confession in the deposition. A confessional statement made by the accused to a police officer while in custody is not admissible in the evidence except to the extent to which Section 27 is applicable. If such inadmissible confessions are made part of the depositions of the prosecution witnesses, then there is every possibility that the Trial Courts may get influenced by it.

- e. In **Rajesh v. State of M.P., (2023) 15 SCC 521**, the Hon'ble Supreme Court held the following:-

18. *A conspectus of the prosecution's case clearly reveals that it is poised entirely on circumstantial evidence as there was no eyewitness to the kidnapping and murder of Ajit Pal. In a case resting on circumstantial evidence, the prosecution must establish a chain of unbroken events unerringly pointing to the guilt of the accused and none other [See C. Chenga Reddy v. State of A.P. [C. Chenga Reddy v. State of A.P., (1996) 10 SCC 193 : 1996 SCC (Cri) 1205] , Ramreddy Rajesh Khanna Reddy v. State of A.P. [Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512] , Majenderan Langeswaran v. State (NCT of Delhi) [Majenderan Langeswaran v. State (NCT of Delhi), (2013) 7 SCC 192 : (2013) 3 SCC (Cri) 266] and Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487]]. As long back as in the year 1952, in Hanumant v. State of M.P. [Hanumant v. State of*

M.P., (1952) 2 SCC 71] , a three-Judge Bench of this Court observed as under : (SCC pp. 76-77, para 12)

“12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

19. *Again, in Padala Veera Reddy v. State of A.P. [Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706 : 1991 SCC (Cri) 407] , this Court affirmed that when a case rests solely upon circumstantial evidence, such evidence must satisfy the following tests : (SCC pp. 710-11, para 10)*

“10. ... ‘(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not

only be consistent with the guilt of the accused but should be inconsistent with his innocence.’ ”

xxx

28. *Section 26 of the Evidence Act, 1872 (for brevity “the Evidence Act”), provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27, thereafter, is in the nature of an Exception to Section 26 of the Evidence Act. It states that, when any fact is deposed to as discovered in consequence 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. Therefore, it is essential under Section 27 of the Evidence Act that the person concerned must be “accused of an offence” and being in the “custody of a police officer”, he or she must give information leading to the discovery of a fact and so much of that information, whether it amounts to a confession or not, that relates distinctly to the fact discovered, may be proved against him. In effect, both aspects viz. being in “the custody of a police officer” and being “accused of an offence”, are indispensable prerequisites to render a confession made to the police admissible to a limited extent, by bringing into play the Exception postulated under Section 27 of the Evidence Act.*

29. *In this regard, reference may be made to Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201] , wherein this Court had observed that the requirement of “police custody” is productive of extremely anomalous results and may lead to the exclusion of valuable evidence in cases where a person, after committing a crime meets a police officer and states the circumstances of the crime which lead to the discovery of the*

dead body, weapon or any other material fact, in consequence of the information thus received from him, and he is subsequently taken into custody and becomes an “accused”. This Court pointed out that this information, which would otherwise be admissible, becomes inadmissible under Section 26 of the Evidence Act as it did not come from a person in the “custody of a police officer” or rather, came from a person not in the “custody of a police officer”. In other words, the exact information given by the accused “while in custody”, which led to recovery of the articles can be proved. It was noted that this doctrine is founded on the principle that if any fact is discovered as a search was made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

30. *Thereafter, in State of Karnataka v. David Rozario [State of Karnataka v. David Rozario, (2002) 7 SCC 728 : 2002 SCC (Cri) 1852] , this Court held that information which is otherwise admissible under Section 27 of the Evidence Act would become inadmissible, if it did not come from a person in the “custody of a police officer” or came from a person “not in the custody of a police officer”. It was further held that what is admissible is the information and not the opinion formed on it by the police officer and, in other words, the exact information given by the accused while in “custody” which led to recovery of the articles has to be proved. The two essential requirements, per this Court, are that : (i) the person giving the information must be “accused of an offence”; and (ii) he must be in “police custody”.*

31. *Again, in Ashish Jain v. Makrand Singh [Ashish Jain v. Makrand Singh, (2019) 3 SCC 770 : (2019) 2 SCC (Cri) 256] , this Court held that once a confessional statement of the accused is found, on facts, to be involuntary, it would be hit by Article 20(3) of the Constitution of India, rendering such a confession inadmissible. It was further noted that there is an embargo on*

accepting self-incriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. This Court further cautioned that if such a statement is made under undue pressure and compulsion from the investigating officer, the evidentiary value of such a statement leading to the recovery is nullified.

32. *More recently, in Bobby v. State of Kerala [Bobby v. State of Kerala, (2023) 15 SCC 760] , this Court referred to the decision of the Privy Council in Pulukuri Kotayya v. King Emperor [Pulukuri Kotayya v. King Emperor, 1946 SCC OnLine PC 47 : (1964-47) 74 IA 65 : AIR 1947 PC 67] , wherein Section 27 of the Evidence Act had been considered at length and it was noted that Section 27 provides an exception to the prohibition imposed by the preceding provisions and enables certain statements made by an “accused” in “police custody” to be proved. It was observed that the condition necessary to bring Section 27 into operation is that the discovery of a fact in consequence of information received from a person “accused of any offence” in the “custody of a police officer” must be deposed to, and thereupon so much of the information, as relates distinctly to the fact thereby discovered, may be proved. It was observed that normally, Section 27 is brought into operation when a person in “police custody” produces from some place of concealment some object, such as a dead body, a weapon or ornaments, said to be connected with the crime, of which the informant is accused. However, the Privy Council concluded that the Exception to Section 26 added by Section 27 should not be held to nullify the substance of the provision and it would be fallacious to treat the “fact discovered” as equivalent to the object produced; the “fact discovered” embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.*

33. *By way of example, it was elucidated that 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; as knives were discovered many years ago, but if 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.*

34. *Noting this principle, this Court observed that Section 27 of the Evidence Act requires that the “fact discovered” embraces the place from which the object is produced and the knowledge of the “accused” as to this and the information given must relate distinctly to the said fact.*

- f. The following was held by the Hon’ble Supreme Court in **Venkatesh v. State of Karnataka, (2022) 16 SCC 797:-**

20. *The trial court in paras 27 to 30 of its judgment extracted voluntary statements of the appellants. First and foremost, going by the parameters of Section 27 of the Evidence Act (“the Evidence Act, 1872”) only so much of information which relates distinctly to the facts thereby discovered can be stated to have been proved. The extent and ambit of the said provision as well as applicability thereof were considered by the Privy Council in Pulukuri Kotayya v. King Emperor [Pulukuri Kotayya v. King Emperor, 1946 SCC OnLine PC 47 : AIR 1947 PC 67] as under : (SCC OnLine PC)*

“10. 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 the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so

much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be 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 can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object

produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. 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. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

(emphasis supplied)

21. *As was observed by the Privy Council in Pulukuri Kotayya case [Pulukuri Kotayya v. King Emperor, 1946 SCC OnLine PC 47 : AIR 1947 PC 67] the words — "with which I stabbed A" were inadmissible since they did not relate to the discovery of knife in the house of the informant. Applying this logic, only that part of the statement which leads to the discovery of certain facts alone could be marked in evidence and not the entirety of the statement. Coming to the instant case and going by the principle and the illustration highlighted by the Privy Council, out of the statement of Accused 1, only the following portion except the words printed in "italics" would be admissible and can be marked in evidence:*

"... If I am taken there, I will show the spot where we committed murder, and we will show the place where we have thrown the knife and the rod. And we will show the shop in which we sold the jewelleryes."

The expression “where we committed murder” must not come on record. Similarly, all the earlier facts narrated in the statement about past history which are in the nature of self-implication, would be inadmissible as amounting to a confession made to a police officer. All the statements, namely, Exts. P-21 to P-24 must be read accordingly.

22. *We must observe that we have repeatedly found a tendency on the part of the prosecuting agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of the Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the court. This practice must immediately be stopped. In the present case, the trial court not only extracted the entire statements but also relied upon them.*

g. In **Allarakha Habib Memon v. State of Gujarat, (2024) 9 SCC 546**, the Hon’ble Supreme Court held the following:-

43. *In this regard, reliance can be placed on the judgment of Mustkeem v. State of Rajasthan [Mustkeem v. State of Rajasthan, (2011) 11 SCC 724 : (2011) 3 SCC (Cri) 473] , wherein this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. The relevant portion is extracted hereinbelow : (SCC p. 730, para 19)*

“19. The AB blood group which was found on the clothes of the deceased does not by itself establish the guilt of the appellant unless the same was connected with the murder of the deceased by the appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword

recovered at the instance of Mustkeem was not sufficient for test as the same had already disintegrated. At any rate, due to the reasons elaborated in the following paragraphs, the fact that the traces of blood found on the deceased matched those found on the recovered weapons cannot ipso facto enable us to arrive at the conclusion that the latter were used for the murder.”

(emphasis supplied)

62. Section 27 of the Indian Evidence Act, and its corresponding provision under Section 23 (Proviso) of the Bhartiya Sakshya Adhiniyam, 2024, carve out a vital exception to the otherwise rigid exclusions contained in Sections 25 and 26. It permits the admissibility of that part of an accused’s statement made in police custody which leads distinctly to the discovery of a fact. Whether or not such information amounts to a confession, the law allows its proof if it is directly linked to the discovery. This is because the discovery, in consequence of such information, serves as a confirmation of the accused’s knowledge or mental awareness of the fact, lending credibility to the statement.

63. The expression “Provided that” and the phrase “whether it amounts to a confession or not” are indicative of a crucial distinction: only that portion of the statement which leads to the discovery of a fact is admissible, while any other confessional segment not so connected remains inadmissible. This exception rests on the rationale that the discovery of a physical object or place, based on such information, substantiates its truthfulness. In ***Pulukuri Kotayya v. King Emperor*, AIR 1947 PC 67**, the Privy Council categorized both the object discovered and the accused’s conscious knowledge of it as relevant facts under this section.

64. The Hon'ble Supreme Court, in ***Delhi Administration v. BalKrishan*** [(1972) 4 SCC 659] and ***Mohd. Inayatullah v. State of Maharashtra*** [(1976) 1 SCC 828], emphasized that the admissibility of a statement under Section 27 depends squarely on the exact nature and specificity of the fact discovered.

65. What Section 27 of the Indian Evidence Act demands is not the opinion of the police officer but the accuracy of the information provided by the accused that leads to a tangible discovery. This principle is known as the "*doctrine of confirmation by subsequent events*," which implies that the recovery of a material object postulates the reliability of the information. A vague statement like "*the accused led the police to the spot*" is insufficient unless it is shown what precise information was given that led to the recovery.

66. Wherever recoveries are effected on the basis of such admissible information, they become incriminating and shift the burden to the accused to explain the circumstances of possession. This was reaffirmed in ***State (NCT of Delhi) v. Navjot Sandhu*** [(2005) 11 SCC 600].

67. Thus, the legal position is well settled that the portion of a custodial statement not related to the discovery must be severed from the admissible part. The discovery lends credence to the statement, even if made in police custody.

68. The prosecution heavily relied on these discoveries and confessional statements made in police custody, asserting that they established the guilt of the appellants. The learned Trial Judge also placed

significant reliance on these disclosures under Section 27 of the Indian Evidence Act, and accordingly convicted the accused persons.

69. However, Mr. Mitra, appearing for the appellants, challenged the admissibility and reliability of the prosecution's case by contending that the confessional statements do not satisfy the statutory mandate of Section 27 of the Indian Evidence Act, 1872, which carves out a limited exception to the general bar under Sections 25 and 26 of Indian Evidence Act against admissibility of confessions made to police. He submitted accepting these statements without scrutiny risks custodial abuse, undermining Article 20(3) of the Constitution, which safeguards an individual against self-incrimination.

70. He further submitted that Section 24 renders confessions inadmissible if obtained through threat, inducement, or promise, while Section 25 bars the use of confessions made to police officers as evidence. Section 26 permits such confessions only when made in the presence of a Magistrate. The underlying legislative intent, he argued, is to protect accused persons from coerced confessions obtained through undue police influence.

71. The Trial Court heavily relied on confessional statements made by the accused during police custody. However, Section 25 of the Indian Evidence Act renders all confessions made to a police officer inadmissible in law. Further, Section 26 mandates that confessions made while in police custody are inadmissible unless made in the immediate presence of a Magistrate.

72. Section 27 provides a limited exception - only that portion of a statement which leads to the discovery of a fact can be admissible. This

principle was reiterated by the Hon'ble Supreme Court in ***Pulukuri Kottaya v. Emperor* (AIR 1947 PC 67)**, where it was held that "discovery statements must be distinctly related to the fact discovered and must be solely attributable to the information supplied by the accused."

73. In the instant case, while the discovery of the torso, severed head, and weapons allegedly based on the confessions of accused persons may fall within the scope of Section 27, the Trial Court's reliance on broader custodial confessions not directly tie to such discoveries is misplaced and inadmissible. The Court should have severed the admissible portions from the inadmissible.

74. The Hon'ble Supreme Court in ***State of U.P. v. Krishna Gopal & Anr.* (AIR 1988 SC 2154)** observed that "*inconsistencies which strike at the root of the prosecution case cannot be brushed aside as mere discrepancies.*" There are clear contradictions in the timeline of arrest and recoveries, particularly regarding Durjodhan's alleged confession and the sequence of recovery. The prosecution's case becomes vulnerable where independent corroboration is missing and the testimonies of witnesses fail to inspire confidence due to inconsistencies.

75. It is a settled position that unexplained delay in lodging an FIR can be fatal to the prosecution case (see ***Thulia Kali v. The State of Tamil Nadu*, AIR 1973 SC 501**). Although the disappearance was reported on 12.05.2014, the sequence of events leading to recovery remains inconsistent, unexplained and suspicious, particularly when juxtaposed with the timing of Durjodhan's arrest and confession. The procedural delay and its implications were neither properly addressed nor reasonably explained by the prosecution.

76. The accused persons, when examined under Section 313 Cr.P.C, opted to remain silent or stated they were falsely implicated. The burden of proof always lies with the prosecution, and an adverse inference cannot be drawn from the accused exercising their right to silence. The Trial Court inferred guilt based on silence, without adequate corroborative evidence, violating settled constitutional principles and standards of criminal jurisprudence.

77. To apply Section 34 IPC, a clear meeting of minds and pre-concert must be established. In ***Krishna Govind Patil v. State of Maharashtra (AIR 1963 SC 1413)***, the Hon'ble Supreme Court held that mere presence at the scene or general participation is insufficient unless a common intention is proved.

78. The prosecution failed to establish a common intention or conspiracy among the convicted persons. The conviction under Section 34 IPC was mechanically applied, without demonstrating individual roles or collective intent, especially in a scenario lacking eye-witnesses or direct evidence.

79. Indubitably, entire case of prosecution rests on (i) circumstantial evidences, (ii) motive arising out of a prior land dispute, (iii) alleged extra-judicial confessions, (iv) pursuant to custodial disclosures leading to recoveries of the deceased's body and weapon of offence disclosures made in police custody, and (v) certain witness testimonies.

80. In the backdrop of animosity between the parties over land dispute, the motive behind the commission of crime could not be ruled out, but the prosecution failed to adduce any specific evidence of threats or overt

acts by the appellants immediately preceding the disappearance of Jayanta Kumar that could have linked such motive to impact the crime.

81. The links in the chain must be supported by credible evidence. In this case, the prosecution failed to bring on record any specific threats or overt acts preceding the alleged disappearance of the deceased that would indicate the appellants' premeditated intent.

82. The crux of the prosecution's case lies in the alleged confessional statements of the appellants made in police custody, leading to the recovery of the deceased's body parts and other articles. However, the sequence of events is crucial. The beheaded torso of Jayanta Kumar was recovered on the morning of 14th May 2014, before the alleged formal recording of Durjodhan Paramanik's confession, which raised serious questions as to whether the discovery was indeed a direct consequence of his confession.

83. Furthermore, the application of Section 27 of the Indian Evidence Act requires that the information given by the accused must distinctly relate to the fact thereby discovered. The recovery of the severed head and other articles on subsequent dates, allegedly based on further disclosures, suffers from significant infirmities. Crucially, there is a lack of credible independent witnesses to these recovery proceedings. The seizure witnesses are primarily police personnel or close relatives of the deceased, which diminishes the evidentiary value of these recoveries. The Hon'ble Supreme Court in ***State of Rajasthan v. Raja Ram*** has cautioned against relying solely on recoveries made in police custody without independent corroboration.

84. Moreover, the forensic evidence is lacking. There is no conclusive evidence linking the recovered 'tangi' to the injuries sustained by the

deceased. No bloodstains were detected on the weapon, nor was any fingerprint analysis conducted. Similarly, the blood-stained sandals and earth recovered were not subjected to DNA analysis to establish a link with the deceased or the appellants. The absence of such crucial forensic evidence weakens the chain of circumstances.

85. The discrepancies in the testimonies of PW-2 and PW-4 regarding the identification of the body further erode the prosecution's case. The unexplained delay in the recovery of the severed head and the lack of independent corroboration for its discovery based on the accused's alleged information also raise doubts.

86. The prosecution's case lacks any eyewitness to the crime. The reliance on alleged extra-judicial confessions before a police officer, was discredited due to the unexplained delay in reporting and the absence of independent corroboration. The medical evidence confirmed the homicidal nature of the death and the likely weapon used. However, the prosecution failed to co-relate such heinous act with the appellant in exclusivity.

87. Numerous inconsistencies, procedural lapses, and gaps in the investigation, perforate the prosecution case. The failure to examine any independent witness, the lack of photographic or video-graphic evidence of the recovery sites, and the discrepancies between the inquest report and the post-mortem report all contribute to a disintegrated and unreliable chain of circumstances.

88. The benefit of the doubt must go to the accused, as held in ***Kali Ram v. State of Himachal Pradesh (AIR 1973 SC 2773)***:

“If two views are possible, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused must be adopted.”

89. The learned Trial Court appeared to have given undue reliance on the recoveries and the disclosure statements, without adequately addressing the legal safeguards and evidentiary thresholds required in a case based purely on circumstantial evidence. The cardinal principle that suspicions, however grave, cannot substitute the proof of any material appears to have been overlooked.

90. Consequently, we find that the chain of circumstances sought to be established by the prosecution, is neither complete nor conclusive. The evidence on record, even if taken in its entirety, fails to exclude every hypothesis other than the guilt of the accused. The benefit of doubt in absence of credible and trustworthy evidence of criminal law must therefore ensure to the appellants.

91. The learned Trial Court erred in law and on facts by convicting the appellants solely on the basis of circumstantial evidence, without establishing an unbroken and coherent chain pointing conclusively to guilt. While the prosecution painted a seemingly complete narrative, the vital legal requirement - that each link in the chain must be proven beyond reasonable doubt and lead to one and only one conclusion, that of guilt - was not accomplished. The evidence adduced was fragmentary, inconsistent, and in several instances, uncorroborated.

92. The confessional statements of the accused persons, recorded while they were in police custody, were accepted uncritically by the Trial Court. These statements formed the foundation for the alleged recoveries. However, the law is clear: only that part of the information which directly leads to the discovery of material evidence is admissible under Section 27 of the Indian Evidence Act. In the present case, the so-called confessions were narrative in nature, detailing the alleged commission of the crime, which renders them inadmissible under settled law. Moreover, the absence of independent corroboration further weakens the prosecution's case.

93. The recoveries, purportedly made at the instance of the accused, are shrouded in suspicion. Not only were there significant delays between the alleged crime and the seizures, but the places from which the body parts and weapons were recovered were open and accessible to others. Such delays, without proper explanation, cast a serious shadow on the credibility of the recoveries. Furthermore, the absence of any independent local witness at the key seizure spots detracts from the evidentiary value of these recoveries.

94. There is no eyewitness to the murder. The prosecution's theory of conspiracy rests on the slender thread of assumed motive - a prior land dispute - without any direct evidence of planning or common intention. The statements of the victim's relatives regarding land disputes are vague and general in nature and cannot substitute for direct evidence of conspiracy.

95. The identity of the deceased, allegedly Jayanta Kumar, was sought to be established primarily through dental comparison and matching of femur bones. However, the remains were severely decomposed, and no DNA evidence was led to scientifically establish identity.

96. The prosecution failed to ensure the presence of magistrates or independent observers during the recording of disclosures and seizures, as is the standard practice in custodial investigations. This omission casts doubt on the voluntariness and authenticity of the statements and taints the entire process of recovery. Further, the defence was handicapped by the non-examination of key witnesses who could have clarified the chain of custody and the process of forensic matching.

97. The Trial Court placed undue reliance on forensic findings, which were themselves inconclusive or merely suggestive. The presence of “human blood” on the weapons does not by itself connect the articles to the crime or the deceased. There was no blood group matching, no DNA analysis, and no chain-of-custody verification to conclusively link the seized items to the crime scene or to the victim.

98. A criminal case primarily based on circumstantial evidence demand the same to be meticulously discerned to eradicate possibility of conviction based on assumption, presumption and hypothesis. It is imperative that the guilt of the accused is proved beyond reasonable doubt. The incriminating circumstances should form a chain wherefrom the legal inference can be drawn to establish the commission of offence without an iota of doubt.

99. In case of a probability that the factum of inconsistencies reigns over the factum of being inculcation, the benefit of doubt must be secured to the accused. The failure on the part of the Investigating Agency as well as prosecution to exclusively connect the *mens rea* or the ulterior motive as well as the criminal intent accomplishing the criminal act of the accused.

100.In the absence of direct evidence it is incumbent upon the prosecution to justify guilty motive on the part of the perpetrators at the first instance to objectify their offence.

101.In the instant case, apart from mentioning of various civil and criminal cases to have been instituted by and between the parties, the Investigating Agency failed to enquire the filing of such cases in respect of the courts as well as to derive the status of pendency or the finality to have been reached in the respect cases.

102.Mere assertions, devoid of concrete evidence will definitely favour the appellants where the allegations against the same could not be proved through plausible, trustworthy and credible evidence. Assumption and presumption on such facts deliberated against the appellants deserved to be rejected.

103.The prosecution failed to establish the rudimentary and cardinal principles of commission of an offence foundation on guilty mind. Inconsistencies and variations in the depositions of the prosecution witnesses writ large and are apparent on the face of the records are sufficient to fragment the prosecution case. Though lapses on the part of the investigating agency are not vital to improbabilize the crux of the prosecution case but lapses or failure on the part of the investigating agency to create the link in the chain of the circumstances uproots and destroys the edifice of the prosecution case.

104.The Investigating Agencies did not send the recovered wearing apparels and the offending weapons for obtaining opinion of forensic expert so as to establish that the recovered weapons, mobiles etc. were genuinely used

in the commission of offence. Inconsistencies of the evidence of the prosecution witnesses with regard to the presence and absence of blood stains on the recovered weapons, mud etc. should have been sent for examination to ascertain its usage and role in the commission of the offence.

105. Such failure on the part of the Investigating Agency cannot be undermined to be irrelevant. Moreover, the manner in which the recovery had been conducted cannot be legally tenable in view of the decisions cited above. The recovery statement came into existence after the recovery contrary to the procedure of recording confessional statement of disclosure of weapons etc. pursuant to which the recovery was conducted.

106. Apart from the disclosure of the weapons and other articles as aforesaid, the overt act of the appellants could not be significantly narrated whether the enmity and acrimonious relationship between the parties was prevalent involving each and every appellant or a specific appellant was unclear.

107. Whether the appellants had a common intention to commit the offence of kidnapping or abduction for the purpose of murder in furtherance of common intention could not be proved to address joint criminal liability.

108. Each of the aforementioned grounds, when considered individually, raise serious doubt about the prosecution's case. Taken cumulatively, they amount to a grave miscarriage of justice. The conviction, therefore, cannot be sustained in law and is liable to be set aside.

109. In light of the foregoing analysis, it is evident that the prosecution has failed to establish a seamless and credible chain of circumstances pointing unerringly to the guilt of the accused. The admissibility of the

accused's statement under Section 27 of Indian Evidence Act is legally untenable. The inconsistencies in the testimonies of material witnesses, coupled with serious procedural lapses, create a substantial and reasonable doubt. In a criminal trial, where the burden lies squarely on the prosecution to prove guilt beyond all reasonable doubt, such inconsistencies cannot be brushed aside. The chain of circumstances is clearly broken, and the accused are entitled to the benefit of doubt.

110. In view of the foregoing discussion, we are of the considered opinion that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. The conviction and sentence of the appellants imposed by the learned Trial Court appears legally unsustainable.

111. For the reasons stated above, the Criminal Appeal 234 of 2017 is allowed. The judgment and order of conviction and sentence dated 7th and 8th February 2017, passed by the Learned Additional District and Sessions Judge, 3rd Court, Purulia, in Sessions Trial Case No. 30 of 2014, are hereby set aside.

112. The Appellants, namely Durjodhan Paramanik, Haladhar Paramanik, Kanai Paramanik, Dayal Paramanik, Nimai Paramanik, and Balai Paramanik, are acquitted of all charges. They shall be released forthwith, unless, otherwise required in connection with any other case.

113. Surety, if any, be discharged at once.

114. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)

Soumen Sen, J.-

115.I have read the judgment authored by brother Justice Uday Kumar and agree with the conclusions. However, I wish to deal with the issues and arguments advanced by the learned senior counsel for the parties in my separate concurring judgment.

116.This appeal is arising out of a judgment and order of conviction dated 7th February 2017 and 8th February 2017 passed by the learned Additional Sessions Judge, 3rd Court Purulia, in Sessions Case No. 220 of 2014 arising out of Balarampur P.S. Case No. 26 of 2014 convicting the appellants guilty of commission of offences punishable under Sections 364/302/201/34 of the Indian Penal Code.

117.The appellants are the convicts. The first appellant is the namesake of Durjodhan in the puranic epic of Mahabharata. Though the evil design with which Durjodhan had deprived the Pandavas is often referred as an example of a person with a crooked mind, this however, should not give an impression that we are proceeding with a pre-conceived notion of Durjodhan possessing a crooked mind and playing a similar role in the present matter.

118.The Trial Court has convicted six persons on examination of sixteen witnesses and a number of documents exhibited by the prosecution. All of them have been accused of the murder of the son of P.W.1, Mahabir Kumar namely Jayanta Kumar.

119.Briefly stated, Mahabir Kumar lodged a written complaint before the Officer-in-charge, Balarampur police station that on 9th May 2014 at night some persons had entered his house and assaulted his daughter-in-law. The appellants had tried to ravish her. In this regard, one F.I.R. was lodged in

Balarampur P.S. on 10th May 2014. Subsequently, on 11th May 2014 at around 10.30 P.M. his younger son Jayanta Kumar, since deceased had left for his new house after dinner to sleep. On the following morning the de facto complainant was informed that Jayanto had not gone to the said house and he could not be found, creating an apprehension in the mind of the de facto complainant of the accused persons named in the F.I.R. and others having kidnapped his son. On the basis of the said complaint a case was registered under Sections 363/365/34 of the Indian Penal Code.

120. In course of the investigation Durjodhan was apprehended and according to the prosecution he led to the discovery of the beheaded dead body of the deceased. Subsequently, allegedly based on the statements of Haladhar and Dayal, the severed head of Jayanta Kumar, offending weapons and other articles were recovered. The post mortem was conducted and thereafter charge sheet was submitted under Section 363/365/302/120B/201/34 of the Indian Penal Code.

Submissions on behalf of the appellants:

121. Mr. Sudipto Maitra, learned counsel appearing on behalf of the appellants has submitted that the entire case of the prosecution as would be evident from the F.I.R. and pre-investigation seems to have rested upon the circumstantial evidence which are ;

- a. Previous enmity between the parties.
- b. Recovery of dead body at the instance of the accused persons.

122. The chain of circumstances, that the prosecution tried to establish to strengthen their case are primarily hinged on the statements recorded under Section 27 of the Evidence Act leading to recovery of the beheaded dead body and the alleged offending weapons and belongings of the victim.

123. It is submitted that the aforesaid chain of circumstances is not sufficient inasmuch as it is doubtful and contrary to each other as would be evident from the record. The case of false implication of the appellants cannot be ruled out due to previous enmity between the parties. There have been previous cases; both civil and criminal between the parties.

124. The learned Senior Counsel has referred to the following civil and criminal cases that are pending between the parties:

a) Civil case details. (Title Suit No. 115 of 2014 at Civil Judge (J/D), Purulia filed on 23/04/2014.

b) Criminal case details.

Purulia P.S. Case No. 23 of 2014, dated 10/05/2014, under Sections 448/376/511/323 and 427/379/34 of the Indian Penal Code. Filed by PW4 Manvula Kumar.

Balarampur P.S. Case No. 36 of 1999, dated 30/07/1999, under Sections 324/325/307/34 of IPC against Bikash Kumar, Mahabir Kumar and Sabita Kumar (Pg.95)

c) Misc Case No. 122 of 2014, U/s. 144 CrPC filed on 20-02-2014 before the S.D.M., Purulia by Mahabir Kumar PW1.

125. It was submitted that the statement under Section 27 of Indian Evidence Act leading to the discovery of the dead body and other materials are shrouded in mystery. The learned Senior Counsel has referred to the evidence of three Investigating Officers in this regard. It is submitted that on 12th May, 2014 the O.C of Balarampur P.S., Dipankar Sarkar had received a written complaint from Mahabir Kumar and following the same, he had started Balarampur P.S. Case No. 26 of 2014 dated 12.05.2014 under Sections 363/365/34 of the IPC and the case was endorsed to Jal Kumar Mandi(PW 14), the first investigating officer for investigation. On 14th May 2014 at night, he arrested Durjodhan Paramanik from Dava More, interrogated him and recorded his statement. On interrogation Durjadhan disclosed that he would show other five assailants who have killed Jayanta, the place where the body of Jayanta where had been concealed and would also show the offending weapons with which Jayanta had been killed and where the beheaded head had been concealed. Based on the statement, Jal Kumar Mandi along with his team went to Ichhadih Forest led by accused Durjodhan who showed the place and the body of Jayanta.

126. Durjodhan brought the investigating team near a ditch and showed the body of Jayanta. The OC was present and informed over R.T. message to S.I. Pankaj Singh to bring near relatives of Jayanta. Thereafter, Pankaj brought Manbhula Kumar sister-in-law of Jayanta at that place and Manbhula identified the body of Jayanta. Thereafter, he held inquest report and prepared report over beheaded body in presence of witnesses. The inquest report was marked as Exhibit 2/2.

127. Thereafter, the beheaded body was sent for postmortem examination. On 15th May, 2014 with Durjodhan, the investigating team went at Deoli village and was taken to a place near one electric transformer where Jayanta was allegedly murdered. As shown by the accused Durjadhan, Jal Kumar prepared one rough sketch map with index. One plastic sandal was recovered from that place. The I.O. seized this plastic sandal as well as blood stain earth and plain earth under seizure list. At that time, two public witnesses namely, Bikash Kumar and Sabita Kumar were present. Thereafter, Durjadhan went to the place where he had kept the dead body of deceased and as shown by him, Jal Kumar prepared another rough sketch map with index.

128. On 16th May 2014, Jal Kumar arrested Haladhar Paramanik and Dayal Paramanik. The learned Senior Counsel has submitted that during the cross-examination, Jal Kumar has stated that the statement of Durjodhan Paramanik i.e. Exhibit 14 has been recorded after recovery of the body. He has also deposed that from the statement of Durjadhan neither body nor any offending weapons has been recovered and the beheaded body was first seen at 9:55 hours on 14th May, 2014.

129. On 12th May, 2014 during investigation, Manvula and Mahabir Kumar did not disclose the name of any accused persons involved in the commission of the murder.

130. Mr. Maitra submits that the statement of the said witness is not corroborated by other investigating officers. He has referred to the evidence of PW-11, Pankaj Singh. According to Pankaj on 14th May 2014, he was asked by the OC to bring the family members of complainant to identify a dead body

recovered. On that basis Swapan Paramanik a neighbour and Manvula Kumar, daughter-in-law of Mahabir Kumar had accompanied him to the forest of Ichadi Pahar for identification. In his presence some plain earth and blood-stained earth were seized. He got news at about 6:30 to 7:00 a.m. in the morning of 14th May, 2014 from the OC of police station about the recovery of one dead body.

131. Mr. Maitra has then referred to the evidence of PW-16 Sisir Kumar Saha, the third Investigating Officer, who claimed to have interrogated Durjadhan, Haladhar and Dayal during remand. Sisir claimed that from the statement he came to know of their guilt and they told him that they would help him recover beheaded body, head and other offending weapons from the place where they had been concealed. Haladhar and Dayal were accompanying Sisir along with one Bikash Kumar brother of the deceased and Sabita Kumar, mother of deceased. They reached at Ekra Mouza. The accused Haladhar and Dayal showed them a pond and searched the pond and brought out one severed head of Jayanta the deceased contained in a white bag including some documents and papers one dot pen and also brought out one tangi from the pond. Thereafter Bikash and Sabita identified the severed head as that of Jayanta and also identified the recovered documents. Sisir recorded the statements of Haladhar and Dayal after recovery of these alamats. The relevant portion of the statement of Haladhar and Dayal have been marked as Exhibits 22 and 23 (with objection).

132. In his cross-examination, Sisir has deposed that he resumed investigation on 17th May, 2014 and before it, beheaded body was recovered. He did not record the statement of accused Haladhar Paramanik and Dayal

Paramanik but had examined them. He did not show the seized weapons to Medical Officer to ascertain as to whether or not those injuries may be caused by those weapons. The seizure list dated 17th May, 2014 did not mention beheaded head. Nimai, Jamini and Kanai Paramanik were arrested on 18th May, 2014. Nimai and Kanai did not disclose any role of Jamini Kumar. Jamini was arrested as his name was mentioned in the written complaint.

133. Mr. Maitra submits that three different versions have come out with regard to the arrest of Durjodhan Pramanik and recording of his statement leading to the alleged discovery. While the first I.O. has stated that Durjodhan was arrested at night however, the Arrest Memo would show that he was arrested on 14th May, 2014 at 05:05 hours from Dava More, P.S.- Balarampur. The Arrest Memo would not show signature of any witness as required under Section 41(b) Cr.P.C. If Durjodhan were arrested in the morning then the evidence of the first I.O. is contrary to the record.

134. It is submitted that even the presence of the parties at the time of recovery is doubtful as P.W.2. Swapan Pramanick in his evidence has stated that he had not gone to the place where dead body was found. This is contrary to the evidence of P.W.4 and P.W.14. P.W.2 has stated that they reached the place at about 09:00 AM and at that time Durjodhan could not have been present in view of the fact that Durjodhan was arrested on night of 14th May, 2014. Swapan Pramanick was there for 10-15 minutes which is again contrary to the evidence of P.W.4 where she said they were there for almost two hours. Swapan denied to have admitted before the Police Officer that Durjodhan had shown the dead body.

135. Manvula Kumar, the daughter-in-law, P.W.4, has stated that P.W.14, is the first I.O., came in the morning along with accused Durjodhan and Swapan Pramanick (P.W.2). However, P.W.2 denied to have been there and P.W.14 said that he arrested accused Durjodhan in the night of 14th May, 2014 but body was allegedly stated to have been recovered in the morning of 14th May, 2014 as per the inquest of UD Case No.15 of 2014 which shows 8:05 hours as the time of preparation of the inquest. The inquest report would show that the body was recovered from a hole of a ditch in Ichadih Jungle which contradicts the statement of Manvula Pramanick that Durjodhan had shown a place which was dug out by two doms.

136. It is submitted that the recovery of head at the instance of the accused Haladhar and Dayal also could not be proved by the three witnesses. Milan Murmu, P.W.5 has stated that he signed the seizure list dated 17th May, 2014 of beheaded head. However, he has also said that when he reached on the bank of the pond then he found several persons have gathered there and the locals were already aware about the recovery prior to him reaching the spot.

137. The statement of Dayal and Haladhar recorded under Section 161 was dated back to 16th May, 2014. During the evidence of P.W 7 Bikash, who was witness to recovery of severed head and black sandal, has stated that the police took his mother and him near a Doba showing that something would be found in the Doba in a plastic. When they reached at the Doba they found that the police had guarded the Doba and thereafter, Dayal and Haladhar were brought by police at the Doba. It was submitted that the said statements

alleged to have been recorded under Section 27 are procured documents produced by the prosecution for the following reasons:-

(i) First the dead body and head was recovered from the same place and on doubt the accused persons namely, Durjodhan, Haladhar and Dayal were arrested and subsequently seizures were shown at their instances.

(ii) Statement of the accused recorded under Section 27 are apparent that prior to their statement the recovery of the dead body was there.

(iii) PM Doctor does not support the theory that the severed head was submerged in water. From the XMN of the PM doctor it transpires that he had not found any watering marks on the root of the hair of the head, which should be there if the head had actually remained submerged in water.

138. The alleged tangi was seized from a pond. Amazingly a blood stain was found in a Tangi which was in the pond for several days. The offending articles and others things were sent to FSL on 3rd June, 2014. But no report was placed during the trial. No forensic reports have been exhibited to show that the recovered articles had any nexus with the commission of the offence. In so far as the seizure of phones are concerned, Mr. Mitra has submitted that though I.O, P.W 16 has seized several phones, but there is no report, CDR or tower location from which any connection can be brought into the record.

139. The offending weapons allegedly recovered had not been produced before the PM Doctor neither before the Trial Court.

140. The learned counsel placed reliance on the case of ***Guna Mahto v State of Jharkhand***¹, for the settled proposition of criminal jurisprudence that the “prosecution must prove the guilt of the accused beyond reasonable doubt and the circumstances relied upon must point out only towards one hypothesis, that is, the guilt of the accused alone and none else” and that suspicion however grave it may be, remains only a doubtful pigment in the story canvassed by the prosecution for establishing its case beyond any reasonable doubt.

141. The case of ***Subramanya v State of Karnataka***² has been cited to substantiate that extra-judicial confession by its very nature is a rather weak type of evidence as it can be easily procured whenever direct evidence is unavailable and hence it must be voluntary, inspire confidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It was also noted by the Court in this case that:

“What emerges from the evidence of the investigating officer is that the accused appellant stated before him while he was in custody, “I may get discovered the murder weapon used in the incident”. This statement does not indicate or suggest that the accused appellant indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the

¹ (2023) 6 SCC 817

² 2023 (1) AICLR 813 (S.C.)

person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.”

142. Mr. Maitra relied on ***Pulukuri Kottaya and others v Emperor***³ to emphasise that the condition necessary to bring Section 27 of the Evidence Act into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of the Police Officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section is 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 can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

143. The case of ***Bakhshish Singh v State of Punjab***⁴ was cited by Mr. Maitra to submit that where the only incriminating evidence against the appellant was that he had pointed to the place where the dead body of the deceased had been thrown, it was not a conclusive circumstance though undoubtedly it raised a strong suspicion against the appellant. In a case

³ AIR (34) 1947 Privy Council 67

⁴ 1971 SCC (Cri) 251

resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved, be conclusive nature and those circumstances should be consistent only with the hypothesis of guilt of accused excluding all other possibilities.

144. The case of *Mani v State of Tamil Nadu*⁵ was referred to emphasise that discovery is a weak piece of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon discovery. In that case, the prosecution had failed to prove that the house in which the alleged bloodstains were found belonged exclusively or was possessed exclusively by the appellant. The discovery was found to be absolutely farcical.

145. Reference was also made to *Mustkeem @ Sirajudeen v State of Rajasthan*⁶ wherein it was noted that what is important with regard to Section 27 of the Evidence Act is the discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence. What is admissible under Section 27 is the information leading to discovery and not any opinion formed on it by the prosecution.

146. The learned counsel cited the case of *Sangili alias Sanganathan v State of Tamil Nadu*⁷ to illustrate another case setting aside the conviction of the appellant on the observation that recoveries were

⁵ (2009) 17 SCC 273

⁶ (2011) 3 C Cr LR (SC) 1

⁷ 2014 Cri. L.J.4519

shrouded in mystery and untrustworthy and the chain of circumstances incomplete and no other circumstances except so-called recoveries being proved against the appellant.

147. Similarly, in the case of *Laxman Prasad v State of Madhya Pradesh*⁸ the conviction was set aside on the basis that the chain of circumstances was not complete as the three links sought to be established by the prosecution namely motive, last seen and recovery of weapons of assault were not satisfactorily proved with one link of the links found missing.

148. Reference was drawn to *Uppala Bixam v The State of Andhra Pradesh*⁹ to reiterate that the only circumstance of the recovery of the dead body of the deceased on the basis of the confession of the appellant accused by itself could not be sufficient to establish the guilt of the accused. There is a wide gap between ‘may be’ and ‘must be’. Though the circumstance of recovery allegedly based on the alleged confessional statement may raise a suspicion against the appellant that he might be involved in the incident mere suspicion itself could not take the place of proof and conviction under Section 302/201 of the IPC could not be sustained when even motive could not be proved.

149. In the case of *Kalinga @ Kushal v State of Karnataka*¹⁰ the Apex Court observed that the conviction was largely based on the extra-judicial confession made by the appellant. Extra-judicial confessions are a weak form of evidence and generally used as a corroborative link to lend credibility to the other evidence on record. The Supreme Court held that the

⁸ (2023) 6 SCC 399

⁹ 2018 (4) Crimes 364 (SC)

¹⁰ 2024 (2) AICLR 641 (S.C.)

evidentiary aspects concerning the arrest of the appellant and recovery of the dead body of the deceased following the confession were equally doubtful and failed to inspire the confidence of the Court and hence upheld the decision of acquittal of the Trial Court.

150. Reliance was also placed on the case of *Manoj Kumar Soni v State of Madhya Pradesh*¹¹, which was also referred in the recent case of *Vinobhai v State of Kerala*¹² wherein the Supreme Court had held that disclosure statements per se, unaccompanied by any supporting evidence could not be deemed adequate to secure a conviction. Although disclosure statements are significant as a contributing factor in unriddling a case, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt. Mr. Maitra in this context submitted that in the present case, apart from the statements of the accused allegedly leading to the discovery of the corpse, severed head and other offending weapons, there was no other shred of evidence to complete the chain of circumstances to convincingly sustain the conviction of the accused.

Submissions on behalf of the State:

151. Mr Debashish Roy, learned Public Prosecutor has submitted that on 12th May 2014 the instant case had been initiated over the apprehension of abduction of victim Jayanta Kumar by the appellants as on a previous occasion they had conjointly entered into the house of Jayanta and tried to outrage the modesty of P.W.4, Manuvala Kumar, the sister-in-law of said

¹¹ 2023 SCC OnLine SC 984

¹² 2025 SCC OnLine SC 178

Jayanta Kumar. In the intervening night of 14th May 2014 appellant no. 1 was taken to the Police Station on the suspicion of his involvement in commission of the offence. He was arrested on 14th May 2014 at around 5.00 a.m. when he confessed his guilt in commission of the offence, expressed his ability to show where the torso of Jayanta was lying, weapons used at the time of assault and the identity of his associates. Thereafter police personnel had been to the village of the deceased, collected P.W. 2 and P.W. 4 and went to Ichhadih Jungle where as per the showing of Durjodhan Pramanik the torso of Jayanta was recovered.

152. It is submitted that even if the statement of the appellant no. 1 is held to be not in conformity with the provisions of Section 27 of the Evidence Act, it transpires from the evidence of P.W.4 that the appellant no. 1 had also made a confessional statement before her. The fact that the dead body was recovered as per showing of the appellant no.1, could not be dislodged from the cross examination of P.W.s 2 and 4. Subsequent thereto, Dayal and Haladhar were arrested on 16th May 2014 and pursuant to their statements the head of Jayanta and tangi was recovered. Subsequently, other appellants were also arrested and pursuant to their statements, the blood-stained iron rod, lathi etc. were recovered.

153. Mr. Roy submitted that it is sought to projected by the appellant accused that initially there was recovery of the dead body in the morning of 14th May 2014 and thereafter in the night Durjodhan was arrested and the recovery of the dead body was foisted upon him after preparing back dated records, is totally belied by the sequence of events as would emanate from the evidence of P.W.14, the first Investigating Officer and Exhibit 2, inquest over

the torso. Admittedly there has been laches on the part of the Investigating Officer such as Durjodhan not being produced before the nearest Magistrate within 24 hours of his arrest, records not being mentioned chronologically but from the sequence of events as has come out from the evidence, the defence could not gain any advantage for the laches of the Investigating Officer.

154. The learned counsel further submitted that so far as the recovery of the head of Jayanta at the instance of Dayal and Haladhar was concerned, heavy stress has been given on the Arrest memo prepared by the Investigating Officer which shows that Dayal was arrested on 18th May 2014. The record of the magisterial proceedings shows that they were arrested on 16th May 2014 and produced before the Court of the Learned Magistrate on 17th May 2014 and as per the prayer of the Investigating Officer, they were remanded to police custody. During their police custody, they made leading statements which led to recovery of the head of Jayanta and one of the weapons of assault namely tangi. The witnesses to such recovery, being PW 5 and PW 6 were not only disinterested witnesses but who did not even know the appellants and they being called by the Investigating Officer, became witnesses to the seizure and there had been no cross examination to question their credibility.

155. Mr. Roy pointed out that what the Defence wanted to project that the First Information Report was anti dated because although the same is said to have been drawn up on 12th April 2014, the same for the first time was produced before the Court of the Learned Magistrate on 15th April 2014. He submitted that the Investigating Officer was never cross-examined as to this delay in production of the First Information Report before the Court of

the Learned Magistrate at a belated stage and as such, as per principles laid down by the Hon'ble Supreme Court, the defence can derive no benefit for the same.

156. The learned counsel argued that the proposition of law that the Prosecution has to prove its case to the hilt can merely be a guideline but not a fetish. Conviction of an innocent person causes as much miscarriage of justice as acquittal of an accused on trivial issues on the count of the aforesaid proposition that the prosecution has to prove its case beyond all reasonable doubt.

157. Dayal's date of arrest of 19th May 2014 as per the deposition was not consistent with the recording in the Memo of Arrest by the Investigating Officer i.e., 16th May 2014 and Dayal and Haladhar had been produced before the Court of the Learned Magistrate on 17th May 2014 and after taking them into police custody from the Court, such recoveries took place. Even if there was an error by the Investigating Officer in recording of the time and hour of arrest in the Memo of Arrest, the same was merely laches on the part of the Investigating Officer and the defence could not derive any benefit from it. It had been time and again reiterated by the Courts that the defence can derive no benefit for the laches on the part of the Investigating Officer if otherwise from the evidence adduced by the prosecution being satisfied about the credibility of the same to record an order of conviction.

158. It is submitted that though the case is based on circumstantial evidence, the prosecution has laid credible information to come to a conclusion that the appellants were responsible for the death of Jayanta Kumar in the following chain of circumstances :-

- a) There was a previous incident in the house of Jayanta Kumar, committed by none other than the group of persons which included the appellants and over this, a police case had been registered and as such, there was a motive/reason for doing the ghastly act apart from the other litigations as has been admitted by the defence.
- b) On source information Durjodhan was arrested, the police along with Durjodhan and the relative of the victim had been to the place of occurrence where as per the showing of Durjodhan a torso was recovered.
- c) Though it is contended that the statement of Durjodhan has been made after recovery of the dead body, the records however run contrary to such claim. Durjodhan also made an extra judicial confessional statement during the time of recovery before P.W.4.
- d) Pursuant to the statement of Dayal and Haladhar, one of the weapons of assault and the head was recovered in the presence of two pure independent witnesses, being PW 5 and PW 6. This factum of recovery could not be shaken during the cross examination of the witnesses. Far less to speak of previous enmity, they did not even know the appellants. The defence could not demonstrate as to why they would falsely implicate the appellants. Various other weapons of assault had been recovered at the instance of the other appellants.

e) Injuries found on the body of the deceased by the post mortem doctor totally matches with the weapon of assault that could have been used at the time of commission of the offence.

f) It has come out in the evidence that the local police was not very friendly towards the family of the deceased. They had to face a lot of hindrances for registration of a case over the previous incident. The mere fact that the Investigating Officer failed to perform his duty in a proper manner and callously recorded the sequence of events incorrectly which the records on the face of it demolishes such fault. Laches on the part of the Investigating Officer can be of no help to the accused.

g) The defence had never suggested that the torso and head which were recovered, were not of Durjodhan.

h) That it is no more *res integra* that even if evidence has been collected due to illegal search and seizure, the factum of recovery of any incriminating material or evidence cannot be brushed aside.

159. In support of his submissions, the learned counsel placed reliance on the case of ***Pooran Mal v Director of Inspection***¹³ to submit that since the Evidence Act, 1872 permits relevancy as the only test of admissibility of evidence and does not exclude relevant evidence on that ground that it was obtained under an illegal search and seizure, such evidence could not be completely excluded if found relevant.

¹³ (1974) 1 SCC 345

160. The case of *Nagesh v State of Karnataka*¹⁴ was cited to contend that in the case of circumstantial evidence, the Court cannot just take one aspect of the entire evidence led in the case like delay in lodging the FIR in isolation of the other evidence placed on record and give undue advantage to the theory of benefit of doubt in favour of the accused. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law.

161. Mr. Roy relied on *Madhu alias Madhuranatha and Another v State of Karnataka*¹⁵ to submit that it is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution must not prompt the court to reject the evidence in its entirety. Therefore, irrelevant details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence, more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, so as to render it unworthy of belief.

¹⁴ (2012) 6 SCC 477

¹⁵ (2014) 12 SCC 419

Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness.

162. Attention was also drawn to the case of *State of Rajasthan v Daud Khan*¹⁶ to submit that the purpose of the "forthwith" communication of a copy of the FIR to the Magistrate under Section 157 CrPC is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. The prosecution should explain the delay in transmitting the special report to the Magistrate, however, if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable.

Findings and Analysis:-

163. The gruesome murder of Jayanto Kumar, as appears from a perusal of the post mortem report, occurred on or about the 11th of May 2014, presumably at night. Daylight revealed the horrors of a man brutally slaughtered, his bones fractured, his corpse decomposing and his head separated from the neck. The accounts of the investigative agencies narrate that the beheaded body of the deceased was discovered in the morning of 14th of May 2014 and the subsequent recovery of the severed head and alleged murder weapon, a tangi was done on 17th of May 2014. Although the grisly details of such an appalling act of manslaughter are truly shocking and an order of conviction by the Trial Court may tempt one to place undue credence

¹⁶ (2016) 2 SCC 607

on it, the Law is reason, free from passion and it is a primary principle of law that the accused must be and not merely may be guilty for a court to convict. There were no eye witnesses to the murder and the case is one based completely on circumstantial evidence. It is well established that circumstantial evidence comprises of various links in a chain which if complete, leads to the undoubted conclusion that the accused alone could have committed the offence with which he is charged. While it is possible that each of such links may not by themselves incriminate the accused or be conclusive against him, the linking of all of them may forge the chain in arriving at that conclusion. Hence, it is to be seen whether the case made out by the prosecution does indeed supply all the links required to forge this chain of circumstances, supporting only the hypothesis of guilt of the accused appellants and none else.

The Discovery of the Corpse

164. PW 14, the SI of Police, Jal Kumar Mandi has deposed that he had arrested Durjadhan Paramanik on the 14th of May 2014 at night from Dava More, interrogated him and recorded his statement pursuant to which the body of the deceased was recovered from Ekra-Ichhadih forest. In his examination-in-chief he has stated as follows:

“After arresting Durjadhan Paramanik I interrogated him. On interrogation Durjadhan Paramanik disclosed to me that he will show five other assailants who have killed and will also show the body of Jayanta Kumar where it has been concealed and will also show the offending weapons with which Jayanta has been killed and beheaded head where it has been concealed. This is the

said statement of Durjadhan Paramanik. The relevant portion except “show the body of Jayanta Kumar” is marked as Exhibit-14 (with objection).”

165. However, a careful reading of the statement marked as Exhibit 14 will clearly show that what Durjadhan has in his statement undertaken to aid the police to do, if afforded the opportunity, is to show other people involved in the murder of Jayanto and to help recover the severed head and the tangi. Notably the statement does not mention that he would aid in recovering the body of Jayanto from the jungle although that is the version of the police. The evidence of PW14 also shows that the beheaded corpse was first noticed at 9.55 hours on the 14th of May 2014. However, in his cross-examination PW 14 has stated that *“This statement is after recovery of body of Jayanta Kumar. From the statement of Durjadhan Paramanik neither body nor any offending weapons has been recovered.”* Notably, the arrest memo and the production warrant would prima facie indicate that the arrest was made at 5.05 hrs which means 5 am in the morning.

166. At this stage, yet another discrepancy is observed. Although PW 14, Jal Kumar Mandi had deposed that he had first noticed the body at 9.55 hours on 14th May, 2014, after recovery of the torso, one R.T. message was sent to the P.S and subsequently S.I Pankaj Singh, PW 11 had brought PW 2 and PW 4 for identification of the body. No R.T. message or copy thereof was seized or produced in this regard. However, PW 11, Pankaj Singh had deposed that he had received instruction from the O.C. of the P.S at 6.30 to 7.00 am in the morning and he had reached the spot by 8.00 am. The contradictions in these two testimonies of the investigating officers show that the body was

discovered by PW 14 well before PE 11 had reached the spot along with the witnesses. Inquest was conducted by Jal Kumar at 9.55 am and it had taken an hour to conclude.

167. PW 14 deposed that the only witnesses to the recovery of the body were PW 2 and PW 4 and hence an examination of their evidence in this regard is essential to see whether their statements corroborate the version sought to be projected by the police.

168. PW 2, Swapan Paramanik is a resident of Deoli village. He has deposed that along with Manbhula (PW 4) he had gone to the place where the dead body was found, in a police jeep. He has stated that Durjadhan was also present with them when the beheaded dead body of Jayanto was found in the Ichhadih jungle and that Durjadhan was shown the dead body. However, in his cross-examination he has stated that he had not gone to the place where the dead body was found. Yet again he states that the police jeep had stopped some distance from the dead body and showed it to them and they were there only for 10 to 15 minutes. He says that “except signing I do not know any other thing” and that the police had not interrogated him for this case and he had not told the police that Durjadhan had shown the dead body and that Manbhula had identified it.

169. PW 4, Manbhula Kumar is the sister-in-law of the deceased Jayanto Kumar. She has deposed that the police had met her in the morning on 14th May 2014 and had come along with Swapan Paramanik and Durjadhan and taken her to Ekra jungle. Then Durjadhan had showed a place and stated that they had buried the dead body of Jayanto there. Thereafter two doms, police and Durjadhan had dug out the place and

brought out the beheaded corpse. She had identified the dead body as that of Jayanto recognising it from the apparel (ganji, pant) and colour of the body. However, in her cross-examination she has stated that the police had told her to accompany them to Ekra jungle to identify a dead body to be recovered and she was present there for almost two hours. She had identified the body and the police had told her that it was that of her brother-in-law. Thereafter Swapan and Durjadhan had tried to flee with the dead body but they were stopped by villagers.

170. PW8, Narayan Chandra Mahanty, a constable of police testified that he had gone with S.I Jal Kumar Mandy, Durjodhan and two female members, the mother and sister-in-law of the deceased, at Ichadih forest and that the two females had identified the body. However, no other witness mentions the mother Sabita Kumar being present for the recovery of the corpse.

171. Hence the version sought to be projected that the corpse was discovered pursuant to the statement of Durjodhan seems suspicious on account of the multiple inconsistencies in the testimony of the witnesses. Consequently, the presence of Durjodhan is shrouded with suspicion as is the evidence of other witnesses, who are primarily family members of the deceased or members of the police force.

The Recovery of the Severed Head

172. PW 16, Sisir Kumar Saha, the C.I. of Police had admittedly taken over the case on 17th May 2014. In his testimony he stated that he had interrogated the accused persons during remand and come to know of their

guilt from their statements and they had told him that they would help him recover the beheaded body, the severed head and the place where the other offending weapons had been concealed. He deposed in his examination-in-chief that based on such information from the accused, they had proceeded to Ekra Mouza with Haladhar, Dayal, PW 7 Bikash Kumar and PW 9 Sabita Kumar near village Bandhghutu where in front of him, accused Haladhar and Dayal had showed them a pond and brought out the severed head of Jayanto along with other materials and thereafter Bikash and Sabita Kumar had identified the recovered items.

173. The Statement of Haladhar marked as exhibit 22 and that of Dayal marked as exhibit 23 would show that these are in essence statements made by the accused persons relating to acts or conducts already done by the accused persons in pursuance of earlier statements made to the police. However, such earlier statements recorded by the police have not been marked as exhibits. Apropos this, the evidence of PW 5 and PW 6 local cowherds, who were the independent witnesses to the recovery of the severed head, has to be examined.

174. PW5 Milan Murmu who was a witness to the recovery of the severed head of the deceased has stated he had been called by the police and Haladar and Dayal had subsequently brought out one bag from the pond which contained one beheaded head of a man, one Dot Pen and some papers and one Tangi from said pond.

175. PW6 Bitta Hari Marmu has stated that he had met with police while going for Bagal work near the pond and he had gone there on being called by the police who were there with two persons. Thereafter, those two

persons namely, Haladhar and Dayal had brought out one bag from the pond containing one beheaded head of a man, one pen, some papers and also one Tangi. Both PW5 and PW6 have admittedly signed on the seizure list dated 17th May, 2014.

176. PW7 Bikash Kumar the elder brother of the deceased Jayanta stated that his brother Jayanta had gone missing on 11th May, 2014 since 10.p.m and such fact had been informed by his father to P.S. The beheaded dead body of his brother was recovered from Ekra Jangle by police as told by Durjadhan. He was also signatory on the seizure list. He has further stated that Haladhar and Dayal had disclosed to the police that they had thrown the head of the body in the doba and they had subsequently also brought out a bag from the pond containing beheaded head, some papers, a pen and a diary and a tangi. He in his cross-examination has stated that police had taken him and his mother near the doba staying that something would be found in the Doba in a plastic and on reaching there they had found that the police had already guarded the doba. People had gathered and thereafter Dayal and Haladhar were brought by police to the said doba.

177. PW10 Sabita Kumar, the mother of the deceased Jayanta was also witness to beheaded body of the deceased Jayanta Kumar and she stated that such was found at Bandghutu jungle. She has also deposed that on being taken there by the police she was witness to Haladhar and Dayal bringing out the severed head of her son in a plastic bag from the pond, apart from one pen, some papers, two rods one tangi and one Lathi.

178. PW9, Laltu Pal, constable of Police has deposed that on 17th May, 2014 he had gone with C.I Sisir Saha at Ichadi jungle where two cow herd

boys were also present. Haladhar along with another accused had brought out the severed head kept in a polythene packet from a pond. Such was identified by the elder brother of deceased and the severed head was sent through Laltu under challan to hospital.

179. However, interestingly, PW 16 Sisir Kumar Saha does not mention the cowherds PW 5 and PW 6 during his deposition, who were independent, local seizure witnesses to the recovery of the head, a tangi allegedly containing bloodstains and the other papers and pen recovered along with it. He also deposed that he had recorded statements of Haladhar Paramanik and Dayal Paramanik after recovery of these alamats. In his cross-examination he has deposed that he had not recorded the statements of Haladhar and Dayal and no witness had signed on the statement of accused persons recorded by him at any time. However, the statement of Haladhar and Dayal, which were marked as Exhibits 22 and 23 show that they were recorded by the CI of Police, Sisir Saha. Since PW16 has also stated that he had recorded the statements of Haladhar and Dayal after recovery of these alamats, it can be presumed that the actual statements wherein the accused had stated that they would aid the police in recovering the articles and which statements were of utmost importance and relevance in this case, were not recorded and/or exhibited.

Recovery of other alleged offending weapons

180. PW 16, Sisir Kumar Saha had deposed that he had arrested Nimai Paramanik on 18th May 2014. After interrogation and on the basis of his statement (marked as Exhibit 29), he had recovered one bamboo lathi and

a wooden lathi under seizure list marked as exhibit 24. As per his statement he had also arrested Kanai Paramanik and based on his confessional statement (marked as Exhibit 28) he had recovered one gunny bag and one iron rod with blood stain on 21st May 2014 under seizure list marked as exhibit 25. Based on Nimai and Kanai's statements he arrested Jamini Kumar and Balai Paramanik. On 21st May 2014 he also recovered one iron rod and mobile phone on which Jamani Kumar had contacted him based on Balai's statement (marked as Exhibit 31) under seizure list marked as exhibit 26. After recovery of these articles, PW16 had again recorded Nimai, Kanai and Balai's statements wherein they had stated that they had recovered the articles as previously stated to the police. These statements were marked as Exhibits 32, 34 and 33 respectively. In his cross examination, PW 16 has stated that such abovementioned exhibits 24, 25 and 26 had been prepared between 17.50 and 18.45 hours and at three adjacent places but there were no independent witnesses on the seizure list.

Recovery as per Section 27 of the Evidence Act

181. The counsel for the appellant has argued that the disclosure statements made by the appellants do not satisfy the requirements of Section 27 of the Evidence Act since the recoveries of the beheaded body of Jayanta and the severed head along with the tangi were not pursuant to the statements made to the police but were recorded thereafter after discovery.

182. It is trite law that entirety of the statement recorded under Section 27 of the Indian Evidence Act is not admissible. The confessional part of the statement as a whole is inadmissible and only the part which distinctly

leads to discovery of a fact is admissible in evidence. Section 27 of the Evidence Act is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The restriction as imposed by the preceding sections was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure.

183. The object of the provision *i.e.* Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections be admitted in evidence. Under Section 27 the evidence leading to discovery of any fact is admissible, provided the information must emanate from an accused in the custody of the police. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be disclosed and evidence to that effect has to be adduced. The idea encapsulated in Section 27 of the Evidence Act is the

‘doctrine of confirmation’ by subsequent facts: that is statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which “furnish a link in the chain of evidence” needed for a successful prosecution. This doctrine is founded on the principle that if any fact is discovered as a result of a search made on the strength of any information obtained from an under-trial, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. [see **Salvi & Ors. v. State of Karnataka**¹⁷ and **State of Karnataka v. David Rozario**¹⁸.]

184. As was observed in **Pulukuri Kottaya (supra)**, it would be fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. The Court observed, “*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*

¹⁷ AIR 2010 SC 1974; 2010 (7) SCC 263

¹⁸ 2002 (7) SCC 728; AIR 2002 SC 3272

is very relevant. But if to the statement the words be added “with which I stabbed A” these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

185. In ***Jaffar Hussain Dastagir v. State of Maharashtra***¹⁹ in this case it was succinctly stated that “the essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence.”

186. From the aforesaid position of the law, it is observed that for Section 27 to be applicable it is of primary essence that the information given by the accused must lead to the discovery of a fact which is a direct outcome of such information. The confessional part of such statements are inadmissible as evidence under Section 27 and only the part leading to the discovery of the fact is admissible. In light of the aforesaid evidence and facts it is apparent that the statements of the accused recorded by the police being entirely confessional in nature cannot be considered or accepted as evidence under Section 27 of the Evidence Act.

187. The Hon’ble Supreme Court in ***Geejaganda Somaiah v. State of Karnataka***²⁰ has observed as under:

“25..... It does not, however, mean that any statement made in terms of the aforesaid Section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police

¹⁹1969 (2) SCC 872

²⁰2007 (9) SCC 315

officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the Accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 of the Evidence Act.”

188.In ***Subramanya (supra)*** the Supreme Court had observed that when an accused in custody makes a disclosure statement which may lead to discovery of the fact that he had concealed the weapon of offence, stolen property etc. at a place, the Investigating Officer must call two independent witnesses at the Police Station and in their presence record the voluntary statement of the accused. This would constitute the first part of the panchnama i.e. Seizure Memorandum. Thereafter the police party along with the accused and two independent witnesses would proceed to the spot as led by the accused. From that spot if the weapon of offence or incriminating articles are discovered, then the entire process would form the second part of the Seizure Memorandum. The Court further held if the disclosure statement is vague and does not indicate his involvement in the concealment of the weapon, mere discovery of the weapon would not invariably reveal the accused had concealed the weapon.

189.In ***Babu Sahebgouda Rudragoudar v The State of Karnataka***²¹ the Apex Court held the statement of an accused under section 27 of the Evidence Act is basically a memorandum of confession recorded by the Police Officer during investigation in writing. The confessional statement is inadmissible and only that part which distinctly leads to discovery of a fact is admissible in evidence. It is the duty of the Investigating Officer to narrate what the accused stated to him. Merely exhibiting the memorandum prepared

²¹ 2024 INSC 320

by the Investigating Officer would not tantamount to proof of its contents. He is required to narrate the sequence of events and the conversation which had transpired between himself and the accused that was recorded in the disclosure statement.

190. The learned Trial Court's observation with regard to the recovery of the severed head and offending weapons by Haladhar and Dayal is relevant for considering whether the provisions of Section 27 of the Evidence Act were complied with in the present case. The learned judge observed that during trial the learned defence counsel had argued that the prosecution had not proved the alleged statement made by the accused Haladhar and Dayal during interrogation but had instead attempted to prove the relevant portion of the statements made by the accused persons after recovery marked as Exhibit 22 and Exhibit 23 and hence these could not be taken into evidence. It was observed that "as leading to confessional statement of accused Dayal Paramanik and Haladhar Paramanik the beheaded head and alleged offending weapons have been recovered, so their statements are reliable and can be taken into consideration to prove the guilt of the accused persons."

191. The statements made by Haladhar and Dayal speak of them already having recovered the separated head of Jayanta in a bag along with other materials in presence of Bikash, Sabita and other local people pursuant to earlier statements made to the police, instead of statements subsequently leading the police to such recovery. The statements of the said accused persons to be considered as evidence under Section 27 of the Indian Evidence Act should have displayed the intention of the accused persons to aid the police in recovery of such items and not in the nature of mere confessions

made of already having recovered such items at the behest of the police. Notably, the seizure list prepared by the police does not mention the severed head being recovered.

192. A close scrutiny of the statement of Durjadhan would reveal that he had never undertaken to take the police to the place where the dead body could be recovered. Furthermore, there were several contradictions in the testimonies of PW 2, PW 4 and PW 14. At one time PW 14 has stated that the torso of the deceased Jayanta was recovered as per the statements made by the accused Durjadhan under Section 161 of the Cr.P.C. and yet at another time he has stated that neither the torso nor the offending weapons had been recovered from such statement of Durjadhan and such statement was made after the recovery of body at 9.55 hrs. This aforesaid observation shakes the amount of faith to be reposed in the testimony given by PW14. Consequently, doubt arises as to the exact time of recovery of the dead body and arrest of the accused Durjadhan. If it is considered that the statement of Durjadhan was indeed recorded after the recovery of body then such statement cannot be treated as a statement recorded under Section 27 of the Evidence Act which led to recovery of dead body. The testimony of PW 14 is also contradictory to the testimony given by PW 2 and PW 4. As per PW 14 the body of Jayanto was discovered from a ditch as shown by Durjadhan and as per PW 4 it was dug out by doms, the police, Durjadhan and Swapan. According to PW 2, the team was only there at the spot of discovery merely for 10-15 minutes and he had no knowledge except signing.

193. Besides, two independent witnesses were not called by the police while recording the statements of the accused. If it is the case of the

investigating officers, PW 14 and PW 16 that the accused appellants while in police custody, had of their own free will and volition made a statements that they would lead to the place where they had hidden the weapon of offence and the site of burial of the dead body, then the first thing the investigating officers should have done was to call for two independent witnesses at the police station itself and thereafter in their presence accused should have been asked to make appropriate statements. The recovery of the dead body of Jayanto along with the severed head and offending weapon cannot be held to be pursuant to Section 27 of the Evidence Act since the discovery of the fact was not made pursuant to the statements given by the accused and since the discovery of the body, severed head and tangi was made prior to the recording of statements.

194. Let us presume a situation where the dead body, severed head and weapon was not recovered on the basis of the statement of the offenders. However, the body and weapons were identified by the accused persons in presence of the witnesses. This would prima facie prove that the deceased is known to the accused. Evidence is there on record of past enmity. However, Durjadhan and others were acquitted in such proceedings. Would that be enough to show that the murder was not committed by way of retaliation? The brutality of nature of crime is not in dispute. The question would arise that even if the recovery is not made in terms of Section 27 of the Evidence Act what more the evidence should be required to establish the involvement of the accused persons and kind of evidence would be required to point out the guilt to them.

Conduct of the Accused Appellants

195. In the case of **Prakash Chand v State (Delhi Administration)**²² the Apex Court noting the distinction between conduct of the accused under conduct admissible under Section 8 of the Evidence Act and the statement made to the police officer during investigation which is hit by Section 162 of the Code of Criminal Procedure proceeded to observe as follows:

“8.There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence, relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act (vide Himachal Pradesh Administration v. Om Prakash [(1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975]).” (emphasis supplied)

196. In **A.N. Venkatesh & Anr. v State of Karnataka**²³ the Apex Court elucidated upon the relation between Section 8 and 27 of the Evidence Act as follows:

²² (1979) 3 SCC 90

²³ (2005) 7 SCC 714

“9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (Delhi Admn.) [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.” (emphasis supplied)

197. In light of the above views of the Apex Court, even if the disclosure statements made by the appellants is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. As for the recovery of the severed head of the deceased Jayanto, apart from the police there were four witnesses to the said recovery from a pond near Bandhghutu jungle. Even if the evidence of PW 7 and PW 10 is treated to be that of interested witnesses, the evidence of PW 5 and PW 6, the two local cowherds still remain to corroborate the evidence of PW 16 the CI of police as to the recovery of the

severed head along with tangi and other materials from the pond by the appellants Haladhar and Dayal, albeit not in terms of Section 27 of the Evidence Act. Such uninterested witnesses who were called by the police while going to work is completely reliable as to the events that transpired since they would possess no motive to falsely implicate the accused persons. However, merely the conduct of Haladhar and Dayal in the absence of other links of the chain of circumstances being proved such as the link between the articles recovered and them having actually committed the crime, motive being established and the recovery being made pursuant to their statements under Section 27 of the Evidence Act, cannot be the sole factor for conviction. As for the recovery of the dead body, the statement of Durjadhan coupled with the inherent contradictions visible in the testimonies of the witnesses raises doubts as to whether it was truly Durjadhan who had aided the police to recover the body and whether he was present at the site or not.

198. The accused appellants were given an opportunity to make statements under Section 313 of the Code of Criminal Procedure but they offered no explanation to the circumstances put to them. It is to be remembered that Section 313 provides an opportunity to the accused for his defence by making him aware fully of prosecution allegation against him and to answer the same in support of his innocence but equally there cannot be a generalized presumption of prejudice to an accused merely by reason of any omission or inadequate questions put to an accused thereunder. Ultimately it will be a question to be considered in the facts and circumstances of each case, there will have to be a cumulative balancing of several factors. The circumstances put together create a complete network from which it is

difficult to escape and does not admit of any inference except that of guilt of the accused and the inculpatory facts are incompatible with the innocence of the accused and are incapable of explanation upon any other reasonable hypothesis except his guilt. While rights of an accused to a fair trial are undoubtedly important, rights of victim and society at large for eviction of deviant behaviour cannot be made subservient to rights of an accused by placing the latter at a pedestal higher than necessary for a fair trial. (See ***Fainul Khan v. State of Jharkhand***²⁴).

Motive behind the Crime

199. The motive behind the murder against the appellant is also not satisfactorily established by the prosecution. The entire case of the prosecution is based on circumstantial evidence. It has been held in a catena of decisions that motive is required to be proved in a case based on circumstantial evidence.

200. In the decision in ***Sarbir Singh v. State of Punjab***²⁵, the Apex Court observed, “7. *It has been impressed that suspicion and conjecture should not take the place of legal proof. It is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to follow a particular path. The existence of a motive is often an enlightening factor in a process of presumptive reasoning in cases depending on circumstantial evidence.*” (emphasis supplied)

²⁴2019 (9) SCC 549

²⁵1993 SCC (Cri) 860

201.In *Nandu Singh v State of Madhya Pradesh*²⁶, the Court observed in paragraph 12:

“12. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.” (emphasis supplied)

202.In the decision in Nandu Singh's case an earlier decision of the Apex Court in *Anwar Ali v. State of Himachal Pradesh*²⁷, was quoted with agreement, thus:—

*“24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in *Suresh Chandra Bahri v. State of Bihar* (1995 Supp (1) SCC 80) that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in *Babu (Babu v. State of Kerala, (2010) 9 SCC 189)*, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under: (Babu case, SCC pp. 200- 01).*

*“25. In *State of U.P. v. Kishanpal* (2008) 16 SCC 73), this Court examined the importance of motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38- 39)*

²⁶ 2022 SCC OnLine SC 1454

²⁷ (2020) 10 SCC 166

‘38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.’

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N. (2009) 9 SCC 152)”. (emphasis supplied)

203. In the decision in **Shivaji Chintappa Patil v. State of Maharashtra**²⁸, after referring to the decision in Anwar Ali's case (supra), Supreme Court observed thus:—

“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances.” (emphasis supplied)

²⁸ (2021) 5 SCC 626

204. PW 4 Manbhula Kumar the sister-in-law of the deceased had deposed that on 9th May 2014 at about 10.30 pm at night Jamini Kumar, Dhananjay Kumar, Haladhar Paramanik, Nimai Paramanik, Dayal Paramanik, Kanai Paramanik, Balai Paramanik, Durjadhan Paramanik and Tapas Paramanik had entered her house, assaulted her, caught hold of her and torn out her blouse and saya. Jamini Kumar had allegedly told her that he would rape her and had assaulted her leg and broke down a tin box in the house. Apart from her parents-in-law she had not informed the incident to any other member of Deoli village. Subsequently, she had gone to Balarampur P.S. to register complaint but had neither signed on diary paper or seizure list of her two wearing apparels. PW 14 Jal Kumar Mandi the SI of police had deposed that Balarampur P.S. Case no. 23 of 2014 dated 10th May 2014 was started pursuant to the complaint lodged by Manbhula Kumar. The chargesheet for the said case was prepared under Section 448/323/427/34 of IPC and the other sections 376/511/379 of IPC were dropped. On the basis of such complaint he had gone to Deoli village but could not arrest any persons as they had all fled away from the village and he had not submitted the chargesheet on the said case either. PW 16 Sisir Kumar Saha the CI of Police had deposed that he had not verified from the court whether any title suit or any other proceeding between the parties was pending at any place.

205. In his cross examination, Jal Kumar Mandi has also stated that the father of the deceased, Mahabir Kumar had not told him that one Nepal Majhi had threatened to kill his son or that a day before the incident, a dacoity was committed at his house. Hence though there were records of a land dispute and prior criminal proceedings between the parties, the serious

charges of rape and dacoity being dropped, no conclusive motive of the accused for murdering Jayanto was conclusively established by the State.

Linking Discovery with Commission of Crime

206. It can be unequivocally stated that the fact discovered must be related to the crime committed. Further, mere recovery is not proof of the appellant having committed the crime. [See *Laxman Prasad v State of Madhya Pradesh*²⁹] The discovery of the dead body of the deceased along with the severed head and other alleged offending weapons does not necessarily connect them to the crime.

207. PW15, K.P. Shah is the Medical Officer posted at Purulia Sadar Hospital and on 14th May, 2014 he was attached to the said hospital in the same capacity and had performed post mortem examination over the dead body of Jayanta Kumar which was brought by PW8, Narayana Mahato. On examination he had found:

- I. The body was decomposed with maggots.
- II. Head separated from neck and head absent. Margins are sharp only poster of skin present i.e. beheaded.
- III. Fracture both bone of both legs above ankle.
- IV. Fracture right humerus upper end.

208. He had stated that the injuries were caused by a heavy sharp cutting substance. In his opinion the cause of death was due to shock and haemorrhage, due to beheading, ante mortem and homicidal in nature.

²⁹ (2023) 6 SCC 399

209. He also stated that on 18th May, 2014 he performed post mortem examination of the severed head of Jayanta Kumar brought by Laltu Pal PW9.

On examination he found:

- I. Incised wound sharp margin transverse 7" X 1" X bone deep left side of the face Mandible and nasal bone cut.
- II. Incised wound sharp margin transverse 2" X ½" X bone deep parietal region posterior aspect.
- III. Small cut injury right angle of mandible.

210. The injuries are caused by heavy sharp cutting weapons. So, in his opinion the cause of death was due to shock and haemorrhage, due to beheading, ante mortem and homicidal in nature.

211. PW 16 Sisir Kumar Saha had stated in his cross examination that he had not shown the seized weapons to the medical officer to ascertain whether or not the injuries may be caused by those weapons. Furthermore, no FSL report was procured in relation to the offending articles and other things sent for examination. Additionally, no forensic reports had been exhibited to show that the recovered articles had any nexus with the commission of the offence. No evidence was adduced by the prosecution apart from such confessional statements of the appellants to prove how the objects discovered allegedly leading from the statements made by the accused linked them to the murder of Jayanto. Neither the tangi nor the other alleged offending weapons allegedly discovered such as the iron rod and lathi at the instance of the other accused persons were forensically examined to establish that it was the murder weapon and no evidence was furthered to undoubtedly

prove that the same was used by the said appellants in the commission of the crime.

212. It is no more *res integra* that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra judicial confession.

213. We are reminded of the oft quoted line of American Statesman Benjamin Franklin- *“It is better that 100 guilty persons should escape than that one innocent persons should suffer”* or the doctrine that “ten criminals may go unpunished but one innocent person should not be convicted”. [see **Dinubhai Boghabhai Solanki v. State of Gujarat and Ors.**³⁰].

214. In the present case, the prosecution has rested its case primarily on the alleged confessional statements made by the appellants while in police custody without adducing any other shred of evidence to substantiate their

³⁰**2018(11) SCC 129**

complicity in the crime. Even that could not be proved to the satisfaction of the Court due to the contradictory nature of the witness testimonies as discussed hereinabove and proper procedure of recording of statements not being followed for making it admissible as evidence under Section 27 of the Evidence Act. Further, apart from a history of prevalent litigation amongst the parties, no basis could be formed by the prosecution for proving any motive of the appellants to murder Jayanto. The only allegation of an acrimonious relationship existing between the parties resulting in the alleged attempt at physical assault of Manbhula Kumar (the charge of rape and theft being dropped) at their house too has not been established due to ineffective investigation. The Trial Court too has allowed itself to be guided mechanically by the confessional statements and alleged recovery of the dead body, severed head and other objects, overlooking the fact that there were several contradictions in the testimonies provided by the witnesses and no other links forming the chain of circumstances being established.

215. A reading of the evidence would indicate that there are several inconsistencies in the testimonies of the witnesses. However, not every minor contradiction is to be construed so strictly as to push the accused another step towards his damnation. The penumbra of uncertainty in the evidence before a court is generally due to the nature and quality of that evidence. It may be the witnesses as are lying or where they are honest and truthful, they are not certain. To quote Justice Krishna Iyer in the case of **Shivaji Sahebrao Bobade & Anr. v State of Maharashtra**³¹, “The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern

³¹ AIR 1973 SC 2622

and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered.” Because of these complexities corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which means that the prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. However, a holistic view of the evidence adduced and especially the contradictions in the testimonies provided by the investigating authorities in this case, which has no ocular witness and relies primarily on witnesses most of whom are family members of the deceased, shakes the trustworthiness of the witnesses and raises doubts as to the circumstances surrounding the death of Jayanto and mode of recovery of the corpse and offending weapons.

216. As has been discussed hereinabove the recovery was not made in accordance with the principles laid down under Section 27 of the Evidence Act. Discovery as is well settled, is a weak piece of evidence and cannot be wholly relied upon and conviction in such serious matters cannot be based upon discovery. Once discovery fails, like in the present case, there would be nothing which would support the prosecution case. Although the conduct of

the accused could be considered relevant under Section 8 of the Act, the contradictory stances of the investigating officers in a case as grave and unsettling as the present one and laches in investigation strike a fatal blow to the case of the prosecution. That apart suspicion however grave cannot take the place of proof and remains only a doubtful pigment in the story canvassed by the prosecution. Hence, I am of the view that the chain of circumstances is not complete or proved by the prosecution as required in cases based on circumstantial evidence to enable the formation of only one hypothesis, that of the guilt is of the accused appellants herein and none else.

217. The investigation was deplorable and the investigating agencies in the present case have miserably failed to adhere to the procedure established by law for recording statements of the accused while in police custody. Although the case sought to be made out was one of discovery under Section 27 of the Evidence Act a bare perusal of the alleged confessional statements of the accused appellants marked as exhibits would show that they were statements made after recovery of the dead body, severed head and alleged offending weapons. The statements made prior to such recovery, if at all recorded by the police were not exhibited as required by law. Neither were independent witnesses called by the police to be present while recording such statements and nor was seizure properly done as the severed head did not even feature in the list prepared by the police. The alleged case of assault of Manbhula Kumar and pendency of other legal proceedings between the appellants and the deceased's family, if investigated properly by the police could have established the possible motive for murder of Jayanto but such was also not proceeded with. The several laches in investigation and the

lackadaisical and perfunctory approach adopted by the investigative authorities has impaired the case of the prosecution beyond repair.

218.In view of the discussion above, the judgment and order of conviction of the Trial Court is set aside and the appeal is allowed.

(Soumen Sen, J.)