



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.480 OF 2020

Datta Subhash Lohar,
Age : 33 years, Occ. Agri.,
r/o. Wagholi,
Tq. and Dist. Osmanabad

..Appellant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Rural Osmanabad Police Station,
Tq. and Dist. Osmanabad

..Respondents

WITH

CRIMINAL APPEAL NO.482 OF 2020

1. Prakash Suryakant Chapekar,
Age : 40 years, Occ. Private Service,
r/o. 36, Mauli Niwas, Porwal Park,
Alandi Road, Yerwada, Pune

2. Pratibha Prakash Chapekar,
Age : 32 years, Occ. Housewife,
r/o. 36, Mauli Niwas, Porwal Park,
Alandi Road, Yerwada, Pune

Vs.

The State of Maharashtra,
Through Police Station Officer,
Rural Osmanabad Police Station,
Tq. and Dist. Osmanabad

..Respondents

Mr.Sopan G. Bobde with Mr.Dhammadeep Paikrao, Advocates for
appellant in Criminal Appeal No.480 of 2020

Ms.Poonam V. Bodke-Patil, Advocate for appellant in Criminal Appeal
No.482 of 2020

Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent - State

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : DECEMBER 12, 2024
PRONOUNCED ON : JANUARY 06, 2025**

JUDGMENT (Per R.G. Avachat, J.) :-

Both these appeals are taken up together for decision, since the challenge therein is to one and the same judgment of conviction and order of consequential sentence passed by the Court of Addl. Sessions Judge, Osmanabad (trial court), on 14.08.2020 in Sessions Case No.89 of 2016. The relevant part of the impugned order reads thus :-

1. Accused No.1 - Prakash Suryakant Chapekar, resident of Pune is convicted for the offence punishable under Section 302 read with Section 120(B) of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/- (Rs.Five Thousands only), in default, he shall undergo rigorous imprisonment for one year.

2. Accused no.1 Prakash Suryakant Chapekar, resident of Pune is convicted for the offence punishable under Section 201 of the

Indian Penal Code vide Section 235(2) of the code of Criminal Procedure and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.1,000/- (Rs.One Thousand only) in default he shall undergo rigorous imprisonment for Three months.

3. Accused no.2 Datta Subhash Lohar, resident of Wagholi, Taluka and District Osmanabad is convicted for the offence punishable under Section 302 read with Section 120(B) of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/- (Rs.Five Thousands only), in default he shall undergo rigorous imprisonment for one year.

4. Accused No.3 Pratibha Prakash Chapekar, resident of Pune is convicted for the offence punishable under Section 302 read with Section 120(B) of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for life and to pay fine of

Rs.1,000/- (Rs. One Thousand only), in default she shall undergo rigorous imprisonment for three months.

5. The substantive sentence shall run concurrently vide Section 31 of the Code of Criminal Procedure.

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2. Criminal Appeal No.480 of 2020 has been preferred by original accused no.2 - Datta Subhash Lohar, while Criminal Appeal No.482 of 2020 has been preferred by original accused nos.1 and 3, Prakash Suryakant Chapekar and Pratibha Prakash Chapekar, husband and wife inter se. The appellant - Datta is brother of appellant - Pratibha (brother-in-law of appellant - Prakash).

3. The facts, in brief, giving rise to the present appeal are as follows:-

The appellant Prakash, initially, was serving with “Blue Dart company”, at Pune. The deceased - Kanchan Popatlal Pardeshi would also serve with the same company. The appellant Prakash was her boss. On account of nature of business of the company,

both were required to travel together. The acquaintance between the two developed into emotional relationship. Efforts made by the parents of Kanchan to ensure disassociation between the two failed. It is also the case of prosecution that the appellant Prakash left the job with Blue Dart company and joined Great Wall Corporate Services Pvt. Ltd., at Nagpur. He, thereafter, shifted to Nagpur. Kanchan too left the job with Blue Dart. The appellant Prakash, initially, stayed alone at Nagpur and then, took a flat on rent for residence. Kanchan joined him. Both of them started residing together as husband and wife. The appellant Pratibha along with her children happened to visit Nagpur. The friends of the appellant Prakash then realised that Kanchan was not the legally wedded wife of the appellant Prakash. To get rid of relationship with Kanchan, the appellant Prakash with the assistance of his brother-in-law - Datta and wife (Pratibha) as well, brought her down to village Wagholi, Dist. Osmanabad. Both Prakash and Datta committed her murder. Her dead body was bundled in a gunny bag and thrown into a public well at village Wagholi, on the intervening night of 20.12.2015 and 21.12.2015. The appellant - Prakash then returned to Nagpur and resumed his pursuits. Based on finding of the dead body of a lady in the well, on whose person there were multiple injuries, a villager, namely Ashok (PW 1) lodged the FIR (Exh.55). Necessarily, the FIR was lodged

against unknown person. Based on the FIR (Exh.55), a crime, vide C.R. No.175 of 2015, was registered for the offences punishable under Sections 302 and 201 of Indian Penal Code. The crime scene panchnama (Exhs.119 and 120) was drawn. Inquest and autopsy were conducted on the mortal remains of the deceased. Photographs of the dead body were snapped. The clothes on the person of the deceased were taken charge of. Her blood samples were also obtained and sent for DNA analysis. The investigation of the crime was entrusted with the Assistant Superintendent of Police-cum-SDPO. During investigation, the appellants were zeroed in on. Statements of the persons acquainted with the facts and circumstances of the case were recorded. The Investigating Officer made communications with the cellular companies and Flipkart, an e-commerce company, and obtained necessary information. Upon completion of the investigation, charge sheet was filed against the appellants.

4. The trial Court framed Charge (Exh.31). The appellants pleaded not guilty. Their defence was of false implication. To bring home the charge, the prosecution examined thirty three witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial court convicted the appellants and

consequently, sentenced to the terms of imprisonment, as stated above.

5. Heard learned counsel for the parties.

6. Learned counsel for the appellants did not dispute the relationship interse the appellants. Besides oral submissions, they have put on record the notes of their arguments. According to them, the evidence of the parents and uncle of deceased Kanchan, suggest that she had consumed poison and was therefore, admitted to Surya Hospital, at Pune, in the year 2014. These witnesses admitted the police to have recorded Kanchan's statement in relation to that incident. Those statements have been suppressed from the Court (not made part of the charge sheet). An adverse inference, therefore, was urged to be drawn. The Investigating Officer - Raj Tilak Roushan (PW 33) collected the medical papers from Surya Hospital, Pune. He also collected some other documents from Flipkart and Great Wall Company. No witness was examined in proof of those documents. Those papers remained to be the police papers in the charge sheet. The trial court erred in relying on those documents since the documents did not partake the character of the evidence for want of proof thereof. Deceased Kanchan had left the

house in search for job. She did not return. A missing person's report was, therefore, lodged by her father. Kanchan had carried with her a credit card, purse, cellphone, etc. No investigation was made in that regard. When she was said to have been at Hotel Aradhana, allegedly in the company of appellant Prakash, no witness has deposed in that regard nor any document relating to check-in the hotel has been proved. On the question of Prakash and Kanchan allegedly staying together at Nagpur is concerned, according to learned counsel, none of the witnesses examined from Nagpur, identified that the lady who was staying with the appellant – Prakash, was deceased Kanchan and none else. No photograph of Kanchan was shown to any of the witnesses. There is no shred of evidence to indicate that the appellant Prakash and Kanchan were seen last together.

7. On the question of appellant Prakash travelling from Nagpur to Wagholi village is concerned, learned counsel would submit the prosecution to have failed to prove that Kanchan was in the company of appellant Prakash. The CDRs and SDRs of the cellphone of the appellant Prakash would, therefore, be of little consequence. According to learned counsel, there was missing link in the chain of circumstances sought to be relied on. She would

further submit that the C.A. reports of the articles seized and analysed do not further the prosecution case. 'Jaipur Kurti' was not such an article, which could be found only on the person of the deceased. On the question of the CDR of the appellants are concerned, learned counsel would submit that there was no evidence that the appellant Prakash was making use of the cellphone no.7722093380. The sim-card of the said number was issued in the name of one Amol Sonwane. He has not been examined. According to the prosecution, the case was cracked on the basis of the material received from Flipkart. However, the evidence would indicate that the appellant Prakash was arrested a few days before such information was received. Learned counsel would further submit that the disclosure statement made by appellant - Datta would be irrelevant and inadmissible, since nothing was seized pursuant thereto. So far as regards the CDRs are concerned, the alleged cellphone no. 7722093380 indicate that it was at a petrol pump at AUSA, Dist. Latur, by 06.55 am. on 20.12.2015, while it was at village Hadgaon, Dist. Nanded, by 05.55 pm. on 19.12.2015. The distance between Hadgaon and Wagholi was not less than 300 kms. There was no call on the cellphone number 7722093380 during the intervening night of the fateful day. The missing person's report was circulated amongst all the police stations in the State of Maharashtra

along with the photographs of the deceased. She would further submit that the Medical Officer, who conducted the autopsy, did not give the actual time of death of the deceased. Learned counsel for the appellants in the written submissions relied on the following authorities:-

1. Nandu Singh vs. State of Madhya Pradesh, 2022 LiveLaw (SC) 229 :- The Hon'ble Supreme Court held that, the absence of motive in a case of circumstantial evidence weighs in favour of the accused. Motive not relevant in a case of Direct Evidence.

2. Randeep Singh Rana and another vs. State of Haryana and others:- The Hon'ble Supreme Court of India, in Criminal Appeal No. 297 of 2024, Randeep Singh Rana and another vs. State of Haryana and others, held that, there is complete prohibition on an attempt to prove inadmissible part of confession through the witness. If such inadmissible confession are made part of the depositions of the prosecution witnesses, then there is every possibility that the Trial Courts may get influence by it. In the present case, at every

point, the prosecution has tried to take inadmissible part of confession statement in the testimony of PW 3, IO- POW 33, PW, which has influence the Ld. Trial Court and resulted into unfair trial

3. Allarakha Habib Memon Etc. Vs. State of Gujrat, AIR 2024 SC 4201, Criminal Appeal 2828-2829 of 2023:- In this judgment the Hon'ble Supreme Court of India, has once again reiterated the law under section 27 of the Evidence Act. The Hon'ble Court at paragraph no. 41 has come to the conclusion that, the circumstance regarding identification of place of incident at the instance of the accused is also inadmissible because the crime scene was already known to the police, no new fact was discovered in pursuance of the disclosure statement.

4. Bobby vs. State of Kerla, Criminal Appeal No. 1439 of 2009:- The Hon'ble Apex Court, has held that the provisions of sec. 27 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.

Learned counsel would, ultimately, urge for allowing the appeals.

8. Learned APP would, on the other hand, submit that the evidence of the parents and the uncle of deceased Kanchan would indicate emotional relationship between appellant Prakash and Kanchan. Their efforts to disassociate them from each other failed. Kanchan's marriage was proposed to be settled with a boy from Dewas. The appellant Prakash played a spoilsport. Kanchan too refused to marry the boy. Identity of the deceased was established on the basis of the photographs and the DNA report. The deceased was sporting 'Jaipur Kurti' when she was met with death. The Investigating Officer collected the information to find that 'Jaipur Kurti' was bought online and delivered on the address of the appellant Prakash, at Nagpur. Learned APP then relied on the CDRs and SDRs of the cellphones of the appellants. According to him, there were many calls between the three cellphones during the relevant days. One call was at an odd hour, i.e. by little before 04.00 a.m, on the fateful night. It was unusual circumstance indicating that all the

three appellants formed a league. The conspiracy, thus, gets proved. The appellants did not offer any explanation to the incriminating evidence adduced by the prosecution. Appellant - Prakash simply denied the same. Learned APP would further submit that on the way back to Nagpur, the appellant - Prakash took his Vento car to a servicing centre; but considering the expenditure required, he did not get it repaired or serviced. When the incriminating circumstances were noticed in the car, his answers to the witness from the servicing centre were inconsistent with his innocence. According to learned APP, it is for the appellant to explain what has happened with the deceased Kanchan when she was all along staying with him as his life partner. Learned APP relied on the CDRs and the tower locations, indicating the appellant Prakash to have travelled from Nagpur to the crime-scene and returned back immediately after doing away with the deceased Kanchan. Learned APP, therefore, urged for dismissal of the appeals.

9. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

10. Before taking up the said exercise, it needs to be mentioned that the case is based on circumstantial evidence. It,

therefore, merits reference to the judgment of the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, wherein, it is observed as under :-

“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.

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

(3) The circumstances should be of a conclusive nature and tendency,

(4) They should exclude every possible hypothesis except the one to be proved, and

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

11. In the case in hand, following circumstances are proposed to be relied on to bring home the Charge:-

- (i) Homicidal death of Kanchan;
- (ii) Intimate relationship between appellant - Prakash and deceased Kanchan;
- (iii) Both of them stayed together as husband and wife for long, at Nagpur;
- (iv) Unusual disappearance of Kanchan and finding of her death body in a public well;
- (v) Non-explanation of any of the incriminating circumstances appearing against the appellant - Prakash in the evidence.

12. The FIR (Exh.55) was lodged by PW 1 - Arun against an unknown person on 21.12.2015 by 01.00 p.m. He testified that the land gut no.108, situated at village Wagholi, Tq. and Dist. Osmanabad, belonged to him. By 07.00 in the morning of 21.12.2015, he went to his field. He then visited the public well to see the water level. Surprisingly, he noticed one gunny bag in the well. He suspected something amiss. He, therefore, shared the said fact with the villagers. Two-three persons from them removed the

gunny bag from the well. The bag contained the dead body of a lady in the age group of 20-22 years. He, therefore, lodged the FIR with the Rural Police Station.

13. PW 2 - Kakasaheb is a witness to the spot panchnama (Exh.62). His evidence indicates that it was a public well at village Wagholi. The dead body of a girl put in the gunny bag was thrown in the well. The panchnama indicates marks of tyres of a four-wheeler at the crime-scene. The articles like, nylon rope, stones, *Odhani* (*Dupatta*) were seized under the panchnama (Exh.131).

14. Exh.73 is the post mortem report. PW 22 - Dr. Ashwini had conducted autopsy on the mortal remains of the girl. She testified that it was the dead body of a girl in the age group of 22 years. According to PW 22 - Dr. Ashwini, the girl died of "*hemorrhagic shock due to cut throat injury*". Following injuries were noticed on the person of the dead body:-

Surface wounds and injuries-

- a) *Incised wound just below chin over neck of size 7 x 2 x 9 cm. encircling V shaped all the great vessels of both sides are completely cut through, with completely transaction of trachea with intact esophagus at thyroid level.*

- b) Stab wound over left hypochondrium region on lateral side of size 5 x 3 x 8 cm., oval shaped.*
- c) Stab wound over upper left sided back, 3 x 2 x 6.5 cm.*
- d) Multiple linear abrasions over left wrist.*
- e) Subcutaneous hemorrhage of size 7 x 5 x 0.5 cm. Over gastric region.*
- f) Bite mark of aquatics over left eyebrow, post mortem in nature, margins irregular of size 2 x 1 x 0.2 cm.*

15. The aforesaid facts go a long way to prove that the girl, whose dead body was found in the well, was done to death. The question is, whether the appellants are the authors of her murder.

16. PW 18 – Popatlal is the father of the deceased Kanchan. The deceased girl was his daughter, has been proved by the DNA report (Exh.97) (not challenged before us). He testified that his daughter – Kanchan did M.B.A., Law (First year), in the year 2010-2011. She was serving with Blue Dart Company, Yerwada, Pune. For the purpose of verification, the appellant Prakash had paid visit to his residence and shop as well. Appellant Prakash was her boss. The

nature of their job was such that both were required to travel together to various places. Their relationship grew into emotional one. He convinced his daughter to disassociate from appellant Prakash. She did not listen. He further testified that she was under influence of Prakash. PW 18 - Popatlal went on to state that in the Marathi month - Margashirsh in the year 2014, Kanchan was admitted to Surya Hospital, as she had consumed poison. Said fact was informed to him by appellant - Prakash. He, therefore, visited Surya Hospital to find Prakash at her bedside. He further went on to state that as an effort to break their relationship, he had fixed Kanchan's marriage with one fellow of their community. Appellant Prakash, however, played a spoilsport. Kanchan too refused to marry anyone else.

17. The evidence of PW 18 - Popatlal further disclosed that in July, 2015, Kanchan told that she was searching another job. She, therefore, left in search thereof. She did not return. He, therefore, lodged a missing person's report at Ganesh Peth Police Chowki. The report finds place at Exh.278. He further went on to state that on 10.12.2015, he received a phone call of appellant - Prakash. He informed that Kanchan was crying and he (Popatlal) should meet her. He, therefore, along with his brother Sohanlal (PW 19), went to room

no.108, Aradhana Hotel, Alandi. Kanchan was crying. He made a phone call to his wife to establish telephonic conversation between Kanchan and her mother. Kanchan told that she would meet her after three months. Since Popatlal's brother - Sohanlal was with him, he went down to see him off. When he returned back to the hotel, Kanchan was not there. He, therefore, immediately called the police. His evidence further discloses that on 12.12.2015, he received Kanchan's phone call, expressing desire to talk to her mother. She, accordingly, spoke with her mother on the following day. They thought Kanchan might be with appellant Prakash and was under pressure. His evidence further disclosed that on 14.06.2016, police official of Osmanabad Police Station came to him with the photographs of Kanchan and informed about her murder. He identified Kanchan from the photographs.

18. PW 18 - Popatlal was subjected to searching cross-examination. He admitted that Kanchan did not make any allegation against appellant Prakash. He was confronted with his police statement, which is silent to state therein that appellant Prakash was her boss. In our view, this is not a material omission. According to him, Kanchan resided separately for six months in a flat at Dhanori and Sathe Vasti. He did not lodge any report against appellant

Prakash in relation to his relationship with his daughter. He gave name of one Sandip Kaushal with whom he had proposed Kanchan's marriage.

19. The evidence of PW 19 – Sohanlal, brother of PW 18 – Popatlal, is very much consistent with the evidence Popatlal (PW 18). He testified to have had accompanied his brother Popatlal to Surya Hospital, Pune, to meet Kanchan there. Appellant - Prakash was present in the hospital. He advised Kanchan to disassociate herself from appellant Prakash. He further testified to have accompanied his brother Popatlal to Room No.108 of Aradhana Hotel, Alandi, to meet Kanchan. He found that she was frightened. Then, evidence of PW 21 – Sushila, mother of Kanchan, is also on the lines of the evidence of her husband (Popatlal) and brother-in-law (Sohanlal).

The evidence of these three witnesses go a long way to indicate that both appellant Prakash and Kanchan were serving with Blue Dart company, at Pune. Both of them were emotionally involved. Kanchan was reluctant to marry someone else. She was even reluctant to disassociate herself from appellant Prakash.

20. There is ample and voluminous evidence on record indicating appellant Prakash had left the job with Blue Dart company. He, then, secured a job with Great Wall Corporate Services, Nagpur. PW 9 – Bramhdev, testified that he was serving as Site Supervisor with HBK Infrastructure, Nagpur. He was Caretaker of ‘Herbal Creation’ building. Appellant Prakash was residing in flat No.403 along with one lady in that building. The flat was owned by Seema Sahastrabuddhe (PW 12). Both of them were residing therein for 6-7 months. Appellant Prakash left the flat in 2016. During cross-examination, it has been brought on record that appellant Prakash told him (PW 9) that “madam was not keeping well” and therefore, she was not with him.

21. PW 10 – Harshita testified that she was H.R. Executive in Great Wall Corporate Services Pvt. Ltd. in 2016. It was the appellant Prakash, who had interviewed her for the job. Appellant Prakash was residing in the guest house of the company.

22. The material witness is PW 11 – Ninad. He testified that he was Executive Officer with Great Wall Corporate Services. Appellant Prakash was Branch Manager. The company had given mobile phones to all the employees. For residence, company had

assigned flat (guest house). One mobile phone was given to appellant Prakash. The flat given to Prakash was situated in Siddhi Apartment, Lok Seva Nagar, Nagpur. He (PW 11) and Prakash were residing in the said guest house (flat). PW 11 - Ninad went on to testify that in August, 2015, Prakash took one flat on rent in Issasani area. Prakash told him that his wife was coming to reside with him. When he visited the flat of Prakash, he introduced his wife by name, Kanchan. The evidence of this witness further disclosed that in the meantime, one lady along with children came to the guest house. From them, he learnt that Kanchan was not Prakash's wife but they were living together. He further went on to state that from December, 2015 onward, Prakash again started residing in the guest house. He left the flat taken on rent. On inquiry, he told that Kanchan left for her village and he, therefore, vacated the flat. During cross-examination, PW 11 - Ninad admitted that Prakash did not tell him that he was taking the flat since his wife was coming to stay with him. In the cross-examination, it has been brought on record that PW 11 - Ninad was on talking terms with Kanchan madam (deceased).

23. PW 12 - Adv. Seema Sahastrabuddhe was the owner of Flat No.403 in 'Harbals Creation' building. She testified that she

rented out the flat to appellant Prakash, wherein he was residing along with one Kanchan. Both of them would come to her to make payment of rent. In the cross-examination, she admitted that no lease agreement was executed between her and appellant Prakash.

24. **The evidence of the aforesaid witnesses makes out a case that appellant Prakash secured a job with Great Wall Corporate Services, Nagpur. Initially, he stayed in the company's guest house. He then secured a flat on rent on the ground that his family would be joining to reside with him. He, thereafter, started residing with a lady (Kanchan). In the meanwhile, the wife of appellant Prakash along with their children visited the guest house. These witnesses then realised that the lady by name, Kanchan, residing with the appellant Prakash was not his real wife. It is true that no photograph of Kanchan was shown to any of them to identify that deceased Kanchan was the lady who was residing with appellant Prakash at Nagpur.**

25. The term "proved", appearing in Section 3 of the Evidence Act, speaks that, *"a fact is said to be proved when, after considering the matters before it, the Court either believes it to*

exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists”.

26 So far, we have come across the evidence indicating that Kanchan was daughter of PW 18 – Popatlal and PW 21 – Sushila. She was deeply involved with appellant Prakash, emotionally. Both of them had served in Blue Dart company at Pune. When Kanchan was admitted in Surya hospital at Pune, appellant Prakash was at her bedside. After some days, both of them left the job. Appellant Prakash secured job at Nagpur. After a brief stay in the company’s guest house, he secured a flat on rent and started residing with a lady by name, Kanchan, at Nagpur. Kanchan, daughter of PW 18 – Popatlal and PW 21 – Sushila was alive until 20.12.2015. From all these facts, we have no hesitation to reach to the conclusion that the lady residing with appellant Prakash at Nagpur, was none other than Kanchan (deceased). The evidence also indicates that after the death of Kanchan, the appellant Prakash returned Nagpur alone. He quit the rented flat and again started residing in the company’s guest house. He informed his colleague (PW 11 - Ninad) that Kanchan had gone to her village (made a false statement). The aforesaid evidence also indicates that the company/employer of the appellant Prakash had provided him with a cellphone.

27. PW 33 – Raj Tilak Roushan did investigation of the crime. It is in his evidence that the Kurti on the person of the deceased Kanchan had a tag “*Jaipur Kurti.com*” (we have verified this fact). He found that similar Kurti was available on the e-commerce websites like, *Flipkart, Amazon, etc.* He exercised powers under Section 91 of the Code of Criminal Procedure and issued notices online through e-mail, requesting those websites to provide the telephonic details of the persons who had purchased such type of *Kurtis* during the period 01.01.2015 to the date of finding of the dead body of Kanchan, i.e. 20.12.2015. There were approximately, 18000 persons, who had purchased such type of *Kurtis* on Flipkart and 7 persons who had purchased the same from Amazon. He compared the tower dump data with the data received from Flipkart. One phone number came common. It was ‘7722093380’. The SDR record indicates that it was in the name of one Amol Sonwane, who was working with Great Wall Corporate Services. PW 33 – Raj Tilak placed on record the documents (Exhs.244, 245, 246 and 248) in the nature of his e-mail letters sent to Flipkart and the replies thereto. He also received certificate under Section 65(b) of the Evidence Act from Flipkart. The same was also marked as Exh.247. The witness placed on record the letters received from the employer of appellant Prakash (Exhs.249 and 250). The best evidence in proof of documents is examination

of author thereof. There are ways and means to prove a document.

Those are:-

- (i) By calling a person who signed or wrote a document.
- (ii) By calling a person in whose presence the document was signed or written.
- (iii) By calling a handwriting expert.
- (iv) By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written.
- (v) By comparing in Court the disputed document or writing with some admitted document or writing.
- (vi) By proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it.
- (vii) By the statement of a deceased professional scribe, made in the ordinary course of business, that the signature on the document is that of a particular person.

- (viii) A document is proved to have been made if it is shown to have been made at the request of a person by some other person, e.g., by the scribe who signed on behalf of the executant.
- (ix) By other circumstantial evidence, AIR 1957 Manipur 9(12)**AIR 1981 Madh Pra 69(72): 1981 MPLJ 192 (DB)

28. In our view, one of the modes of proving of the document, would be tendering in evidence such document by the person who has received it in response to his official course of business. Section 114 of the Evidence Act reads thus:-

“114. Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The Court may presume -

- (e) that the judicial and official acts have been regularly performed.*
- (f) that the common course of business has been followed in particular cases;*

29. As such, in response to the communications made by the Investigating Officer, the office copies whereof are on record and admitted in evidence, the employer of appellant Prakash informed that the aforesaid cellphone was being used by the appellant Prakash; and Flipkart informed that the said Kurti was ordered by a person holding the said cellphone and it was delivered on his address at Nagpur. Then, we have evidence of the Nodal Officer of Vodafone Idea Ltd. (PW 30 - Dattaram). In response to the requisition given by the police authorities, he produced on record the CDR, SDR and the tower locations of three cellphones numbers namely, 7722093380, 7743898148 and 8975671499. He supplied the said information along with the certificate under Section 65(b) of Evidence Act (Exh.230), indicating that the cellphone no. 7743898148 was in the name of appellant - Pratibha, wife of appellant - Prakash. The cellphone no. 8975671499 was in the name of Subhash Lohar (father of appellant - Datta). All the three cellphone numbers were in contact with each other for long. We do not propose to give details thereof since, considering their interse close relations, they are bound to be in contact with each other on cellphones. The material piece of evidence is the tower location of cellphone no.7722093380. Same indicates that on the fateful day, it travelled from Nagpur upto village Hadgaon and returned back to

Nagpur on the following day, i.e. 20.12.2015. During the material time, said cellphone had neither received any incoming call nor any call was made therefrom. Same suggests that appellant Prakash is intelligent. He must have kept the cellphone switched off. He did not offer any explanation as to why did he had been to village Hadgaon, wherefrom village Wagholi, the place of his brother-in-law (appellant Datta) was at a short distance, compared to Nagpur. On his way back to Nagpur on 21.12.2015, the appellant Prakash had to been to Sadik Motors Pvt. Ltd. with his Vento car bearing registration No.MH-12-JZ-4720, for repairing. The motor mechanic (PW 20) testified to have inspected the vehicle. He noticed some blood stains on the front left side door and seat of the car. The appellant Prakash told him that while coming to Nagpur, dacoits committed attack with stones. The head of his wife dashed against the dashboard. She, thereby, received injuries. Since the expenditure of the repairs of the car were amounting to Rs.40,000/- plus, the appellant Prakash took away the car. A bill was issued of Zero amount. The appellant then sold the said car to Jafar (PW 15).

30. Necessarily, the statements of the witnesses have been recorded late after the incident, since, by that time, identity and involvement of the appellant had not been surfaced. The appellant

Prakash was arrested on 15.06.2016; appellant Datta was arrested on 16.06.2016; and appellant Pratibha was arrested on 29.06.2016. The trial court mostly relied on inadmissible piece of evidence namely, the disclosure statement made by the appellant - Datta, disclosing the manner in which the crime was committed and the dead body was thrown into the well.

31. PW 3 - Ramesh is witness to the disclosure statements (Exhs.102 and 103). The appellant - Prakash too made disclosure statement pointing out the place in Nagpur, whereat, he destroyed the articles of deceased Kanchan. No object was recovered pursuant to any of these disclosure statements. Both the statements, therefore, would be irrelevant and not inadmissible in terms of Section 27 of the Evidence Act, except for making out the case about the conduct of the appellants. A photographer had accompanied on all the occasions. He too testified accordingly. Then, there is evidence of the carrier/police officials, who carried the seized articles to F.S.L., Aurangabad and Kalina as well. Their evidence was not referred to.

32. From the aforesaid evidence, what can be said to have been made out is that:-

- (i) Deceased Kanchan was daughter of Popatlal (PW 18);
- (ii) She and appellant Prakash, initially, were employed with Blue Dart Company;
- (iii) Their job profile required them to travel together at various places;
- (iv) The acquaintance between the two developed into emotional relationship;
- (v) Kanchan had, once, consumed poison. She was admitted to Surya Hospital, at Pune.
- (vi) Appellant Prakash was by her bed side;
- (vii) The parents of Kanchan made great efforts to ensure break up between the two, but in vain. They had settled marriage of Kanchan with a boy from Dewas;
- (viii) The appellant played a spoilsport. Kanchan too refused to marry anyone else. Same indicates bonding between the appellant Prakash and Kanchan);
- (ix) After some days, both of them left the job with Blue Dart company;
- (x) The appellant Prakash secured a job at Nagpur. He stayed in the company's guest house for some days and then, took a flat on rent to stay with his family;

- (xi) He then started residing in the said flat with a lady by name, Kanchan. In our view, said lady must have been Kanchan (deceased) and none else;
- (xii) The appellant Prakash's employer had provided with him a cellphone no.7722093380. Said cellphone travelled from Nagpur to village Hadgaon, meaning thereby, appellant Prakash came down to Hadgaon. Then, he switched off the cellphone.
- (xiii) He started backward journey on 20.12.2015 (CDR record indicates that tower location;
- (xiv) PW 1 – Arun noticed the dead body of a lady in the public well at village Wagholi, Dist. Osmanabad;
- (xv) Appellant Prakash gave false explanation to the motor mechanic and even to his colleague (same is stated above);

33. In view of illustration (d) to Section 114 of the Evidence Act, it has to be presumed that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence.

Based on the aforesaid evidence, it has to be presumed that the relationship between the appellant Prakash and deceased Kanchan that had continued while they were serving with Blue Dart company, Pune, continued even after they left the said job. Both of them stayed together as husband and wife at Nagpur. On the fateful day, appellant Prakash left Nagpur with her for village Wagholi, Dist. Osmanabad. He returned back alone to Nagpur and offered a false explanation to his colleague.

34. In view of the above facts, we reached to the conclusion that it was the appellant Prakash who owe explanation as to what he did with Kanchan, who was staying with him as his wife. It is reiterated that he offered no explanation to any of the incriminating circumstances appearing in the evidence against him. The only conclusion, therefore, could be drawn that the appellant Prakash committed murder of Kanchan. There is also evidence to indicate that Prakash's father had lodged N.C. against him. Although he was not examined, the N.C. has been proved by the police constable by tendering it in evidence. It was in relation to the quarrel between him and the family members over his relationship with Kanchan.

35 The question is, whether the appellants - Datta and Pratibha could be said to be privy to the crime. Appellant - Pratibha,

wife of appellant Prakash, was alleged to have conspired with her husband and brother, to eliminate Kanchan. To make out the case of conspiracy, the evidence relied on is C.D.R., indicating interaction between these cellphones. Admittedly, the calls between the appellants have not been recorded. They being family members bound to have interaction on cellphone. True, one of the calls was at an odd hour, i.e. little before 04.00 am. Based on the same, we, however, cannot jump to the conclusion that appellant - Pratibha was privy to the conspiracy. Section Section 120-A of Indian Penal Code defines conspiracy, which reads thus:-

120A. Definition of criminal conspiracy.- When two or more persons agree to do, or cause to be done,

(1) an illegal act, or
(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

It is very easy to allege a case of conspiracy but difficult to prove the same. Mere telephonic conversations between appellant Pratibha and her husband appellant - Prakash and brother appellant - Datta,

no way lead us to conclude she (appellant Pratibha) to have had hatched conspiracy to eliminate Kanchan. She, therefore, deserves to be acquitted.

36. So far as appellant - Datta is concerned, he appears to have helped his brother-in-law (appellant Prakash) in doing away with Kanchan. In that regard, we have evidence in the nature of the disclosure statement made by him, wherein, he stated as to when appellant Prakash came to his village, when he joined him and how executed the plan. Whatever he has stated to the Investigating Officer and deposed to by the witnesses thereto, was altogether inadmissible in evidence. Mere conduct is grossly insufficient to hold him guilty of the crime in question. He too, therefore, deserves to be acquitted.

37. We have gone through the authorities relied on by learned counsel for the appellants. Needless to mention, the factum of murder is a question of fact. Each criminal case has to be decided on the facts and circumstances of it. What has been observed in the case relied on by learned counsel for the appellants were on our mind while deciding the present appeals. So far as regards the judgment in the case of **Charandas Swami Vs. State of Gujarat**

and anr., AIR 2017 SSC 1761, relied on by learned APP is concerned, we find the same to be inapplicable to the present case.

Paragraph 45 of the said judgment reads thus:-

45. The dead body of deceased Gadadharanandji was found on 4th May, 1998 in a burnt condition in a ditch behind the house of PW50 in Barothi village in Rajasthan. How the dead body of Gadadharanandji reached that spot was revealed by none other than Accused No.3. In what circumstances burnt injuries were caused on the dead body of Gadadharanandji, no prosecution witness has spoken about that. Be that as it may, the fact that the dead body recovered from Barothi village on 4th May, 1998 was that of Gadadharanandji could be known only after Accused No.3, during the course of investigation, made a disclosure about the location where he had disposed of the dead body of Gadadharanandji. Till the aforesaid disclosure was made, in the records of the Rajasthan police, the dead body was noted as that of an unknown person. If, the Accused No.3 had not disclosed to the Investigating Officer about the location where the dead body was dumped by him - which information was personally known to him and at best Accused No.5 and none else, then the investigation would not have made any headway. The disclosure made by Accused No.3 to the investigating officer was recorded in the panchanama Exh. 188, when he had led the police party to the spot where the dead body was dumped by him. That location matched with the location from where the dead body of an unknown person was recovered on 4th May, 1998 on the information given by PW50 to the local police at Barothi. The fact that the dead body was already recovered from the same place on 4th May, 1998 and so noted in the public records in the State of Rajasthan does not undermine the admissibility of the

disclosure made by Accused No.3 to the investigating officer about the location where the dead body of Gadadharanandji was dumped by him, which information was exclusively within the personal knowledge of Accused No. 3. The fact that the dead body recovered on 4th May 1998 was of Gadadharanandji, was unraveled and discovered only after the results of its medical examination became available to the investigating agency. Till then, it was considered to be of an unknown person. The Courts below have accepted the case of the prosecution that the disclosure made by Accused No.3 about the location where the dead body of Gadadharanandji was dumped by him, was admissible under Section 27 of the Evidence Act. The appellants, however, take exception to that by relying on the reported decisions. In our view, the decision in the case of Navjot Sandhu (AIR 2005 SC 3820) (Supra) has adverted to all the previous decisions and restated the legal position. In paragraph 114, while considering the arguments advanced by the parties regarding the sweep of Section 27 of the Evidence Act, the Court formulated two questions which read thus:

“(i) Whether the discovery of fact referred to in Section 27 should be confined only to the discovery of a material object and the knowledge of the accused in relation thereto or the discovery could be in respect of his mental state or knowledge in relation to certain things — concrete or non-concrete.

(ii) Whether it is necessary that the discovery of fact should be by the person making the disclosure or directly at his instance. The subsequent event of discovery by the police with the aid of information

furnished by the accused — whether can be put against him under Section 27.”

In the context of these questions, the argument of the counsel for the State in that case has been adverted to in paragraphs 115 to 118. The Court then after analyzing Section 27 of the Evidence Act, in paragraphs 120 to 144 adverted to the relevant decisions on the point. In paragraphs 120 and 121 (para 13 of AIR), the Court noted thus:

“120. The history of case-law on the subject of confessions under Section 27 unfolds divergent views and approaches. The divergence was mainly on twin aspects: (i) Whether the facts contemplated by Section 27 are physical, material objects or the mental facts of which the accused giving the information could be said to be aware of. Some Judges have gone to the extent of holding that the discovery of concrete facts, that is to say material objects, which can be exhibited in the Court are alone covered by Section 27. (ii) The other controversy was on the point regarding the extent of admissibility of a disclosure statement. In some cases a view was taken that any information, which served to connect the object with the offence charged, was admissible under Section 27. The decision of the Privy Council in Kottaya’s case which has been described as a locus classicus, had set at rest much of the controversy that centred round the interpretation

of Section 27. To a great extent the legal position has got crystallised with the rendering of this decision. The authority of the Privy Council's decision has not been questioned in any of the decisions of the highest court either in the pre-or post-independence era. Right from the 1950s, till the advent of the new century and till date, the passages in this famous decision are being approvingly quoted and reiterated by the Judges of this Apex Court. Yet, there remain certain grey areas as demonstrated by the arguments advanced on behalf of the State.

121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is

explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in Kottaya case 64: (AIR p. 70, para 10)

“clearly the extent of the information admissible must depend on the exact nature of the fact discovered”

and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said: (AIR p. 70, para 10)

“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.”

We have emphasised the word “normally” because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown’s counsel was emphatically rejected with the following words: (AIR p. 70, para 10) “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.” Then, Their Lordships proceeded to give a lucid exposition of the expression “fact discovered” in the following passage, which is quoted time and again by this Court: (AIR p. 70, para 10) “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)

38. The facts in the case of **Charandas Swami** (supra) would indicate that the dead body of *Gadadharanandji* was found in Rajasthan. How the dead body reached that spot was revealed by none other than the accused therein. By that time, the Investigating Officer was not in the know thereof.

The facts in the present case, indicate that it is not that based on the disclosure statement made by appellant Datta, Investigating Officer or the officials of the police station with which the crime was registered, came to know about identity of the deceased Kanchan.

39. The evidence of Popatlal (PW 18) and the Investigating Officer would indicate that the identity of the dead body was established when the Investigating Officer had visited his house on 15.06.2016 with photograph in cellphone. Thereafter, the appellants were arrested and then, the disclosure statement was made by appellant – Datta. Be that as it may.

40. The appreciation of the evidence and the conclusion arrived at, stated herein above, lead us to dismiss the appeal of appellant Prakash and allow the appeals preferred by appellants - Datta and Pratibha.

41. In the result, the following order:-

(i) Criminal Appeal No.480 of 2020 is allowed. The impugned order dated 14.08.2020, passed by learned Addl. Sessions Judge, Osmanabad, in Sessions case No.89 of 2016, convicting and sentencing the appellant - Datta s/o. Subhash Lohar for the offences punishable under Section 302 read with Section 120-B of Indian Penal Code, is set aside. He is acquitted of the said offence. He be released forthwith, if not required in any other case. Fine amount paid by the appellant - Datta, if any, be refunded to him.

(ii) Criminal Appeal No.482 of 2020 is partly allowed.

(a) The conviction and sentence imposed vide impugned order dated 14.08.2020 passed by learned Addl. Sessions Judge, Osmanabad, in Sessions Case No.89 of 2016, for the offences punishable under Section 302 r/w. 120-B of Indian Penal Code, to the extent of appellant - Pratibha Prakash Chapekar, is set aside. She is

acquitted of the said offences. Fine amount paid by the appellant - Pratibha, if any, be refunded to her. Her bail bonds shall stand cancelled.

(b) Criminal Appeal No.482 of 2020 to the extent of appellant - Prakash Suryakant Chapekar, is dismissed. He shall surrender to his bail. His bail bonds stand cancelled.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

After pronouncement of the judgment, Ms. Poonam Bodke Patil, learned counsel submits that since the appeal of appellant - Prakash has been dismissed, who had been granted bail by the Hon'ble Supreme Court, subsequent to dismissal of the application for suspension of sentence by this Court, some time may be granted for his surrender, so as to ensure that he would approach the Hon'ble Supreme Court within a reasonable time.

On her request, the appellant - Prakash is granted four weeks' time to surrender.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

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