



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 10 February 2025

Judgment pronounced on: 19 February 2025

+ **CRL.A. 188/2024**

VIJAY SINGH @ VIJAY PEHLWAN

.....Appellant

Through: Mr. Tanveer Ahmed Mir, Sr. Adv.
with Mr. Kartik Venu, Mr. Keshav
Singh & Mr. Md. Imran Ahmad, Adv.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Mr.
Lalit Luthra & Ms. Divya Yadav, Adv.
with Insp. Ram Phool, PS Vasant Kunj
& Insp. Ravi, PS Special Cell.
Mr. Puneet Mittal, Sr. Adv. with Mr.
Rupendra Pratap Singh, Ms. Sakshi
Mendiratta, Mr. Rupendra Sharma, Mr.
Varun Upadhyay, Adv. for R-2. (M:
9818928506)

CORAM:

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The present appeal has been preferred in terms of Section 374 (2) of the Code of Criminal Procedure, 1973 ["Cr.P.C."], assailing the judgment dated 12.07.2018 passed by the Court of learned Additional Sessions Judge-02, South Saket Court, New Delhi ["Trial Court"] whereby the appellant (hereinafter referred as 'A-1') has been convicted under section 302 read with Section 34 of the Indian Penal Code, 1860 ["IPC"], followed by impugned order on sentence dated 22.02.2024 whereby A-1 has been sentenced to



undergo rigorous imprisonment for life and to pay a sum of Rs.25,000/- as fine, in default of which he shall further undergo one year simple imprisonment. Further, under Section 364/34 IPC A-1 is sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.25,000/- in default of which, he shall further undergo 06 months simple imprisonment, under section 365/34 IPC sentenced to undergo rigorous imprisonment for 05 years and to pay fine of Rs.10,000/-, in default of which, he shall further undergo 06 months simple imprisonment and under section 201/34 IPC sentenced to undergo rigorous imprisonment for 03 years and to pay fine of Rs.7,000/-, in default of which, he shall further undergo 02 months simple imprisonment.

2. It is pertinent to mention here that the co-accused Vikram @ Manoj (hereinafter referred as 'A-2') was also convicted *vide* the same impugned judgment dated 12.07.2018 for the same set of offences and sentenced in the same manner as A-1. A-2 earlier filed a criminal appeal bearing CRL.A. 968/2018, which came to be dismissed by a co-ordinate bench of this court *vide* judgment dated 23.12.2022 and thereby upholding the impugned conviction and order on sentence passed by the learned Trial Court.

FACTUAL BACKGROUND

3. In a nutshell, the prosecution case brought out during the trial is that on 26.05.2011 at around 10:30 p.m., a missing report *vide* DD No.62-B (Ex. PW-2/DB) was registered at PS¹ Vasant Kunj (North) on the complaint of PW-2/Baljit Singh, who reported that his father Raghuvir Singh (deceased) aged around 62 years had left home at 8:00 am as per daily routine and had gone to their plot bearing No.150A/9, Kishangarh, Delhi but had not returned

¹ Police Station



home. He further stated that his mother was also there with his father but around 10:00 am his father was conversing with a man who had arrived in a long/big vehicle of yellow colour and was taken by him in the car which was being driven by another person.

4. It is the prosecution case that since the father of PW-2 did not come back, PW-2 visited the police station on the next day 27.05.2011 at about 12.00 p.m. and informed that he had come to know that A-1, who was their neighbour, was the one who had taken away his father in his car which was being driven by somebody else, which led to registration of the present FIR² No.127/2011 (Ex.PW-14/A) under Section 365/34 IPC at 12.40 p.m. on 27.05.2011 at PS Vasant Kunj (North). During the ensuing investigation, statement of PW-1/Omwati and PW-2/Baljit Singh were recorded who informed that A-1 had posed a threat to them about 10-20 days before regarding their plot 150-A/9, Kishan Garh as well as demanded money. At their instance the site plan of the place from where the deceased went missing was prepared (Ex. PW-41/B). The IO³/PW-41 obtained the CDR⁴ of mobile number 9911730966 of A-1 provided to him by PW-1 and PW-2 and found that a call was exchanged between the said number and the complainant's mobile number viz., 9911222561 and the then current location of the A-1's phone number was shown to be at Vadodara, Gujarat. However, when the police team led by IO/PW-41 reached Vadodara on 28.05.2011, their search for A-1 went in vain as his flats were found locked and he could not be located.

5. It is brought on record that in the meanwhile the body of the deceased

² First Information Report

³ Investigating Officer

⁴ Call Detail Record



was already located by the Gurgaon Police, i.e., PS Sushant Lok on 26.05.2011. They were not aware of the 'missing status' of the deceased, and thus, the post mortem was conducted on 29.05.2011 and the body of the deceased was cremated as unclaimed. The prosecution case is that it was on 01.06.2011 that the IO/PW-41 SI Ravi Babu came to know about the recovery of a dead body of an unknown man within the jurisdiction of PS Sushant Lok, Gurgaon *qua* which an FIR No.114/2011 (Ex.PW-24/B-7) had been registered, and eventually the body of the victim came to be identified by PW-2 as that of his missing father on 01.06.2011, the photographs of which are at Ex. PW-2/B1 to B20.

6. The prosecution story is that A-1 surrendered in the Rohtak Court on 04.06.2011 pursuant to which his production warrants were sought by PS Vasant Kunj (South) in case FIR No. 127/11 u/s 387 IPC. Through the court, A-1 was produced before the Saket Courts on 16.06.2011 and he was remanded to police custody on the same day. The information regarding his involvement in the murder of the deceased came to be disclosed by A-1 *vide* undated disclosure statement (Ex.PW-34/A) recorded on 18.06.2011 in the presence of Ct. Tilak Raj (PW-31) and Ct. Bhoop Singh (PW-36). Thereafter, on 20.06.2011 PW-41/IO along with Ct. Jai Bhagwan and Ct. Rajesh reached Saket Court as A1 was being produced before the concerned court. PW-41/IO then moved an application for permission to interrogate and arrest A-1 in the present case which was allowed and the custody of A1 was handed over to him.

7. In the meanwhile, PW-41/IO arrested A-2 on 19.06.2011 *vide* arrest memo Ex. PW-5/A and personal search memo PW-5/B and on recording of his disclosure statement PW-5/J, at his instance a pistol (Ex. P-7) and two live



cartridges (Ex. PW-5/D) were separately recovered, besides cash amount of Rs. 1,06,000/- which along with four mobile phones and metal piece were seized *vide* parcel Ex. PW-5/F. It is the prosecution's case that thereafter, a Silver coloured Hyundai Accent car bearing registration number HR-02-P-4110 was also recovered on the same day. Upon inspection of the said car, blood stains were found on its rear seat as well as boot/dicky. The car (Ex. PW-5/G) was brought to the police station and while Crime Team led by PW-35 inspected the car on 21.06.2011 taking its photographs Ex. PW-19/B-1 to B-20, its forensic analysis was conducted on 27.06.2011 by PW- 3/Ms. Seema Nain.

8. Upon the completion of the investigation, the chargesheet dated 14.02.2012 was then filed by the police.

9. On 18.02.2012 charges were framed against A-1 and A-2 under Sections 365, 364, 302, 201 and 34 of the IPC by the learned Trial Court to which they pleaded not guilty and claimed trial.

PROSECUTION WITNESSES EXAMINED

10. The prosecution examined 45 witnesses in support of the case which are as follows:

10.1 The star witnesses were: PW-1/Smt. Omwati who was the wife of the deceased and PW-2/Baljit Singh, who was the son of the deceased. Further, PW-4/Rati Ram, he was working as a guard in DLF, phase-V, Gurgaon and found the dead body of the deceased and informed the police. Although PW-8/Suresh Kumar Rathore was presented as a prosecution witness, he did not support the prosecution case *in toto*.

10.2 Medical/Expert Witnesses was PW-24/Dr. Deepak Mathur who conducted post mortem on the body of the deceased; and PW-3/Seema Nain



who examined Hyundai Accent Car (CRDI) No.HR-02P-4110. PW-42/Loveleen Kumar Katyal examined the viscera of the deceased and detected no common poison; and PW-43/Rajeev Kawatra examined the stone pieces and book containing blood.

10.3 Certain witnesses in relation to the CDR were examined which are: PW-6/MN Vijayan, PW-7/Pradeep Kumar, PW-9/Pawan Singh.

10.4 Formal/Police Witnesses: PW-41/SI Ravi Babu was the investigating officer of the case. The rest of the witnesses were police witnesses.

We shall delve into the details of the testimonies of these witnesses later on in the judgement.

STATEMENT OF A-1 u/s 313 Cr.P.C

11. On the closing of the prosecution evidence, the accused persons were examined under Section 313 Cr.P.C. wherein they pleaded false implication at the behest of PW-1 & PW-2 due to history of family enmity. A-1 was not only put the questions of incriminating evidence brought on record by the prosecution as against him but also as against A-2. A-1 denied that anyone by the name of A-2 was involved. Although A-1 initially stated that he wanted to lead evidence, however, on 14.10.2017 it is recorded that he chose not to lead any evidence.

IMPUGNED JUDGMENT

12. After the conclusion of the trial, the impugned judgment convicting A-1 and A-2 was passed by the learned Trial Court on 12.07.2018 in the following terms:-

121. From the testimony of PW1 and PW2, it is credibly proved that accused Vijay Pehlwan alongwith co-accused Vikram had taken away deceased Raghubir in a car driven by co-accused Vikram at around 10 am on 26.05.2011 and the dead body lying in the jungle was noticed by PW4



Rati Ram at around 11.30 am on 26.05.2011. On the basis of this statement Ex.PW4/A of Rati Ram the FIR no. 114 dated 26.05.2011 u/s 302/201 IPC was registered at Sushant Lok, Gurgaon at 1.50 pm. The time gap when the deceased was taken away and found murdered is around 90 minutes. The distance between both the places might be around 10-15 kilometers. From this last seen circumstance, an irresistible conclusion is arriving that the deceased was murdered by accused Vijay Pehlwan in furtherance of common intention with accused Vikram @ Manoj who was accompanying accused Vijay Pehlwan in the car. Ld. Counsel for the accused Vikram submitted that there is no direct enmity of accused Vikram with deceased neither he is beneficiary of plot, nor made any conspiracy thus no inference of any liability could be fastened upon him in present facts and circumstances. Accused Vikram accompanied Vijay Pehlwan in the car and thereafter the said incident of murder took place, then that accused not reported the matter to police and absconded, therefore in these facts and circumstances a definite inference can be drawn that he shared a common intention to kill the deceased Raghubir.

122. The last seen evidence is duly corroborated through the mobile call records of accused Vijay Pehlwan and accused Vikram @ Manoj which suggest that both are in contact prior to the date of incident as well as in the morning of the date of incident ie 26.05.2011 and thereafter also. The mobile call locations were also found to be at Delhi. The mobile call records of PW8 Suresh Halwai and that of accused Vijay Pehlwan also suggest they had talk with each other after the incident on 26.05.2011. Furthermore, the mobile phone talk between Vijay Pehlwan and PW2 Baljeet at around 10.18 pm on 26.05.2011. It is pertinent to notice here again that mobile phone location of Vijay Pehlwan at 10.18 pm is at Vadodra and at around 6 and 7 pm at Delhi. Accused in his statement u/s 313 Cr.P.C categorically stated that he was not in Delhi on 26.05.2011 and also stated that he was in Vadodra on 26.05.2011 to get back his opel astra car and brought the same to Delhi, however not lead any positive evidence in this regard. Accused could not show even from the prosecution case that he was not in Delhi at the time of commission of offence whereas the prosecution able to prove his presence at Delhi at the time of offence. Thus, accused not able to prove the alibi that he was in Gujarat at the time of incident. Hence, this is an additional incriminating circumstance to be considered against the accused Vijay Pehlwan.

123. On appreciation of evidence, prosecution credibly able to prove following circumstances against the accused:

- (i) Last seen evidence of taking away of deceased Raghubir by accused Vijay Pehlwan in car driven by Vikram @ Manoj at around 10 am on 26.05.2011.
- (ii) Noticing of dead body lying in jungle at Gurgaon at



around 11.30 pm on 26.05.2011.

(iii) Mobile conversation between accused Vijay Pehlwan and Vikram @ Manoj, and also between PW8 Suresh Halwai and accused Vijay Pehlwan.

(iv) Location of all mobiles in the vicinity where the incident took place.

(v) Threatening received by PW2 from Vijay Pehlwan during mobile conversation on the night of incident at 10.18 pm.

(vi) Motive of crime ie forcible transfer of plot.

(vii) False alibi of accused Vijay Pehlwan that he was at Gujarat at the time of incident.

127. It is not necessary for the prosecution to prove each and every circumstance relied upon, however the circumstances proved must be conclusively proved and from the said conclusive circumstances, a chain be so complete as to exclude the hypothesis of innocence and must show that in all human probability the act must have been done by the accused. Though the prosecution not able to prove the manner of arrest and consequent recoveries at the instance of accused persons in the manner projected by prosecution, however prosecution credibly proved the circumstance of last seen, identity of both the accused as well as their movements in Delhi and connection through mobile phones on the day of incident as well as around the incident and motive of crime. Furthermore, the accused Vijay Pehlwan plea of alibi also found false.”

13. It is pertinent to mention here that at the time of delivering the impugned judgment, the learned Trial Court observed that A-1 had been absconding from 06.04.2018 and had been declared as proclaimed offender *vide* order dated 07.07.2018. Thereafter, he was arrested by PS Crime Branch in Jabalpur, Madhya Pradesh on 20.11.2023. It is borne out from the record that A-1 had been granted bail *vide* order dated 04.04.2018 from 05.04.2018 till 06.04.2018 so as to allow him to be present at the *Tehrvi* Ceremony of his nephew, however, thereafter he absconded and did not surrender, and he was eventually declared proclaimed offender *vide* order dated 07.07.2018. In the said backdrop, since the statement of A-1 had been recorded much earlier and the matter was at the stage of arguments being addressed, in view of Section



353(6) of the Cr.P.C, the learned Trial Court pronounced the judgment dated 12.07.2018 thereby convicting the present appellant/A-1 as well.

LEGAL SUBMISSIONS

14. Learned Senior Counsel urged that despite there being sufficient clarity in the testimony of PW-1 with regard to the identity of the A-1 since the inception, the name of A-1 had not been mentioned in the DD entry that was filed at the first instance, and such fact according to the ld. Senior Counsel, shows that the allegations raised against A-1, both in Section 161 testimony and the Court testimony, were afterthoughts; and barring such tainted evidence, there is no other concrete evidence which can link A-1 to the death of the deceased. He further argued that the Trial Court has completely misread the testimony of PW-1 and PW-2 since, in the missing report on 26.05.2011, the colour of the car was described yellow, however, the car which was allegedly recovered was a silver colour Hyundai Accent car. It was urged that even if PW-1 was an illiterate woman, she was expected to know the difference between yellow and silver.

15. It was urged that the prosecution has not been able to establish the location of A-1 near the place of taking away the deceased and also the place from where the dead body was discovered. It was urged that the said evidence is inadmissible due to absence of a Section 65B certificate. It was also argued that the contact name “Bej” does not match A-1’s name and guilt cannot be inferred based on speculation.

16. Learned counsel for the appellant challenged the evidence with regard to the recovery of wristwatch, gold & silver ring from Vadodara, Gujarat for the lack of independent witnesses and non-involvement of local police. It is contended that there is no reimbursement slip to substantiate the trip and there



are contradictions in the testimonies of police officials regarding the dates of the trip. It was pointed out that PW 41/IO admitted that the claim of Rs. 23,000/- was rejected which could indicate that the police team never actually travelled to Gujarat and the recovery of the wrist watch, gold & silver ring belonging to the deceased were planted upon A-1.

17. It was urged that the refusal to participate in the TIP⁵ by A-2 cannot be considered a circumstance against A-1 and cannot lead to drawing of an adverse inference against him. Insofar as the last seen/circumstantial evidence is concerned, Id. Senior Counsel relies upon the decision of the Supreme Court in **Boby v. State of Kerala**⁶, the relevant paragraphs read as under:

“14. Shri Basant submitted that the trial court solely relied on the last seen theory and held that the prosecution had proved the same with regard to the chain of circumstances in this case. It is further submitted that conviction of an accused person cannot be sustained only on the basis of proving the last seen theory as the same was required to be corroborated with the statements of the witnesses that are examined during trial along with other evidence placed on record. While pointing out the discrepancies in the statements of prosecution witnesses, which were relied upon by the courts below, it was submitted that the conviction of the appellant herein could not be sustained on the said ground alone.

XXX XXXXXX

23. Insofar as last seen theory is concerned, it will be relevant to refer to the following observations of this Court in the case of State of U.P. v. Satish:

“22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the

⁵Test Identification Parade

⁶(2023) SCC OnLine SC 50



accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.”

XXX XXXXXX

24. It could thus clearly be seen that the last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. If the gap between the time of last seen and the deceased found dead is long, then the possibility of other person coming in between cannot be ruled out.

XXX XXXXXX

36. It is thus clear that the only circumstance that now remains is the circumstance of the accused last seen in the company of the deceased on the basis of the evidence of PW-1. In that view of the matter, we find that, solely on the basis of last seen theory, the conviction could not have been recorded. The prosecution has utterly failed to prove that the recovery of the dead body of the deceased was at the instance of Bobby (accused No. 3/ appellant herein). The recovery of the articles from the house of Bobby (accused No. 3/appellant herein), even according to the trial court, is farce and fabricated. The recovery of the spade at the instance of Shibu @ Shibu Singh (accused No. 1) is from a place which, even according to the trial court, was also known on account of the disclosure statement made by Bobby (accused No. 3/appellant herein).”

18. Reliance is also placed on the judgment of **Darshan Singh v. State of Punjab**⁷, wherein it was held that-

“9.

The normal approach in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

XXX XXXXXX

37. Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure to prove a single circumstance cogently can cause a snap in

⁷ (2024)3 SCC 164



the chain of circumstances. There cannot be a gap in the chain of circumstances. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt.”

19. Lastly, the learned counsel for the appellant urged that there were several investigative lapses on the crucial aspect for which reliance was placed on the decision in case of **State of Gujarat v. Kishanbhai**⁸, besides pointing out that the telephone calls that emanate from the CDRs brought on the record by the prosecution do not in any manner relate to the place of occurrence for which reliance was placed on the decisions in the case of **Kiriti Pal v. State of West Bengal**⁹ and **Ravinder Singh @ Kaku v. State of Punjab**¹⁰. It was also argued that mere exhibition of marking of exhibits upon the documents does not amount to proof of its content for which reliance was placed on the decisions by the Supreme Court in the case of **Narbada Devi Gupta v. Birendra Kumar Jaiswal**¹¹ and **Alamelu v. State**¹².

20. *Per Contra*, the ld. APP¹³ argued that this is not only a case of false plea of *alibi* but also of absconding. Reliance is placed on the CDR and the testimony of PW-1 which shows conspiracy between the accused persons. Further, in the testimony of PW-2, he states that around 10-15 days prior to the incident, A-1 had threatened him and his father/deceased on account of some monetary dispute. Lastly, to show the conspiracy between the accused

⁸ (2014) 5 SCC 108

⁹ (2015) 11 SCC 178

¹⁰ (2022) 7 SCC 581

¹¹ (2003) 8 SCC 745

¹² (2011) 2 SCC 385

¹³ Additional Public Prosecutor



persons, Id. APP has placed reliance in the judgment of **State v. Nalini**¹⁴ and **Kehar Singh v. State (Delhi Administration)**¹⁵. Further, Id. APP for the State also relied upon the decision in the case of **Mary Pushpam v. Telvi Curusumary**¹⁶ to buttress the point that the decision given by the coordinate bench of this Court in Criminal Appeal No.968/2018 upholding the conviction of the Vikram alias Manoj also has a binding effect on the fate of the present appeal.

ANALYSIS AND DECISION

21. We have given our thoughtful consideration to the submissions advanced by the learned Senior Counsel for the Appellant/A-1. We have also perused the oral and documentary evidence brought on the record, besides the case law cited at the Bar.

22. First things first, before proceeding to decide the present appeal preferred by A-1 on merits, it would be relevant to delineate the observations that prevailed in the mind of the co-ordinate bench of this Court in sustaining the impugned judgment dated 12.07.2018 on a conviction against A-2 *vide* CRL.A. 968/2018 and the subsequent sentencing by the learned Trial Court. The co-ordinate bench found the following evidence reliable and credible:

- (i) The testimony of PW-1/Omwati that her husband had left on 26.05.2011 at approximately 09:45-10:00 AM with A-1 in a car driven by A-2 and thereafter her husband was found missing;
- (ii) The testimony of PW-1 that the Hyundai Accent Car, Silver Colour, registration No. HP-02P-4110 was being driven by A-2 and the identification of A-2 was established by PW-1/Omwati and it was not doubted, since an

¹⁴ (1988) 5 SCC 253

¹⁵ (1988) 3 SCC 609

¹⁶ (2024) 3 SCC 224



adverse inference could be drawn for his refusal to participate in the TIP on 23.06.2011;

(iii);The testimony of PW-1/Omwati identifying the belongings of her deceased husband, viz., gold ring, silver ring and wrist watch that were recovered at the instance of A-1, which articles were being worn by her husband on 26.05.2011 when he left the spot with A-1 and A-2;

(iv) Corroboration of the testimony of PW-1/Omwati by PW-2/Baljeet Singh that his mother informed her that his father had left with A-1 in the morning at approximately 09:45-10:00 AM and then PW-2 made a call to A1 at about 10:00-10:15 p.m. on that day and spoke to him, upon which A-1 threatened that he should transfer the plot situated near the *Ghoshala* in his name, otherwise he would kill his father:

(v) The recovery of bullet ridden body of the deceased within 19 hours of his leaving the site of his wife, as proven by the Post-Mortem report Ex.PW24/A, raising the premise that the deceased was last seen in the company of A-1 and A-2 and thereby placing the onus upon the A1 and A2 to explain their whereabouts and conduct;

(vii) The recovery of 9mm pistol with live cartridges Ex. P-7 and P-9 respectively besides Hyundai Accent car Ex. P-5 were made at the behest of A-2.

(viii) A-2 was found using mobile number 9253865430 seized vide Memo Ex. PW-5/F with CAF approval as Ex.PW-6/B and Ex.PW6/C subscribed/registered in his name;

(ix) The analysis of the CDR of A-1 having using mobile no. 9911730966 and that of A-2 brought out that both A-1 and A2 knew each other and they were in contact with each other soon and after the incident.



(x) A2 was not able to account of his whereabouts during the course of the day on 26.05.2011, whereas false plea of alibi was taken by A-1 that he was in Vadodara, Gujarat.

23. We take note of the aforesaid findings recorded by the DB¹⁷ of this Court, while upholding the conviction of the co-accused/A-2 *vide* judgment dated 23.12.2022. At the same time we are also conscious of the fact that the aforesaid findings recorded by the DB of this Court with regard to the complicity and culpability of A-2 in the commission of the crime in question cannot be considered as constructive *res-judicata* or an issue estoppel when it comes to determining the fate of the present appeal filed by A-1. Therefore, we proceed to appreciate the oral and documentary evidence on the record independent of the aforesaid findings.

TESTIMONY OF PW-1 & PW-2

24. Reverting to the instant appeal, it is obvious that the entire prosecution case against A-1 crucially hinges on the testimony of PW-1/Omwati, wife of the deceased and their son PW-2/Baljit Singh. A meticulous appreciation of the testimony of PW-1 would show that she testified that she used to visit her plot of land along with her husband both in the morning and in the evening so as to look after their cattle; and that on 26.05.2011, she visited the said plot along with her husband at 8 a.m. and at about 9.45 or 10.00 a.m., when they were engaged in the daily pursuits, a big car came at the plot and halted at its gate. She categorically testified that A-1, who hails from the same village, was sitting in the car who called her husband saying “*Chacha Ure Ku Aa*” and then her husband was in some conversation with A-1 for about ten minutes over some subject which she could not overhear, and thereafter, A-1 held the

¹⁷Division Bench



hand of her husband and said “*Chal Beth Garhi Main*”. She testified that on seeing her husband getting into the car, she proceeded towards the gate to ask her husband as to where he was going and when he would be coming back but by the time she approached the gate, the car had left which was being driven another person, who was identified as A-2.

25. It is further in the testimony of PW-1 that her husband did not turn up till evening and when her son PW-2/Baljit Singh came, and she found that her husband had neither gone to their shop nor PW-2 had met him during the course of the day, and she then apprised him that his father had left with A-1 in the morning in car driven by another. She testified that her son left to look out for his father and on the following day she came to know that PW-2 had visited the police station in the night.

26. She further testified that PW-2 on the following morning informed her that A-1 had visited their shop about 10 to 15 days back and had asked his father to give the plot near Gaushala in Kishan Garh to him or else he threatened to eliminate him. Her testimony goes to show that she asked PW-2 as to why such fact was not disclosed to her the previous evening on 26.05.2011, and therefore, advised her son PW-2 to report the matter to the police immediately. She also testified that her son told her that he had spoken to A-1 in the previous night i.e. 26.05.2011 who had reiterated his threats and then her son reported the matter to the police on 27.05.2011.

27. PW-1/Omwati categorically identified A-1 as well as A-2 who was on the driver seat of the car that left the spot, which car was also identified by her (Ex P-5). PW-1 was subject to a very rigorous cross-examination on three different dates i.e., on 03.08.2012, 04.10.2012, 28.07.2012 and on appreciation of her evidence as a whole we have no hesitation in finding that



her testimony remained unshaken and unscathed. On being asked in her cross-examination as to how could she tell that her husband had left at 9.30 am, she deposed that it was her husband who had told her that it was already 9.30 a.m. and they should wind up the work fast and learned APP rightly pointed out that such fact disclosed by PW-1 substantiated that her husband was wearing a wrist watch.

28. PW-1 was also able to describe the entire structure of the plot in some vivid detail and there was no question asked about her eye sight being poor in any manner. Her version of the incident is consistent, without any embellishment, and hence, truthful and inspiring confidence when it comes to the fact that on being asked in her cross-examination, she stated that the window panes of the car were rolled down.

29. The testimony of PW-1 was corroborated by her son PW-2 to the effect that when he reached home at 8.00 p.m. on 26.05.2011, his mother enquired from him about his father and when he disclosed that he had not seen his father, she disclosed to him that her father had been taken away by A-1 with another person in the morning at 10.00 a.m. from the plot and had not returned. PW-2/Baljit Singh testified that knowing the criminal antecedents of A-1, he went out searching for his father but could not locate him, and therefore, he went to the police to lodge the DD (Ex.PW-2/DB). It was also testified by PW-2/Baljit Singh that before going to the Police he had called A-1 from his mobile to contact no. 99112225269 belonging to A-1 9911730966 at about 10.00 or 10.15 p.m, who reiterated the earlier threat.

30. Indeed as vociferously urged by the ld. senior counsel for the appellant A-1, PW-2/Baljit Singh had not named A-1 while lodging the missing report of his father but that aspect was clarified by PW-2 in his cross-submissions



that since A-1 had advanced threats some time back to kill his father unless the plot situated near the Gaushala was transferred in his name and fearing for the life of his father who was probably confined by A-1 somewhere, he did not disclose the conversation as well as the name of A-1 to the police out of fear for the safety of his father.

31. We find that it is quite understandable that the threat advanced by A-1 was not disclosed to PW-1 prior to 26th or 27th May, 2011, as it is not uncommon that the men in the family thought not to create an alarm in the family about such threats. What transpires is that PW-2/Baljit Singh called A-1 from his mobile no. 99112225269 on mobile of A-1 (9911730966) at about 10.00 or 10.15 p.m. and when his father did not turn up till morning, he went to the police and narrated the entire sequence of events which led to the registration of the FIR *vide* DD No.62B and consequently, the present FIR (Ex.PW14/A) at 12:40 hrs on 27.05.2011. Not much mileage can be taken from the fact that PW-2 in the DD No.62B dated 26.05.2011 recorded at 10.00 p.m. Ex.PW-2/DB had reported that his father had been taken away in a yellow colour big/long car as PW-1 disclosed that she never disclosed the colour of the car to her son and it is probable that PW-2/Baljit Singh was quite disturbed and could not comprehend the said fact correctly.

INITIAL INVESTIGATION

32. At this juncture, it is pertinent to mention that that initially some alacrity was shown by PW-41/SI Ravi Babu who on being given information by PW-2 as to the mobile no. 9911730966 being used by A-1, put the same on surveillance and found that its location was showing at Vadodara, Gujarat. It is in the testimony of PW-41 that after apprising his senior officers about the facts that were emerging during this investigation, he along with PW-2/Baljit



Singh, HC Sushil, Ct. Kamlesh and Ct. Jai Bhagwan (PW-17) went to Vadodara, Gujarat on 28.05.2011. There it was revealed that the children of A-1 were studying in a school nearby the airport and they were able to find that A-1 was residing at D-9& D-10 near police post Sahyog but both the flats were found locked, and unable to ascertain the whereabouts of A-1, the police team came back from Vadodara, Gujarat to Delhi on 31.05.2011.

33. It is brought out in the prosecution case that the bullet-ridden body of the deceased had been found on 26.05.2011 at about 11.30 a.m. across the border of Delhi in the adjoining area within the jurisdiction of PS Sushant Lok, Gurugram by PW-4/Rati Ram, a Security Guard at DLF Phase-V and on the matter being reported, the investigation was headed by PW-30 Inspector Amarjeet Singh besides PW-27/ASI Lal Singh with PW-11/Ct. Ashok Kumar. During investigation the photographs of the place where the body of the deceased was found were taken which are Ex.PW-2/B1 to B20. On appreciation of the testimony of such witnesses vis-a-vis the perusal of such photographs which are very much clear, it is significant to find that the deceased was not wearing his gold ring, silver ring and wrist watch.

34. Much mileage was sought to be drawn by the learned senior counsel for the appellant that the recovery of wrist watch and two rings were planted upon A-1, referring to the testimony of PW-4/Rati Ram who was initially examined on 24.09.2012 stated in his cross-submission that he had seen such articles being worn by the deceased on 26.05.2011. It is a matter of record that PW-4 was later on recalled for further examination on 17.09.2016 and on being asked and confronted with the photographs Ex.PW2/B1 to B20, he acknowledged that such photographs did not show that the deceased was having such items on his body, on being asked about his previous statement



he admitted his mistake and stated, that his version, that such items were on the body of the deceased was a case of lapse in his memory.

35. Furthermore, the defence plea that the two gold rings and a wrist watch had been found on the body of the deceased and later on planted as the recovery at the behest of A-1 is also belied from the fact that the identity of the deceased was not known to the police officials of PS Sushant Lok on 26.05.2011. It is unfathomable that the Police team from Gurgaon deliberately removed such articles from the body of the deceased in order to get the articles planted upon the offender at a future date.

36. Suffice it to hold that the cumulative effect of the testimony of PW-41/SI Ravi Babu, PW-20/HC Rajpal and PW-23/ASI Rai Singh clearly brings out that the recovery of two rings P1 and P2 and wrist watch P3 were effected from the flat of A-1 from flat no. D-9 & D-10 Rudradham Society, Gorwa, Gujarat at Vadodara, Gujarat *vide* seizure memo Ex.PW-20/A in the intervening night of 24th & 25th June, 2011 and the said articles were identified by PW-1 as belonging to her husband. The mere fact that the public witnesses were not joined during the course of such search, hardly causes any crack in the prosecution case.

FLIGHT IS AN EVIDENCE OF GUILT

37. It is matter of record that A-1 absconded to Vadodara soon after the incident and eventually could be arrested on 20.06.2011 by the IO/PW-41. The testimony of PW-13 Rajender Kumar, Assistant Manager, IGI, Airport brings out that A-1 had travelled on 26.05.2011 by flight no.AI-9619 to Vadodara. Although the time of travel has not come into evidence but analysis of the mobile no. 9911730966 attributed to A-1 would show that on 26.05.2011, he was in or around Delhi till 7:00:32 p.m. and then at 10:14:32



p.m. he was at Vadodara, Gujarat which would raise an inference that A-1 had travelled during such hours to Vadodara, Gujarat and the testimony of PW-2 that he had spoken to A-1 about 10.15 p.m. on 26.05.2011 gets substantiated.

POST MORTEM REPORT

38. This brings us to the post-mortem report Ex.PW24/A that goes on to prove that the death was homicidal in nature on account of two fire arm injuries with entry and exit wound and piercing the vital parts of the body. The plea by the learned Senior counsel for the Appellant that the time of death has not been sufficiently explained and that the post-mortem report itself shows that there was extensive decomposition is only noted to be rejected. At the cost of the repetition, the dead body was found within one & half hour of the deceased leaving his plot with A-1 and A-2 in the car hardly at a distance of 15 kms from the plot of land. The dead body was subjected to post mortem on 29.05.2011 and the time of death is recorded approximately 3 to 5 days. We take note of the fact that PW-24/Dr. Deepak Mathur, who conducted the post-mortem on the body of the deceased, was not prodded about the cause of such decomposition. It appears that the extensive decomposition took place probably due to the extreme heat that is prevalent in the month of May and for the fact that perhaps, the freezers in the mortuary were not working properly.

39. The foregoing discussion brings to the fore that the deceased was taken away at about 10.00 a.m. from the plot by A-1 and A-2 and his dead body was soon recovered within one hour or so dumped at the place marked Ex.PW-29/B at Sushant Lok, Gurugram. It is apparent that the deceased had been killed somewhere else and thereafter his body was dumped at the site across the border to avoid early detection of the dead body and consequent investigation by the police.



RECOVERY OF FIRE ARM & CARTRIDGES

40. We also find that the recovery of the pistol at the instance of A-2 pursuant to his disclosure statement with two live cartridges besides the recovery of Hyundai Accent Car are also two important links in the chain of the circumstantial evidence against the appellant. Indeed, as was rightly urged by the learned senior counsel for the appellant, there was a serious blemish on the part of PW-41/SI Ravi Babu that although the Hyundai Accent Car was recovered on 19.06.2011, the crime team inspected the car in the Police Station Vasant Kunj (North) on 21.06.2011 *vide* report Ex.PW-35/A and then it was subjected to forensic analysis by PW-3/Ms. Seema Nain on 27.06.2011.

41. However, such delay by itself does not demolish the entire evidence brought on the record to the effect that the examination of the car by PW-35/Inspector Jitender Kumar brought out that there were two holes on the back seat of the car and on the left rear gate, and there were some blood spots in the inside portion of the gate and certain blood spots were also noticed in between the front and rear seat on the floor behind the driver seat, as reported in the Crime Scene Report Ex.PW35/A and the holes are seen in the photographs Ex.PW-26/A6 and A/5.

42. Although the serological report of the blood samples taken from the car was not able to positively match the same with the DNA of the deceased, the recovery of pistol at the behest of A-2 and its consequent ballistic examination *vide* report Ex.PW-39/F would show that the pistol Ex.P-7 was a country made pistol with chamber for 9mm cartridges; and the same were found in the working order. It is brought out in the prosecution case without any challenge by the defence that the 9 mm fire cartridge case marked C/1



was recovered from the car from the portion marked BC/1 and it was fired from the same pistol i.e. Ex. P-7. The cumulative effect of the crime report Ex.PW-35/A and ballistic report Ex.PW-39/F would show that holes present on the back seat of the accent car had been caused by bullet projectiles and two such bullet entry holes were fired from a distance beyond blackening range while the third hole was found to be a bullet exit hole besides recovery of lead piece of the bullet Ex. P-10 found in the dicky of the car, which had probably existed from the seat to the back.

CALL DATA RECORD ANALYSIS

43. The final nail in the prosecution case against the appellant is the analysis of CDR records of the co-convict/A-2 using mobile no. 9253865430, which was proven to be in his name as per Customer Application Form (CAF) Ex.PW-6/B and Ex.PW-6/C. It may be reiterated that PW-2 Baljit Singh had spoken to A-1 dialling the latter on mobile no. 9911730966 which number was supplied to the IO/PW-41 and in this regard, the CDR of mobile number of PW-2 viz., Ex.PW-9/A was also proven bearing no. 9911222561. The analysis of the CDR would go to show that there were multiple calls exchanged between A-1 and A-2 between 20th May, 2011 and 27th May, 2011. In fact, on the fateful day i.e. 26.05.2011 when the deceased was taken away, two calls were exchanged between mobile of A-1 and A-2 at 07:31:56 for 72 seconds and at 07:52:26 for 21 seconds. It is brought out in the prosecution's case that the recovery of pistol Ex.P-7 and two live cartridges Ex.P-9 were recovered at the instance of A-2 from the almirah fixed in the wall of the drawing room of his house. It is further in evidence that the recovery of ₹106000/- was effected from A-2 *vide* memo Ex.PW-5/F. Although PW-8/Suresh Halwai did not support the prosecution case that he had given



their side money to A-1 in the presence of A-2, the recovery of such money was not accounted for by A-2 either.

44. At this stage, it is pertinent to mention the observations made by the learned Trial Court which are clearly brought out by the prosecution and which are as follows: -

“98. PW6 M.N. Vijayan Nodal officer exhibited the CAF of telephone no. 9253865430, CDRs of this number from 20.5.2011 to 31.05.2011, mobile details of accused Vikram, identity proof of accused Vikram Ex. PW6/C, certificate u/s 65B. Nothing material came in his cross-examination except the bald suggestion that these documents are forged and fabricated. Therefore, prosecution able to prove that this mobile number belongs to accused Vikram @Manoj. As per the CDR record Ex. PVV6/A, this accused had talked with Vijay Pehlwan from his no. 9253865430 to the mobile no. 9911730966 on 20.05.2011 three times for a duration of 101, 38, 16 seconds and on 21.05.2011 once for 21 seconds, on 22.05.2011 for 57 seconds, 151 seconds, 80 seconds, on 23.05.2011 for 28 seconds, 13 seconds and 69 seconds, on 24.05.2011 for 9 seconds, 103 seconds, 6 seconds and 156 seconds. On 26.05.2011 for 72 seconds and 21 seconds that too in the morning time at around 7.31 and 7.51 am. Thereafter, the call on 27.05.2011 is 3 times for 18 seconds, 11 seconds and 102 seconds. The CDR details of Baljeet Singh also showing the call of 60 seconds at around 10.18 pm on 26.05.2011 with mobile phone of accused Vijay Pehlwan. The mobile call details of Suresh Halwai also showing his contact with accused Vijay Pehlwan on 22.05.2011 and 3 times on 23.05.2011, on 25.05.2011 and thereafter 5 times on 26.05.2011. On 30.05.2011 also Suresh Halwai also talked to Vijay Pehlwan on the said number. PW8 Suresh Halwai admitted that he was having mobile number 9811009404 though denied that he does not know the owner of mobile connection number 9911730966. PW2 Baljeet Singh categorically stated that he called Vijay Pehlwan on this number.

99. It is pertinent to note that PW2 was specifically suggested that this number was given to him by Gajender @ Kalu. Record shows Gajender @ Kalu has lodged the FIR no. 127/11 against accused Vijay Pehlwan on said night, in that case also the mobile number of accused Vijay Pehlwan is shown as 9911730966. During arguments, it is submitted that in that case accused Vijay Pehlwan was convicted and this mobile phone was found to be used by him, however this plea cannot be considered because that case record is not before this court.

100. Prosecution for proving the factum that the said mobile number is of



Vijay Pehlwan examined PW7 Pradeep Kumar, PW22 Satpal Malik, PW16 Rajiv Shokeen and PW9 Pawan Singh. PW9 Pawan Singh Nodal officer exhibited the original CAF record of mobile no. 9911730966 which is in the name of Rajiv Shokeen. However, PW7 Pradeep Kumar stated that the sim of said mobile was sold out to retailer Satpal Singh Malik of Krishna Communications as he was having the dealership of Idea Cellular. PW22 Satpal Singh Malik stated that this sim was issued to one Rajiv Shokeen and the original documents regarding the identity of Rajiv Shokeen were seen by one Lalit Kumar working with him at that time. PW16 Rajiv Shokeen have stated that he had never used this mobile number and the documents regarding this mobile number has been lost one and half year back. Therefore, from the evidence on record there is no direct evidence to connect the accused Vijay Pehlwan with this mobile number. But there is also nothing in cross-examination of these witnesses that this mobile was used by PW16 Rajiv Shokeen or any other person.

101. The mobile call records as discussed categorically suggests that through this mobile no. ie 9911730966, the accused Vikram, PW8 Suresh Halwai and PW2 Baljeet Singh were in contact with accused Vijay Pehlwan. It is specifically suggested to PW2 Baljeet in cross-examination that this number of Vijay Pehlwan was given by one Gajender @ Kalu to the accused. This suggestion itself somehow indicates that accused Vijay Pehlwan using this mobile. One thing noticeable that as per prosecution case accused left Delhi to Vadodra in evening. The CDR record of this number at 10.18 pm when call of Baljeet received showing location at Vadodra. Therefore, from these circumstances it can be easily inferred that the said mobile number was used by Vijay Pehlwan at the time and around the time of incident. Ld. Counsel for the accused raised a plea that mobile phone could not be recovered from the accused, however in present scenario mere non recovery of mobile phone particularly when the accused was arrested after number of days cannot be the ground that he was not using the said mobile number.”

45. The said findings have not been assailed in any manner by the learned counsel for the appellant. It is thus brought out from the CDR analysis Ex.PW6/A, that A-2 talked with A-1 from his mobile no. 9253865430 to mobile no. 9911730966 almost three times on 20.05.2011 and once on 21.05.2011. Although the plea was taken by A-1 that he was in Gujarat on 26.05.2011 and 27.05.2011, however, not only the fact that no such suggestions were given to PW-1 and PW-2 during their cross-examination but



also the fact that no specific time of his going to Vadodara, Gujarat and coming back were brought out by A-1 in his defence, and therefore, the said plea of alibi was rightly held to be false by the learned Trial Court.

CONCLUSIONS

46. In view of the foregoing discussion and analysis, this Court finds that the culpability of the appellant for committing murder of the deceased has been proved beyond reasonable doubt by the prosecution based on the following conclusions: -

- 1) The testimony of PW-1 that her husband had left at about 10.00 a.m. on 26.05.2011 in a Hyundai Accent Car Ex.P-5 with A-1 which was being driven by A-2 from the plot of land marked Ex. PW41/B;
- 2) that the dead body of the deceased was found across the border at Sushant Lok, Gurugram as proven in the site plan Ex. PW-30/A within one-and-a-half hours of his being taken away, which was at a distance of about 15 kms from his plot of land;
- 3) that A-1 after the incident left for Vadodara, Gujarat and avoided being located;
- 4) no explanation has been afforded by A-1 as to the whereabouts soon after the incident;
- 5) A-1 neither in the statement under Section 313 of Cr.P.C. nor in his defence A-1 came forward to reveal as to what time had he left for Vadodara and how long he remained there and no flight timings were given but the location of his mobile no. 9911730966 was established at Vadodara, Gujarat on the day of the incident at 10:14:32 p.m.;



- 6) that both A-1 and A-2 were in contact with each other through their mobile connections as proven by the CDRs (Ex. PW-9/B);
- 7) the fact that the deceased died homicidal death on suffering two bullet injuries from the pistol marked Ex.P-7 recovered at the instance of A-2;
- 8) the recovery of two rings and wrist watch P-1 to P-3 at the instance of A-1 from the residential flat at Vadodara, Gujarat, which were identified by PW-1 as belonging to her husband in the TIP proceedings i.e., Ex. PW-2/D;
- 9) that the recovery of the pistol Ex. P-7 and two cartridges Ex. P-8 & 9 was effected at the behest of A-2 and the ballistic report opined that the same pistol was used for killing the deceased.

47. In view of the aforesaid conclusion, we have no hesitation in holding that the prosecution has been able to bring home the 'last seen theory' as the time gap between the point when the deceased was taken away and seen alive in the company of A-1 and A-2, and the time when the body of the deceased was found was so small that the possibility of any third person other than A-1 and A-2 being the perpetrator of the crime becomes impossible.

48. At the cost of repetition, it is brought on record by the prosecution that A-1 had absconded soon after the incident and had fled to Vadodara, Gujarat in the evening flight which would have taken hardly one hour forty minutes to two hours plus one hour for boarding/alighting at the respective airports. Since the deceased was lastly seen in the company of A-1, the burden shifted upon A-1 to offer an explanation as to how and where he parted company with the deceased. It is the failure of the accused in a case like the present one which is based on circumstantial evidence to adduce an explanation of his



whereabouts that has to be considered as a crucial link in the chain of circumstances.

49. Reference in this connection can be invited to the decision in the case of **Paramasivam v. State**¹⁸ wherein it was observed that when the deceased is shown to have been abducted, it is for the abductors to explain as to how they dealt with the abducted victim. It was held that in the absence of explanation, the court is free to draw an inference that the abductors are the murderers. In this regard, reference was made to the earlier decisions in the case of State of **W.B. v. Mir Mohammad Omar**¹⁹ wherein it was held as under:-

“34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused without tell the Court what else happened to Mahesh at least until he was in their custody”

50. Further, a reference was also invited to **Sucha Singh v. State of Punjab**²⁰ wherein it was held as under: -

“15. The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the court there is very justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.

19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the

¹⁸ (2015) 13 SCC 300

¹⁹ (2000) 8 SCC 382

²⁰ (2001) 4 SCC 375



accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.

21. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others."

51. In a case titled **Arvind Singh v. State of Maharashtra**²¹ reiterating the proposition of law that where the deceased is lastly seen in the company of the accused, the onus shifts upon the accused under Section 106 of the Evidence Act so as to disclose as to when and where the company of the deceased was parted with. The word "especially" under section 106 means that the facts that are pre-eminently or exceptionally within his knowledge. The Supreme Court in the case of **Darshan Singh v. State of Punjab (supra)** while reiterating the provision of law held that *the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; and that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.*[See **Sharad Birdhichand Sarda v. State of Maharashtra**²²]. It is pertinent to note that an earlier decision **Trimukh Maroti Kirkan v.**

²¹ (2021) 11 SCC 1

²² (1984) 4 SCC 116



State of Maharashtra²³, cited with approval, wherein it was held as under:-

“i. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts.....Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. **The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation**”

52. In view of the foregoing discussion, we find there is no illegality, perversity or incorrect approach that has been adopted by the learned Trial Court in convicting A-1 for the offence with which he was charged and resultant order on sentence. The appeal is, accordingly, dismissed.

53. A copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance. Order be uploaded on the website forthwith. The physical record from the Trial Court be sent back and the same be weeded out in accordance with the rule.

DHARMESH SHARMA, J

PRATHIBA M. SINGH, J

FEBRUARY 19, 2025/Ch

²³ (2006) 10 SCC 681