IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 502 OF 2021

Prabhakar Kutty Shetty ..
(At Central Prison, Kolhapur)
Aged 33 years

Add. Padmashri House, Village Irna,
Tal. Karkala, Dist. Udupi, Karnataka.

Appellant

V/S.

The State of Maharashtra .. Respondent

Adv. Gaurav Bhawnani a/w Adv. Hari Rajguru a/w Adv. Mayanka S. a/w Adv. Abdul Wahab Khan for Appellant.

Ms. Sangeeta E. Phad APP for the Respondent-State.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

RESERVED ON : 9th APRIL, 2026.

PRONOUNCED ON : 9th JULY, 2026.

JUDGMENT: *(Per Shreeram Shirsat, J.)*

1. The present Appeal has been filed challenging the impugned judgment and order dated 08.12.2020 passed by the Sessions Judge, Gr. Bombay in Sessions Case no. 179/2014, whereby the Appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code (IPC) and has been sentenced to undergo Imprisonment for Life and pay a fine of Rs.1,00,000/- and in default to undergo Imprisonment for 1 year and under Section 201 of the IPC to undergo Rigorous Imprisonment

for 2 years and a fine of Rs. 10,000/- and in default to undergo Imprisonment for 3 months.

2. Brief facts of the prosecution case are as under:

a) It is the case of the prosecution that on 29th October, 2013, at about 22:40 hours, ASI Hanumant Govind Patil (P.W. 1) while on patrolling duty on Hemu Kalani Marg, found mob of some persons near Charai Lake, Chembur and upon inquiry, it transpired that two unidentified persons had arrived by auto rickshaw and disposed off a black coloured plastic bag in the lake. The bag was retrieved and found to contain the torso of a woman aged approximately 25 to 30 years. An Accidental Death Report (ADR) bearing No. 135/13 was registered under Section 174 of the Code of Criminal Procedure (Cr.P.C). It is further the case that on 30th October, 2013, two human legs along with four blood-stained plastic bags were separately recovered from another location (Trombay Jetty).

b) It is further the case of the prosecution, that the investigation led to the tracing of the auto rickshaw driver (P.W. 3), whose statement was recorded and a description of the accused was obtained. A missing complaint report lodged at Saki Naka Police Station by Subhashini Prasad Shetty (P.W. 18), the sister of the deceased, led to the identification of the body parts as those of

Smt. Kanti Karunakar Shetty (deceased), confirmed through physical identification.

c) It is further the case that the accused was thereafter arrested and two mobile phones were seized from his person. Pursuant to disclosure statements made by the accused, the head of the deceased was recovered from a nala near Sai Baba Nagar, Shell Colony and a further disclosure statement on 7th November, 2013, led to the recovery of a knife from a nala on the western side of Acharya College which was seized under panchanama.

d) It is further the case that the Test Identification Parade was conducted on 27th December, 2013, before the Naib Tahasildar (P.W. 12) at Arthur Road Jail, wherein the Appellant was identified by two witnesses.

e) Upon completion of investigation, a charge-sheet was filed against the Appellant for offences punishable under Sections 302 and 201 of the Indian Penal Code.

3. To bring home the guilt of the Accused-Appellant, the prosecution in all examined 25 witnesses (P.W. 1 to P.W. 25):

P.W	NAME	ROLE
1.	Hanumant Patil	ASI who lodged FIR on 30.10.2013.
2.	Aatish Kale	Witness who saw the Appellant disposing the torso and who also identified the Appellant in the Test Identification parade.
3.	Mohammed Sail Mohd Iklal Shaikh	Auto-rickshaw driver who rode the Appellant to Charai Talao on the evening of 29.10.2013.

4.	Krutik Shetty	Son of the deceased who has deposed about the previous quarrels between the Appellant and the deceased.
5.	Nilesh Dhobale	Witness who claims to have last seen the deceased entering the room of the Appellant.
6.	Mukesh Kavale	Witness who saw the Appellant disposing the torso and who also identified the Appellant in the Test Identification Parade.
7.	Goga Ram More	Panch Witness -Inquest and spot panchnama dated 29.10.2013. Personal search panchnama dated 05.11.2013. Disclosure panchnama dated 05.11.2013 and seizure panchnama pertaining to the head of the deceased and Room No. 224.
8.	Sunil Rane	Panch Witness to disclosure panchnama and seizure panchnama dated 07.11.2013 pertaining to the weapon of murder- knife.
9.	Balu Panchange	Panch Witness to disclosure panchnama and search panchnama dated 16.11.2013 pertaining to the mobile phones, clothes, chappal and ornaments of the deceased.
10.	Sanjay Sarkar	Panch Witness to seizure panchnama dated 17.11.2013 pertaining to the black coloured polythene bag from Chembur Gymkhana.
11.	Hussain Shaikh	Panch Witness to Spot-cum-inquest panchnama dated 30.10.2013 pertaining to the legs of the deceased.
12.	Sanjay Kirve	Naib Tahsildar who conducted the Test Identification Parade on 27.12.2013.
13.	PN Sheshrao Tiwale	Carrier of muddemal, forwarding letter dated 31.10.2013, forwarding letter dated 06.11.2013, request letter for DNA kit dated 11.11.2013, forwarding letter dated 13.11.2013, forwarding letter dated 14.11.2013, forwarding letter dated 19.11.2013 and forwarding letter dated 05.12.2013.
14.	Gurunath Kulkarni	Landlord who let out Room No. 224 to the Appellant.
15.	Yogesh Rajapurkar	Nodal Officer- Airtel, with respect to numbers 98925223098 and 9967131884.
16.	Changdev Godse	Nodal Officer- Vodafone, with respect to numbers 9167976154 and 9930783502.

17.	Dr. Sunil Jawale	Autopsy surgeon of the head of the deceased and who conducted the Post-Mortem of the deceased on 06.11.2013.
18.	Subhashini Shetty	Sister of the deceased.
19.	Ajay Kamble	Witness who found the legs of the deceased at Trombay Jetty on 30.10.2013.
20.	Dr. Harshal Thube	Autopsy Surgeon of the torso and the legs of the deceased.
21.	Dr. Ganesh Niturkar	Autopsy surgeon of the torso and the legs of the deceased.
22.	Suresh Hegde	Manager of K.V. Caterers where the Appellant was employed.
23.	Ravindra Mohite	The Investigation Officer who registered ADR dated 30.10.2013 and made a station diary entry dated 30.10.2013.
24.	Ganesh Adsul	The Investigation Officer.
25.	ACP Khanwilkar	The Investigating Officer.

4. On completion of the prosecution evidence, statement of the Appellant under Section 313 Cr.P.C. was recorded, wherein the Appellant denied the case of the prosecution and further stated that he was falsely implicated in the case. The Appellant was also granted an opportunity to lead defence evidence, if so desired. The Appellant neither chose to lead any defence evidence, nor did he examine himself on oath.

5. After hearing the prosecution as well as the defence and upon appreciation of the evidence on record, the Sessions Judge, vide judgment and order dated 08.12.2020, was pleased to convict the Accused/Appellant for the offences punishable under Section 302 of the Indian Penal Code (IPC) and sentenced him to undergo Imprisonment for Life and pay a fine of

Rs.1,00,000/- and in default to undergo Imprisonment for 1 year and under Section 201 of the IPC to undergo Rigorous Imprisonment for 2 years and a fine of Rs. 10,000/- and in default to undergo Imprisonment for 3 months.

6. Being aggrieved by the judgment and order of conviction in Sessions Case No. 179/2014, dated 08.12.2020, passed by the Sessions Judge, Gr. Bombay, the Appellant has approached this Court by way of the present appeal.

7. Heard Learned Counsel Adv. Gaurav Bhawnani for the Appellant and Ld. APP Adv. Sangeeta Phad for the Respondent-State.

8. The Learned Counsel for the Appellant submitted that the case rests entirely on circumstantial evidence and the prosecution has failed to establish a complete chain of circumstances, pointing unerringly, to the guilt of the Appellant. On the aspect of motive, it was submitted that the first alleged motive, namely the monetary dispute, has already been disbelieved by the Sessions Court. As regards the second alleged motive of refusal of marriage, it was submitted that the same is wholly speculative and uncorroborated, inasmuch as P.W. 4, the son of the deceased, did not even possess the contact number of the Appellant and P.W. 18, sister of the deceased, was unaware of the existence of any person by the name of Prabhakar in the life of the deceased. He also submitted that the Appellant had agreed to marry the deceased and therefore refusal to marry cannot be considered as a motive. With respect to the theory of last seen together, it

was submitted that the statement of P.W. 5 was recorded after a delay of approximately one and a half months and that his explanation of being preoccupied with his courier business does not satisfactorily account for his silence during an ongoing murder investigation, rendering his evidence a clear afterthought. As regards the disposal of the torso, it was submitted that P.W. 2 and P.W. 6 described the person at Charai Lake as approximately 5 feet in height whereas the Appellant stands at 5 feet 7 inches, a material discrepancy of seven inches going to the very root of identification. On the Test Identification Parade, it was submitted that the same stands vitiated on account of unexplained delay, material contradictions as to whether it was the panchas or the police who brought the witnesses, a contradiction hit by Section 162 Cr.P.C and the admission of P.W. 12 that both the Panchas and the dummies were arranged by the police and jail authorities respectively, were contrary to the requirement of independent arrangement by the Tahsildar. On the Call Detail Records (CDRs), the Ld. Counsel submitted that a static tower location does not establish physical presence, particularly when the possibility of the phone having been used by another person cannot be excluded. It was further submitted, that the recoveries under Section 27 of the Indian Evidence Act require scrutiny as to whether they constitute genuine discoveries or merely confirm facts already within the knowledge of the police. It was also submitted that the knife recovered is wholly insufficient to account for the injuries noted in the post-mortem report. He further argued that the delay of six days in lodging the missing

complaint by P.W. 18, was also urged as casting further doubt on the prosecution's timeline. It was submitted that each of the aforesaid circumstances, being individually infirm, cumulatively fall well short of the standard required to sustain a conviction on circumstantial evidence.

9. In support of their contentions, the Ld. Counsel for the Appellant has relied upon a plethora of judgments, which are as under:

i. Hanumant v/s State of Madhya Pradesh[1]

ii. Sharad Birdhichand Sarda v/s State of Maharashtra[2]

iii. Shankarlal Gyarasilal Dixit v/s State of Maharashtra[3]

iv. Shahid Khan v/s State of Rajasthan[4]

v. Ganesh Bhavan Patel v/s State of Maharashtra[5]

vi. Mohd. Sajjad v/s State of West Bengal [6]

vii. Chunthuram v/s State of Chhattisgarh[7]

viii. Vilas Vasantrao Patil v/s State of Maharashtra[8]

ix. State of Maharashtra v/s Rajesh[9]

x. H.P. Administration v/s Om Prakash[10]

xi. Gambhir v/s State of Maharashtra[11]

xii. Kashinath Baban Palkar v/s State of Maharashtra[12]

xiii. Sattatiya v/s State of Maharashtra [13]

1 (1952) 2 SCC 71.
2 (1984) 4 SCC 116.
3 (1981) 2 SCC 35.
4 (2016) 4 SCC 96.
5 (1978) 4 SCC 371.
6 (2017) 11 SCC 150.
7 (2020) 10 SCC 733.
8 1995 SCC OnLine Bom 399.
9 1997 SCC OnLine Bom 399.
10 (1972) 1 SCC 249.
11 (1982) 2 SCC 351.
12 1995 SCC OnLine Bom 167.
13 (2008) 3 SCC 210.

xiv. Makhan Singh v/s State of Punjab[14]

xv. State of Haryana v/s Jagbir Singh[15]

xvi. Murli v/s State of Rajasthan[16]

xvii. Madaiah v/s State [17]

xviii. Rohidas Manik Kasrale v/s State of Maharashtra[18]

10. *Per Contra*, the Learned APP submitted that the prosecution has successfully established a complete and unbroken chain of circumstances unerringly pointing to the guilt of the Appellant and that the Sessions Court has rightly convicted the Appellant-Accused. On the aspect of motive, it was submitted that P.W. 4, a natural and credible witness, has established that the deceased was insisting upon marriage which the Appellant was refusing, and that his evidence stands unimpeached. It was submitted that this constitutes a sufficient link in the chain of circumstances. The Ld. APP, on last seen together, submitted that the evidence of P.W. 4 and P.W. 5, corroborated by the Cell tower location evidence of P.W. 15 and P.W. 16, conclusively establishes that the deceased was last seen in the company of the Appellant, immediately prior to her death. It was submitted that the Cell tower location records, demonstrate continuous interaction between the two mobile phones during the relevant evening hours and the progressive movement of the phone of the deceased towards the location of the Appellant. On the aspect of the disposal of the torso, it was submitted that

14 1998 Supp. SCC 526.
15 (2003) 11 SCC 261.
16 1995 Supp (1) SCC 39.
17 1992 Cri.L.J. 502.
18 2012 Cri.L.J. 917.

P.W. 2, P.W. 3 and P.W. 6 are consistent, cogent and independent witnesses who had ample opportunity to observe the Appellant, and that any minor discrepancy in physical description is of no consequence. It was submitted that the SIM cards seized from the possession of the Appellant are sufficient to establish their use by him. The Ld. APP further submitted that the Test Identification Parade was conducted by P.W. 12 and that any delay therein is not fatal, particularly when the witnesses had sufficient opportunity to observe the Appellant. On the issue of disclosure and recovery, it was submitted that the recovery of the head of the deceased from a location exclusively within the knowledge of the Appellant, is by itself a powerful, incriminating circumstance and that the recoveries of the legs of the deceased and the weapon of the murder (knife), under Section 27 of the Indian Evidence Act, forms a crucial independent link in the chain. On medical and forensic evidence, it was submitted that the post-mortem reports conclusively establish homicidal death by decapitation of head and that DNA profiling conclusively establishes the identity of the deceased as Kanti Karunakar Shetty. It was submitted that the totality of the evidence right from motive, last seen, eye-witness identification, disclosure and recovery, tower location and forensic evidence forms a complete and unbroken chain admitting of no other reasonable hypothesis, and that the conviction deserves to be maintained.

11. The Ld. APP has relied upon the following authorities to buttress her arguments:

i. Balu Sudam Khalde & Anr. v/s State of Maharashtra[19]

ii. Neelu @ Nilesh Koshti v/s State of Madhya Pradesh[20]

iii. Chetan Prakash v/s State (GNCT of Delhi)[21]

iv. Prabhu Dayal v/s State of Rajasthan[22]

v. Phula Singh v/s State of Himachal Pradesh[23]

vi. Munish Mubar v/s State of Haryana[24]

vii. Pramod Mandal v/s State of Bihar[25]

viii. State of Maharashtra v/s Suresh[26]

ix. State of Punjab v/s Karnail Singh[27]

x. Ganesh Lal v/s State of Maharashtra[28]

xi. Rohtash Kumar v/s State of Haryana[29]

xii.Trimukh Maroti Kirkan v/s State of Maharashtra[30]

xiii. Kishore Bhadke v/s State of Maharashtra[31]*.*

12. Before adverting to the individual circumstances, it will be pertinent to refer to the latest judgment of the Hon'ble Apex Court in the case of ***Anand Jakkappa Pujari @ Gaddadar v/s The State of Karnataka*** decided on 27th April, 2026 in ***Criminal Appeal No. 1864 of 2024*** wherein it is held as under:

> *"27. The logical process involved in the admission and consideration of circumstantial evidence has been*

19 AIR OnLine 2023 SC 229.
20 Cri.A.5357 of 2025.
21 AIR OnLine 2022 Del. 1715.
22 Cri. A. 2324 of 2014.
23 AIR 2014 SC 1256.
24 AIR 2013 SC 912.
25 Cri.A. 174 of 2003.
26 AIR OnLine 1999 SC 169.
27 (2003) 11 SCC 271.
28 (1992) 3 SCC 106.
29 (2013) 14 SCC 434.
30 (2006) 10 SCC 681.
31 (2017) 3 SCC 760.

explained by Wigmore on Evidence in paragraph 32 et seq. The test for the admissibility of evidence to prove a circumstantial fact was expressed in the following words:-

> *"The evidentiary fact will be considered when, and only when, the desired conclusion based upon it is a more probable or natural, or at least a probable or natural hypothesis, and when the other hypotheses or explanations of the fact, if any, are either less probable or natural, or at least not exceedingly more probable or natural" (paragraph 32, page 421).*
>
> > *"Where even the possibility of a single other hypothesis remains open, Proof fails, though it suffices for Admissibility if the desired conclusion is merely the more probable, or a probable one, even though other hypotheses, less probable or equally probable remain open. It is thus apparent that, by the very nature of this test or process, a specific course is suggested for the opponent. He may now properly show that one or another of these hypotheses, thus left open, is not merely possible and speculative, but is more probable and natural as the true explanation of the originally offered evidentiary fact" (paragraph 34, page 423)."*
>
> *"28. In the aforesaid context, Kenny states that:-*
>
> > *"An amount of testimony which is not sufficient to rebut the presumption of innocence entirely (i.e., to shift the burden of proof so completely as to compel the prisoner to call legal evidence of circumstances pointing to his innocence), may yet suffice to throw upon him the necessity of offering, by at least an unsworn statement, some explanation. If he remain silent and leave this hostile testimony unexplained, his silence will corroborate it, and so justify his being convicted" (page 388).*
>
> *"29. The principle that criminal courts should bear in mind is, in the words of C.B. Pollock:-*
>
> > *"To make a comparison between convicting the innocent man and acquitting the guilty is perfectly unwarranted. There is no comparison between them. Each of them is a great misfortune to the country and discreditable to the administration of justice. The only rule that can be laid down is that in a criminal trial you should exert your utmost vigilance and take care that if the man be*

> *innocent he should be acquitted, and if guilty that he should be convicted." (quoted in Donough's Principles of Circumstantial Evidence, 1918, 158).*

"30. From the above, the following propositions emerge:-

1. Circumstantial evidence to justify conviction must be consistent with any reasonable or rational hypothesis of guilt of the accused.

2. When the inference of guilt from the proved incriminating facts is a more natural and probable hypothesis than the other, the onus of offering an explanation for the incriminating facts lies upon the accused. If he does not offer any explanation, or falsely denies the very existence of the incriminating facts, it is itself a circumstantial fact against him, even if the court is in a position to imagine an explanation. The guilt is the legitimate inference from the incriminating facts and the added circumstantial fact of failure or refusal to offer an explanation for the incriminating facts because it is not reasonable or rational to say that the accused would fail or refuse to offer an explanation consistent with his innocence if he could. It is immaterial in such a case whether the Court can imagine an explanation or not.

3. If the inference of guilt from the proved incriminating facts is a less natural or probable hypothesis than the other, the Court cannot draw it and the accused must be acquitted whether he offers any explanation or not.

4. If the inference of guilt from the proved incriminating facts is as much a natural or probable hypothesis as any other, the accused may be called upon to explain and if he fails or refuses, the Court may treat it as an additional circumstantial fact and infer his guilt. Or it may take judicial notice of the other hypothesis even without any explanation by the accused and acquit him.

"31. In a catena of decisions, it has been consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the tests laid down by this Court in ***Sharad Birdhichand Sarda v. State of Maharashtra,*** *reported in* ***(1984) 4 SCC 116****. The relevant observations read thus:-*

> *"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can*

be said to be fully established:

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

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

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

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

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

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

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

(Emphasis supplied)

13. A useful reference can also be made to the judgement of the Hon'ble Apex Court in the case of ***Abdul Nassar v/s State of Kerala and Another***[32] wherein it has been observed that:-

"14. Indisputably, the prosecution case rests on

32 2025 SCC OnLine SC 111.

circumstantial evidence. The law with regard to a case based purely on circumstantial evidence has very well been crystallized in the judgment of this Court in the case of Sharad Birdhichand Sarda (supra), wherein this Court held thus:

> *"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of Tufail (Alias)Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:*
>
> *"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the Accused. Again, the circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."*

14. We also refer to the judgment of ***Chetan Prakash v/s State (GNCT of Delhi)***[33] which has been relied upon by the Ld. APP, inviting the attention of this Court to paragraph 18:

> "*18.....Circumstantial evidence or indirect evidence is an unrelated chain of events which when combined together formulates circumstances leading to the commission of the crime. Conviction based on circumstantial evidence requires an unbreakable link between the criminal and the crime devoid of conjecture or suspicion. The chain of*

33 AIR OnLine 2022 Del 1715.

> *circumstances must rule out reasonable likelihood of the innocence of the accused. If circumstantial evidence establishes the chain of events leading to the guilt of the accused and commission of the crime without other possibilities, can be sole basis for a conviction. The circumstances should indicate towards the guilt of the accused and should be inconsistent with his innocence. The onus is on the prosecution to prove that the chain of circumstantial evidences is complete without gaps to the extent that no other conclusion or inference apart from the guilt of the accused can be drawn."*

15. Therefore, where the evidence is of a circumstantial nature or where the case is based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn, should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as to not leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. It will therefore have to be seen from the evidence that has come on record, whether the circumstances from which the conclusion of guilt is to be drawn, are fully established and all the facts so established are consistent only with the hypothesis of the guilt of the accused.

16. As stated above, in this case, there is no direct evidence and the entire case hinges on circumstantial evidence. According to the prosecution and as also considered by the Trial Court, the following circumstances form a chain

of evidence excluding every possible hypothesis except the guilt of the Appellant. These circumstances are as follows:

1. *Identity of the Victim*
2. *Motive*
3. *Last seen together*
4. *Witness seeing the accused dumping the torso in Charai Lake*
5. *Test Identification Parade*
6. *Disclosure/recovery*
7. *Reports of post-mortem and Chemical Analyser .*

17. The Trial Court, based on the above circumstances, has come to the conclusion that prosecution has been successful in proving the entire chain of circumstances beyond reasonable doubt, which point towards the guilt of the Appellant and which leave no doubt that the Appellant was the perpetrator of the offence and was also involved in the destruction of the evidence.

18. It will therefore have to be seen, whether from the facts of the case, the chain of evidence is so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it is such as to show that within all human probability the act must have been done by the accused.

Let us now analyse each of the circumstances *in seriatim* :-

A] <u>IDENTITY OF THE VICTIM</u>

19. The first circumstance taken into consideration is about the identity of the victim/deceased. To establish the identity of the deceased, the prosecution has examined P.W. 18, the sister of the deceased who has deposed that her sister was missing since 29.10.2013 and a missing complaint was filed by her and the son of the deceased, at Sakinaka Police station on 04.11.2013. She has further deposed that on 06.11.2013, she was called to the Chembur Police Station to identify the dead body. She has deposed that the body was in different, separated parts and she identified the body which was shown to her. She has deposed, that she identified the body on the basis of her nail paint and the structural arrangement of her teeth. She has deposed that the nail paint was of pink colour and the deceased used to come to her house and she had applied pink coloured nail paint at her house. The said witness was cross-examined by the defence counsel, however, nothing much could be elicited in the cross-examination as regards the identity of the deceased and the defence unable to discredit the witness on the point of identity. Further, the DNA reports at Exhibit 95 Colly., conclusively establish the identity of the deceased. The report proves that Thimmappa K. Shetty was the biological father and that P.W. 4 was the biological son of the deceased. This evidence, therefore establishes beyond reasonable doubt that the dismembered body parts were those of Kanti Karunakar Shetty (deceased). Therefore, we are of the opinion that the prosecution has duly proved the first link in the chain of circumstances and has clearly established the identity of the deceased.

B] MOTIVE

20. The next circumstance is motive. To establish motive, the prosecution examined P.W. 4, the son of the deceased. P.W. 4 deposed that he knew the Appellant and that his mother had introduced him to the Appellant. He deposed that his mother had told him that she was in a relationship with the Appellant and that she wanted to marry him. He further deposed that the Appellant used to visit their house twice a week and used to stay at night whenever he used to visit their house. He further deposed that after some days, quarrels started between his mother and the Appellant. He further deposed that his mother was telling the Appellant to marry her, but he was refusing and therefore his mother was asking back for her money from the Appellant. He further deposed that the Appellant promised to marry his mother by putting his hand on her head and that he had put a mangalsutra on the person of his mother. He further deposed that the Appellant had signed the open day meeting attendance card as a guardian and that the said card also bears the photograph of the Appellant. In the cross-examination, the witness stated that there were frequent quarrels between his mother and the Appellant and these quarrels started after one month of his introduction. This witness categorically admitted that he can tell the issues about the quarrel between his mother and the Appellant and the issues were that his mother had given some money to the Appellant which he did not return. He further admitted that the quarrel was also on account of his mother insisting the Appellant to marry her.

21. No doubt there is nothing on record to show that the money was lent by his mother in his presence or that this witness was taken into confidence before lending the money. There is also nothing on record to establish lending of money by way of any documentary evidence but that is not the only motive. It has categorically come in the evidence that the deceased was insisting the Appellant to marry which he was refusing. Although, it has also been admitted in the cross-examination that on 28th October 2013, the accused promised to marry his mother, we do not find the testimony of this witness to be biased in any manner. The evidence of this witness appears to be natural and cannot be said to be exaggerated or inflated just because the Appellant has been accused of killing his mother. His deposition was consistent even in the cross-examination on the point of his mother asking the Appellant about the money which she had lent him and also about the Appellant refusing to marry his mother. Just because the witness has admitted that on 28.10.2013, the Appellant promised to marry his mother, does not mean that no quarrels had taken place in the past or that all their disputes ceased to exist with the said promise. The reasons narrated for the quarrels which ensued, are sufficient to come to the conclusion that the Appellant was holding some serious grudge which has culminated into the motive. We do not agree with the finding of the trial court that the motive with respect to the money is not believable in the absence of any evidence about how much was the earning of the victim or what amount was lent to the accused or in whose presence it was lent. We are of the opinion that the

prosecution has proved the motive on both counts beyond reasonable doubt.

C] LAST SEEN THEORY

22. Before adverting to the circumstance of last seen theory which has been strongly relied upon by the prosecution, a useful reference can be made to the judgment of ***Anand Jakkappa Pujari @ Gaddadar v/s The State of Karnataka (supra):***

> "*41. 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 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. Even in such a case, the courts should look for some corroboration.*
>
> *"42. In* ***The State of U.P. v/s Satish reported in (2005) 3 SCC 114****, this Court observed:-*
>
> > *"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 accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."*
>
> (Emphasis Supplied)
>
> *"43. By now, it is a well settled position of law that the circumstance of "last seen together" does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. The Courts should look for some corroboration.*

23. The prosecution in order to establish the circumstance of "last seen theory" has examined and relied upon P.W. 4 and P.W. 5. P.W. 4 is the son of the deceased who has deposed that on 29.10.2013, when he had gone to play at Hiranandani Garden, his mother called him home and told him that she was going to meet the Appellant. He has further deposed that after playing, he returned home between 8:30 p.m. to 9 p.m. when his mother was still not home. He has further deposed that since that day, his mother never returned.

24. The prosecution has also examined P.W. 5, who is a resident of the society and resides in Room No. 236. He has deposed that, he knows the owner of that said Room No. 224 and has deposed that Room No. 224 was given on rent by P.W. 14- Gurunath Kulkarni. He stated in the deposition that, "*I alongwith my family resides at Subhash Nagar, Chembur. I have a weekly off on Sunday. On 29/10/2013 I was standing in the gallery in front of main door. On that day I was observing the persons who are coming inside and going outside from our building when I was standing, brushing in gallery. The lady who came with one rickshaw at our building was unknown to me. The lady alighted from auto rickshaw and directly entered in the building towards staircase. There are two staircase in our building. In our building the room consists from room No.217 to 252. There are 12 rooms on each floor of said building. The said lady went upstair through the said staircase. The said lady went in room no.224. Room No.217 is situated at the corner side of the building. Room numbers are allotted serially on each*

floor. I again say that room numbers are allotted not serially on each floor of the said building on two wings. In first wing of the said building the room number starts from 217 to 234 serially and in the second wing of said building the room starts from 235 to 252. I am residing in the second wing in room no. 236 on ground floor. I was knowing the persons who were residing in room no 224. I had not seen who had come and gone in room no.224 prior to the said lady visited the room. After entering the said lady inside room no.224 I had not seen anybody had come and gone from the said room. I was knowing that four male persons were residing in room no.224. I did not inquire as to why the said lady had gone in the said room no.224. I had seen that the said lady knocked the door and after opening the door she went inside and then the door was closed." He has further deposed that on 30.10.2013, he had gone to Nashik along with his family on a holiday for 3 to 4 days. He has further deposed that, after his return to Mumbai, his mother told him that there has been a murder of one lady in Room No. 224. He has stated in his deposition, that he gave his statement to the police approximately after one and half month from the date of incident. He has further deposed that due to his courier business, he could not approach the police to give a statement and that there is a delay. He has deposed that he narrated the said fact to the police which he had seen on 29.10.2013. He has further deposed that he came to know that the accused residing in Room No. 224 has committed murder of one lady and he identified the accused in the court. He has further admitted, that after returning from Nashik, he did not

see any of the occupants of Room No. 224. Further, in the cross-examination, which was conducted on a subsequent date, he has tried to give an explanation that the police came on their own to him for enquiry and recording of the statement. He said that police had come to him after 10 to 15 days from the date of the incident. He has further admitted in the cross-examination that the noise can be heard from the neighbouring flat and that he did not hear any quarrel or noise from Room No. 224. He has also admitted that he did not hear any cutting noise from Room No. 224. He has admitted in the cross-examination that he cannot tell who was present in Room No. 224 when the said lady entered inside the room.

25. What can be deduced from his evidence, is that this witness has seen one lady entering the said room as admitted by him, but the prosecution has not taken any pains to confront this witness with any photograph of the deceased in order to confirm whether the lady who entered the Room No. 224 on 29.10.2013, was the deceased. The lady, whom he claims to have seen, was not a known lady to this witness. This witness is assuming that the lady, who visited Room No. 224, must have been murdered. Confrontation of this witness with the photograph of the deceased would have lent corroboration and strengthened his narration, which in the absence thereof falls short of a conclusive proof. This witness in his examination-in-chief has stated that he did not go to the police station after knowing the incident. But, after one and half to two months of the incident, he went to the police station and narrated the facts to the police. However, in the cross-

examination which was on a subsequent date, he has contradicted his own version and stated that police came on their own to him for enquiry and for recording his statement. This appears to be a material contradiction and the improvement is made specifically to overcome the delay in approaching the police. It has been admitted in the cross-examination that police came to him after 10 to 15 days of the incident. If this is accepted to be true, then it is still a mystery as to why the statement came to be recorded after 1 and 1/2 to 2 months. It has come in the evidence of P.W. 7 that the police had also visited the site on 05.11.2013 and therefore nothing prevented this witness from disclosing the events to the police at the first available opportunity which he claims to have witnessed.

26. The Ld. Counsel for the Appellant has relied upon the following judgments in support of his contention on the issue of delay in recording the statement by the police. By citing ***Shahid Khan v/s The State of Rajasthan***[34], the Ld. Counsel has invited the attention of the Court to the following paragraph:

> "*20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they are not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eye-witnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced…"*

34 (2016) 4 SCC 96.

27. Additionally, the Ld. Counsel has also placed reliance on ***Ganesh Bhavan Patel v/s The State of Maharashtra***[35]

> *"15. As noted by the trial court, one unusual feature which projects its shadow on the evidence of PWs Welji, Pramila and Kuvarbai and casts a serious doubt about their being eyewitnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under Section 161 of the CrPC were recorded on the following day. Welji (PW 3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. Delay of a few hours, simpliciter, in recording the statements of eyewitnesses may not, be itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to suggest that the decide about the shape to be given to the case and the eyewitnesses to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case."*

28. Further, a useful reference can be made to the case of ***Ganpat Kondiba Chavan v/s The State of Maharashtra***[36]. The relevant portion is quoted herein below. It has been held thus:-

> *"11. The Apex Court in number of cases has concluded that the conduct of a witness in not disclosing the incident to persons whom he must have met after the incident, is indicative of the fact that he had not seen the incident. In this connection we would like to refer to the decision of the Apex Court reported in Shivaji Dayanu Patil Vs State of Maharashtra, AIR 1989 Supreme Court 1762; wherein the wife who had seen the murder of her husband did not disclose the incident for two days to anyone and on this score the Apex court did not believe her evidence. In paragraph 11 of the said judgment it has been observed thus:*
>
> *"A wife, who has seen an assailant giving fatal*

35 (1978) 4 SCC 371.
36 1997 (2) Crimes 38.

> *blows with a stick to her husband would name the assailant to all present and to the police at an earliest opportunity."*
>
> *"12. We would also like to emphasise that the Supreme Court held that the circumstance of inordinate delay in recording the statement of an eye witness under Section 161 Criminal Procedure Code, 1973 is a pointer to the fact that he has not seen the incident. It is a trite that the investigating officer in a murder case immediately after the FIR has been registered seeks to discover as to who are the persons who have seen the incident and thereafter embarks upon the job of interrogating them under Section 161 Criminal Procedure Code."*

29. We, therefore, find that the conduct of P.W. 5, creates a serious doubt about the veracity of his deposition and gives an impression that in all probability, this witness has not seen any such happening, in the manner as stated by him and therefore also taking into consideration the unjustifiable delay, the evidence of P.W. 5 cannot be said to be free from doubt.

30. The Ld. APP has further contended that in cases where the prosecution establishes that the deceased was last seen alive in the company of the accused, the burden shifts upon the accused to explain how the incident had occurred. In support of her contention she has relied upon the judgment of ***Rohtash Kumar v/s The State of Haryana***[37]**.** The relevant paragraphs are quoted as below:

> *"Last seen together theory*
>
> *32. In cases where the accused was last seen with the deceased victim (last seen together theory) just before the incident, it becomes the duty of the accused to explain the circumstances under which the death of the victim occurred. (Vide Nika Ram v. State of H.P. and Ganeshlal v. State of Maharashtra.)*
>
> *33. In Trimukh Maroti Kirkan v. State of Maharashtra*

37 (2013) 14 SCC 434.

this Court held as under: (SCC p. 694, para 22)

> *"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."*
>
> *(See also Prithipal Singh v. State of Punjab)*

> *34. Thus, the doctrine of "last seen together" shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him."*

31. There can be no doubt about this proposition of law. However, the reliance on this principle is misplaced in the facts of the present case. In the present case, there is no convincing material that has come on record to establish that the deceased and the accused were 'last seen together' prior to the murder of the deceased. We are not inclined to accept the evidence of P.W. 5 on the point of last seen together for what we have discussed above, as P.W. 5 does not inspire confidence and therefore even if the Appellant has not discharged the burden, the same cannot be said to be fatal. We are therefore of the opinion, that the prosecution has not successfully proved this circumstance of last seen.

32. It will also be pertinent to consider the Call Detail Records (CDRs) and the Cell Tower Location in order to find out whether it can be considered as a corroborative material to find out whether the Appellant was

in the company of the deceased on the evening of 29.10.2013.

33. In order to establish the CDRs and tower location, the prosecution has examined P.W. 15 and P.W. 16 who have deposed about the phone numbers of the deceased and the Appellant.

34. P.W. 15 the nodal officer in Bharti Airtel Company, in his deposition has stated: "*I retrieved the data from the server through the confidential password provided to the Nodal Officer. As per my report, the name of the subscriber of the mobile number 98925223098 is Karunakar Shetty while the name of the subscriber of the mobile number 9967131884 is Karunakar Sanjivan Shetty. Date of activation for No. 98925223098 is 30.09.2006, while date of activation for No. 9967131884 is 31.07.2007.*"

35. P.W. 16, the nodal officer with Vodafone India Ltd., has deposed as follows: "*By using user I.D. and password, I retrieved data from the server of these mobile numbers of the requisite period. I sent the print out of CDR copies of customer application form of both the numbers along with certificate u/s. 65B and tower location I.D. list to DCP Zone 6. The mobile No. 9167976154 is in the name of Sunita R. Maru, GR 7, Central Railway hutment, Chapsi Marg, Mazgaon, Mumbai was a prepaid number and date of activation of that number was 16/02/2011. The mobile No. 9930783502 is in the name of Karunakar Shetty, B2 Vajrani Colony, Jadari No. 1, Sakinaka, Mohali village, Mumbai- 72. It was prepaid number and the date of activation of said number was 14/10/2011.*"

36. The following table would enumerate the Mobile Phone numbers used

by the Appellant and the deceased, as culled out from the evidence on record:-

Sr	Phone Numbers	Used by	SIM Registered in the name of
1.	9967131884	Deceased	Karunakar Sanjivan Shetty
2.	98925223098	Deceased	Karunkar Shetty
3.	9167976154	Appellant	Sunita R. Maru
4.	9930783502	Appellant	Karunakar Shetty

37. A detailed analysis of the Call Detail Records (CDRs) and Cell Tower Location reveals that Mobile Phone No. 9892523098, belonging to the deceased and Mobile Phone No. 9167976154, belonging to the accused were found to be present at the exact same Cell Id Address i.e. *Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur (E)* at 19:26 hours on 29th October, 2013. Relevant Call Detail Records of the Appellant and the deceased on 29.10.2013 are as follows:

Sr No.	A Number	Cell ID Address	B Number	Cell ID Address	Call Time
1.	9167976154 (Appellant)	Prakash Lodge, Narayan Guru Chembur.	9892523098 (deceased)	Sector No. 6, Road No. 4. Chheda Nagar, Chembur.	19:24:15
2.	9892523098 (deceased)	Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	9167976154 (Appellant)	Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	19:25:58
3.	9892523098	Jayalaxmi	9167976154	Jayalaxmi	19:26:47

	(deceased)	Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	(Appellant)	Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	
4.	9702583499 (unknown)	-	9167976154 (Appellant)	Plot No. 102/103, Pestom Sagar Scheme, Near Shankaralayam Temple, PL Lokhande Marg, Chembur West	19:36:03
5.	9986029867 (unknown)	-	9930783502 (Appellant)	Plot No. 102/103, Pestom Sagar Scheme, Near Shankaralayam Temple, PL Lokhande Marg, Chembur West	19:42:34
6.	9820355672 (unknown)	-	9930783502 (Appellant)	Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	21.08.37
7.	9449517976 (unknown)	-	9167976154 (Appellant)	Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	22:16:06

38. While from the above records it is apparent that the Appellant and the deceased were in proximity at 19:25 and 19:26 hours as both the phones were recorded at the same tower location i.e. *Jayalaxmi CHSL, B Wing, 14/B Subhash Nagar, Chembur(E)* the very same records also disclose that the Appellant had thereafter moved away, his tower location having shifted to Chembur West at 19:36 hours and continued to remain there until 19:42 hours. The Appellant having moved away from the alleged scene of offence,

the possibility of intervention of any third person cannot be excluded, more specifically, when the CDRs reveal the presence of an unknown person having the same tower location as that of the deceased i.e. at *Jayalaxmi CHSL, B Wing, 14/B Subhash Nagar, Chembur(E)*. This possibility is reinforced by a further analysis of the CDRs.

39. We find it imperative to mention certain findings that can be derived from the Call Detail Records (CDRs) of the deceased. At the relevant point of time in the evening on 29.10.2013, the call records of the deceased can be traced to an unidentified number, not appearing to be that of the Appellant, who was present at the same location as the deceased i.e. at *Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)*.

40. The CDRs reflect a call at 20:12 hours and a text message subsequently at 20:20 hours from Mobile No. 8108258597 and the location is found to be of *Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)*. The following table reflects the same:

Sr No.	A Number	Cell ID Address	B Number	Cell ID Address	Call Time
1.	8108258597 (unidentified)	Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	9967131884 (deceased)	Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	20:12:00
2.	8108258597 (unidentified)	Jayalaxmi Building, Near Muktanindya High School, Subhash Nagar, Chembur(E)	9967131884 (deceased)	-	20:20:12

41. This was a circumstance of considerable importance which the investigating agency has entirely failed to look into. No attempt was made by the investigating agency and the prosecution to ascertain the identity of this unknown person whose mobile activity is reflected at the material time at the same location as that of the deceased. Further, there was no inquiry directed towards establishing the reason or relevance of the presence of this unknown person at the same location. Such failure on the part of the investigating agency to pursue what appears to be a material and proximate lead, is in the opinion of this Court, a serious lapse in the investigation. It was imperative on the part of the prosecution to negate the hypothesis of third party intervention, but the prosecution has entirely failed to do so, both in the course of investigation and before the Court.

42. In our considered opinion, the CDRs and Cell Tower Location relied upon by the prosecution to establish the presence of the Appellant with the deceased on the evening of 29th October 2013 cannot ascertain that the Appellant and the deceased were in each other's company all throughout that evening. This Court is also conscious of the law that the CDRs can be used only for a limited purpose of corroboration and therefore, cannot be taken into consideration independently. In any event, in the facts of the present case, the CDRs cannot be said to be conclusively establishing the presence of the Appellant at the spot of the incident, all throughout. More specifically the lack of evidence about the presence of an unknown person whose tower location was exactly the same as the deceased, negates the

theory of the prosecution that the Appellant and the deceased were last seen together in the exclusive company of each other.

43. A reference can be made to the judgment in the case of ***Azad v/s State of GNCT of Delhi and Another***[38] wherein it was held that CDRs can only be used for the limited purpose to corroborate any other evidence. It was observed thus:

> *"16. ...CDR data may be an important and effective piece of evidence which may facilitate and assists courts in ascertaining the presence of different participants in commission of an offence including the complainant and proposed accused at one particular place or location which may be their presence at or near the place of occurence. However, CDR data can only be taken as supporting or corroborative piece of evidence and conviction cannot be made solely on basis of CDR data. CDRs proved and relied on by the Prosecution only proved that the appellants Jitender @ Jitu and Azad@ Gaurav, on day of incident, were present near place of occurence/ incident but it is not proved that they have actually participated in commission of offence as per complaint Ex. P.W.1/A."*

44. It is thus, a settled principle of law that CDRs, although an important and admissible evidence in the Court of law, cannot stand on its own legs. The role of CDR in establishing the presence of the accused person(s) at or near the alleged spot of incident at the given time, in the company of the victim is merely corroborative and needs the footing of an independent, reliable and substantive piece of evidence.

45. In the present case, the prosecution has relied upon the CDRs and the Cell Tower Location for corroborating the "last seen theory". The primary

38 2023 SCC OnLine Del 1769.

evidence adduced to establish the "last seen theory" of the prosecution was that of P.W. 5. However, that theory has already been discarded by us for reasons already stated and elaborated as above. Therefore, in such peculiar facts and circumstances of this case, we are not inclined to rely solely on the CDRs to establish the theory of last seen together which even otherwise, is not conclusively proved.

D] WITNESS SEEING THE ACCUSED DUMPING THE TORSO IN CHARAI LAKE

46. The next circumstance is the witnesses seeing the Appellant dumping the torso of the deceased at Charai Lake. To prove this circumstance, the prosecution has examined P.W. 2, P.W. 6, P.W. 3 and P.W. 12.

47. Aatish Kale (P.W. 2) has deposed that on 29.10.2013 at about 8.00 p.m. when he, along with Mukesh Kavale (P.W. 6) and Rohit were sitting and chitchatting near the gate of the Charai Talao garden, at about 9.45 p.m., an auto-rickshaw came there and one person got down from the said auto-rickshaw. He had a polythene bag on his back. P.W. 2 has further deposed that the said person was trying to open the gate of the Talao but the said gate was locked. He further deposed that P.W. 6 told the said person that "हार किंवा फुल असेल तर कलशाच्या आत टाका". The said person replied to P.W. 6 that "हवनचे सामान आहे ते पाण्यात साडायचे आहे." He further deposed that they jumped from the gate and went inside the garden to drop the said polythene bag in Talao. He further deposed that the said person handed over the

polythene bag to him and P.W. 6. When they took the said bag, they felt something different, hot and fishy and thereby they got frightened and put the said polythene bag on the ground and went out of the gate. They saw the said person was present there. He further deposed that P.W. 6 asked him, "सच सच बता इस थैलि मे क्या है" to which the said person again replied that "हवनचे सामान आहे". He has further deposed that when he doubted, he again asked the person if some part of the body was in the polythene bag. He further deposed that the said person replied "हवनचे सामान आहे". He thereafter went into the garden and sat there watching the said person. He further deposed that the said person came by jumping from the gate and picked up the bag and took it on his shoulder and went near the talao and then boarded on a small boat on the bank and threw the said black coloured polythene bag in the water of the said talao. He has further deposed, that the said person went outside and sat in the rickshaw. He further deposed, that P.W. 6 was near the said auto-rickshaw and was talking with the driver. He has deposed that after the said person sat in the auto-rickshaw, the rickshaw went away and he noted down the number of the rickshaw. He further deposed that thereafter they called Rohit and Rakesh outside the gate of the said talao as they were suspecting about the said bag. He further deposed that thereafter P.W. 6 and Rohit went near the said talao and dragged the said black colour polythene bag with the help of bamboo and took the said polythene bag near the bank. He further deposed that Rohit tried to open the polythene bag with the help of a broken piece of glass. He

further deposed that blood was oozing from the polythene bag. He deposed that at that time, police came there and as per the directions of police, Rohit opened the said black colour polythene bag where they found that there was a trunk (body without head, hands and legs). He deposed that the said body belonged to a female. He deposed that the police sent a message to the control room. Thereafter, they went away. P.W. 2 further deposed that on 30.10.2013, he along with P.W. 6, Rakesh and Rohit were called in the police station. Police recorded their statements. They had given a description of the said rickshaw driver and the person who came by the auto-rickshaw. He has further deposed that he identified the accused in the Court who came by the auto-rickshaw and was having a polythene bag and threw the bag into the water of the talao.

48. In the cross-examination, nothing adverse to the prosecution case could be elicited from P.W. 2. The cross-examination focused mainly on the topography of the said area and on the height of the gate etc to establish whether the witness could have jumped the said iron gate or not or could have entered in the talao from the gap between two rods. He admitted in the cross-examination that the names and addresses of all of them were taken by the police of Chembur police station who arrived there later on. In the cross-examination, the witness has categorically admitted to seeing the auto-rickshaw driver and that he had given a description of the auto-rickshaw driver to the police. He had seen the auto-rickshaw driver from a distance of 25 ft. The defence tried to pick holes in his evidence by putting

questions as regards the height of the accused wherein in his statement, he had mentioned the height of the accused as 5 ft. and while deposing in the Court he had mentioned the height to be 5.6 ft. The cross examination did not in any manner dislodge the evidence of this witness or discredit what he had stated in the examination in chief.

49. P.W. 6 Mukesh Kavale, is another witness the prosecution has relied upon to prove the circumstance. He deposed that on 29.10.2013 at about 8:30 p.m., he along with P.W. 2, Rakesh, Gautam and Rohit had been to Charai talao and that there was street light. He deposed that at about 9:40 p.m., one auto-rickshaw came there and one person alighted. He was aged 30-35 years. He had a black coloured caterers bag on his shoulder. He further deposed that the said person was trying to open the gate of the talao which was locked. He and P.W. 2 called as "शुक शुक" and went near the said person. He further deposed that he and P.W. 2 asked the said person what was in the bag. The said person responded that they were hawan articles. He further deposed that he and P.W. 2 told the said person that if there were haar (garland) and flowers, then he could drop the same in a kalash, to which the said person told that he wanted to drop the hawan articles into the water. He further deposed that he and P.W. 2 went inside the gate by climbing on it and took the bag inside from the gap of the gate. He deposed that at that time, he and P.W. 2 doubted that there might be something other than hawan articles, as they felt something hot and soft. He further deposed that, as they doubted him, P.W. 2 asked the said person again and

he responded that there were hawan articles. He further deposed that P.W. 2 told that there are no hawan articles, but something like a body, to which the said person told that hawan articles are kept in the plastic bag and he replied that *"tumko chodne ka hai to chodo nato to main jata hu".* He further deposed that as they both were frightened, they kept the said bag near the gate. Thereafter, he and P.W. 2 came outside of the gate by climbing and went to sit in the garden and that they were sitting in the garden observing the said person. He further deposed that the said person went inside the gate by climbing on it, lifted the bag, put it on his shoulder and threw the bag into the water of Charai talao. He deposed that P.W. 2 and Gautam also observed all the things of the said person. He further deposed that the said person in an auto-rickshaw. He deposed that in the meantime, P.W. 2 went near the rickshaw and asked the said person who threw the bag that, " थैली के अंदर क्या था, सच मे बताओ". The said person responded with "hawan ka saman" and the said person told the driver of auto-rickshaw " जल्दी चलो, दुसरे जगह जाने का है". He further deposed that when the rickshaw started and proceeded, at that time, he told P.W. 2 and Gautam to note down the rickshaw number.

50. P.W. 6 further deposed that thereafter, he and Rohit went inside by climbing the gate and took the '*tarapa*' in the middle of talao and with the help of bamboo, they released the knot of the rope. He deposed that they dragged the said plastic bag to the stair and kept it on the ground. He deposed that he and Rohit tore the plastic bag with the help of a piece of

glass. At that time, they saw blood was oozing from the bag. They were frightened, therefore he and Rohit came outside of the gate by climbing on it. He deposed that, at that time, one police van stopped there by seeing them. He deposed that, he along with P.W. 2 and Rohit narrated the incident to the police as they doubted about the plastic bag. He further deposed that they noticed one trunk which was without the head, hands and legs of a female in the plastic bag. He further deposed that they came outside and were standing at that time, a police officer came and took their names and addresses. He deposed that on 30.10.2013, they were called at Chembur police station and the police recorded their statements. He further deposed that he had given the description of the said auto-rickshaw driver and the person who had come there from the auto-rickshaw and the clothes which the said person was wearing.

51. In the cross-examination of P.W. 6, the defence could not shake the credibility of this witness in any manner. On the contrary, in the cross-examination, several material aspects have been brought on record which fortify what he had deposed in his examination in chief and even the presence of the accused/appellant gets established. Surprisingly, cross-examination of this witness revolves on the topography, the area and the layout of the garden. There is nothing to disbelieve and discredit the said witness. On perusal of the cross-examination of this witness, the identity of the accused at the spot is once again very much established.

52. P.W. 3 Mohd. Sail Mohd Iklal Shaikh is the auto-rickshaw driver and

he has deposed that on 29th October, 2013 at about 9:15-9:30 p.m., he came near Acharya College. He further deposed that he got one passenger who wanted to go to the talao to drop articles of pooja. He deposed that the said passenger was carrying a plastic bag. The passenger told him to take him to the nearest talao. He further deposed that he took the passenger near Charai talao, Chembur where there is a garden adjacent to the talao. He further deposed that he stopped the auto-rickshaw near the talao. He deposed that at that time, two boys came and asked the passenger what was inside the plastic bag, to which the passenger told them that the plastic bag contained pooja articles. He further deposed that the gate of the talao was closed and that the two boys went inside by jumping the gate. He deposed that, the passenger handed over the bag to those boys and those boys put the said bag on the ground upon feeling hot. Thereafter, the passenger went inside and took the said bag from the gate of the said talao. Thereafter, the passenger threw the said bag into the water of the talao. He further deposed that the passenger came out of the gate by jumping. At that time, two boys stopped his auto-rickshaw and asked the passenger about the contents of the plastic bag to which the passenger replied that the plastic bag contains articles of pooja. He further deposed that the passenger told him to take him to Subhash Nagar and he dropped the passenger there. He deposed that after giving him a fare of Rs. 50/-, the passenger entered into the premises of one society at Subhash Nagar. He deposed that he dropped the passenger at 10:00 p.m. P.W. 3 gave the description and features of the

said passenger to the police. He also identified the accused who was present in the Court as the passenger who was sitting in his auto-rickshaw with one bag, which he had thrown in the Charai talao at Chembur. In the cross-examination, nothing much could be elicited to discredit the testimony of this witness and the thrust of the cross-examination was once again mainly on the description of the talao and the garden.

53. On a close scrutiny of the testimonies of P.W. 2, P.W. 6 and P.W. 3, we find no reason to disbelieve them. Their presence at Charai Talao on the night of 29.10.2013 appears to be natural and there is no material to suggest any motive on their behalf for falsely implicating the Appellant-Accused. Further, the incident was not a fleeting encounter. Appellant was carrying a black coloured plastic bag and upon being questioned, he answered that it contained *havan* articles. The conduct of the Appellant coupled with his insistence on throwing the bag in the talao despite the suspicion expressed by P.W. 2 and P.W. 6, naturally drew their attention towards him.

54. What lends considerable strength to the testimony of P.W. 2 and P.W. 6 is the fact that the suspicion entertained by the witnesses was immediately confirmed when the bag was retrieved and found to contain a torso of a female body. An encounter of such nature was bound to leave a lasting impression in the minds of the witnesses. Additionally, the depositions of P.W. 2 and P.W. 6 corroborate each other in all material aspects. Even though there are minor discrepancies, the same do not, in any manner cause a dent to the case of the prosecution. On the contrary, it suggests that

the witnesses are natural witnesses.

55. The Ld. APP, whilst dealing with the rival contention regarding the discrepancies in the depositions of P.W. 2, P.W. 3 and P.W. 6 has placed before us the judgment of the Hon'ble Apex Court in ***The State of Punjab v/s Karnail Singh***[39]. This judgment, in the following paragraph lays down thus:

> *"10. To the same effect is the decision in State of Punjab v. Jagir Singh and Lehna v. State of Haryana. As observed by this Court in State of Rajasthan v. Kalki normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be....."*

56. Therefore, we are of the opinion that P.W. 2, P.W. 3 and P.W. 6 are natural and credible witnesses, and even if there are minor discrepancies, they can be classified to be within the ambit of human error. However, while stating so, we also clarify that none of these discrepancies are material in nature. Hence, these depositions can be considered to be true and without any material defects.

57. The depositions of P.W. 2 and P.W. 6 further stand corroborated by P.W. 3, who dropped the Appellant to Charai talao. Further with respect to identification, corroboration is lent by the testimony of P.W. 12, who conducted the Test Identification Parade. The cumulative effect of the evidence discussed above conclusively and singularly leads to the only inference that it was the Appellant who was carrying the black coloured

39 (2003) 11 SCC 271.

polythene bag containing the torso of the deceased and dropped the same in the Charai talao on the evening of 29.10.2013. Although, it was tried to be argued that the statements of P.W. 2 and P.W. 6 came to be recorded belatedly i.e. on 30.10.2013 and not on the same day, we are not inclined to accept such an untenable argument as recording of the statement on the next day of the incident in the peculiar facts of the case cannot be said to be recorded belatedly. Hence, we are of the opinion that the act of the Appellant of disposing off the torso as witnessed by P.W. 2, P.W. 3 and P.W. 6, which amounts to destruction of evidence, is established beyond reasonable doubt.

E] TEST IDENTIFICATION PARADE

58. The next circumstance which the prosecution has relied upon is the Test Identification Parade (TIP) to establish the identity of the person who caused the destruction of evidence. To establish this circumstance, the prosecution has examined P.W. 2, P.W. 6 and also P.W. 12, who conducted the TIP.

59. The identity of the Appellant gets further corroborated as P.W. 2 and P.W. 6 have identified the Appellant in the Test Identification Parade conducted on 27.12.2013. P.W. 2 has stated in his deposition that:

> *"5. On 27/12/2013 I was called in Arthur Road jail for TIP. I identified the present accused in TIP. There was six dummy persons alongwith accused were standing in the row. The officer who is conducting TIP asked me to identify the accused. I identified the accused who was standing in between the dummy person Sr No.1 and 2. I identified the said accused in TIP, who came by auto rickshaw was having black colour polythene bag*

and thrown the said polythene bag into water of Charai talav. The witness pointed out the accused who is present before the court is the same whom he identified in TIP. The accused stated his name Prabhakar Kutty Shetty. The officer recorded my statement after TIP.....

.....

9. .....I had seen the accused for twice before I came to depose before the court. I had seen the accused at the second time on 27/12/2013. On 27/12/2013 there was a difference in the features of accused I.e. beards were increased.

.....

11. ....It is not true that I am deposing false that I identified accused in TI Parade. It is not true that whatever I deposed before the court, is at the instance of police."

It was also stated by P.W. 6 about the identification of the accused in the TIP. The relevant paragraphs are reproduced as hereunder:

"2. On 27/12/2013 I was called at Arthur road jail for test identification parade. On 27/12/2013 I myself, Atish, two panch witnesses and Police officer Mohite went to Arthur road jail. We reached at Arthur road jail at about 11.00 a.m. In parade room there were six dummy persons standing in one row and one saheb (but he was not police officer) was sitting and two panch witnesses were present. Saheb told me to identify the accused. I identified accused he was standing at serial no.3 by touching him. I stated to saheb that the accused whom I identified is the same person who come with auto rickshaw with one plastic bag and dropped the said plastic bag into water of Charai Talav. After identification of the accused I came out of the parade room at about 2.15 p.m. I can identify the accused and today he is present before the court who came with auto rickshaw with one plastic bag and dropped the said plastic bag into water of Charai Talav, in which one female body (trunk) without any head, leg and hand found. The witness identified the accused by pointing him in the court. Police recorded my further statement on 27/12/2013 after identification of the accused."

Nothing much has been elicited in the cross-examination of P.W. 6 on the aspect of Identification of the accused in the TIP.

60. In the deposition of P.W. 12, it is clearly established that P.W. 2 and P.W. 6 identified the accused in the Test Identification Parade. The relevant

paragraphs read as follows:

> "*3.....I asked accused that he can change his position in the row of dummy accused. So, accused stand between dummy accused no. 2 and 3. then I called panch and one witness Mukesh Gautam Khawale in that hall. I asked Mukesh Gautam Khawale that the accused is standing in the row of dummy accused person, he should identify the accused by touching his person. Witness observed and identified the accused by touching his person. At that time, accused was standing between 2nd and 3rd dummy accused in that row. Accordingly, the TI parade by 1st witness is completed.*
>
> *4....Again I asked accused that he is permitted to change his clothes, accordingly accused changed his clothes. I told accused that he can stand in the row of dummy accused, at the place of his choice. Then accused did stand between 1st and 2nd dummy accused of that row. Then I call panch and another witness Atish Kale, in that hall. I informed witness Atish Kale that the accused is standing in the row of dummy accused persons, he should identify the accused by touching his person. Witness observed and identified the accused by touching his person. At that time, accused was standing between 1st and 2nd dummy accused in that row. Accordingly, the TI parade by 2nd witness is completed.*"

61. Therefore upon perusal of evidence of P.W. 12, it is established that P.W. 2 and P.W. 6 identified the accused in the Test Identification Parade, which lends corroboration to the establishing of the identity of the person seen disposing the torso of the deceased to be the Appellant-Accused. Even though P.W. 3 has not identified the Appellant in the TIP, he identified the Appellant in the Court.

62. Although the Ld. Counsel for the Appellant has tried to point out several deficiencies in the TIP, it will be necessary to analyse the deposition of P.W. 12 to ascertain whether the TIP was conducted adhering to the

guidelines laid down in the Criminal Manual or whether there are serious discrepancies which vitiate the TIP.

63. The first line of attack by the Ld. Counsel for the Appellant was with respect to the delay in conducting the TIP. The Ld. Counsel for the Appellant vehemently argued that the delay in conducting the Test Identification Parade vitiates the identification evidence. However, this contention deserves to be rejected in our view. It is a settled proposition of law, as is clearly established by the Hon'ble Apex Court in ***Pramod Mandal v/s The State of Bihar***[40]***.*** The same was reiterated in the subsequent judgment of the Hon'ble Apex Court in ***Raja v/s State by Inspector of Police***[41]. The relevant paragraphs of the case of ***Raja*** (supra) are reproduced hereinbelow:

> *"16. Again, there is no hard and fast rule about the period within which the TIP must be held from the arrest of the accused. In certain cases, this Court considered delay of 10 days to be fatal while in other cases even delay of 40 days or more was not considered to be fatal at all. For instance, in Pramod Mandal v. State of Bihari the accused was arrested on 17.01.1989 and was put up for Test Identification on 18.02.1989, that is to say there was a delay of a month for holding the TIP. Additionally, there was only one identifying witness against the said accused. After dealing with the decisions of this Court in Wakil Singh v. State of Bihar, Subhash v. State of Uttar Pradesh and Soni v. State of Uttar Pradesh in which benefit was conferred upon the accused because of delay in holding the TIP, this Court considered the line of cases taking a contrary view as under:*
>
> *"18. Learned counsel for the State submitted that in the instant case there was no inordinate delay in holding the test identification parade so as to create a doubt on the genuineness of the test identification parade. In any event he submitted that even if it is assumed that there was some delay in holding the test identification parade, it was the duty of the accused to question the*

40 (2004) 13 SCC 150.
41 (2020) 15 SCC 562.

investigating officer and the Magistrate if any advantage was sought to be taken on account of the delay in holding the test identification parade. Reliance was placed on the judgment of this Court in Bharat Singh v. State of U.P. In the aforesaid judgment this Court observed thus: (SCC p. 898, para 6).

"6. In Sk. Hasib v. State of Bihar it was observed by the Court that identification parades belong to the investigation stage and therefore it is desirable to hold them at the earliest opportunity. An early opportunity to identify tends to minimise the chances of the memory of the identifying witnesses fading away due to long lapse of time. Relying on this decision, counsel for the appellant contends that no support can be derived from what transpired at the parade as it was held long after the arrest of the appellant. Now it is true that in the instant case there was a delay of about three months in holding the identification parade but here again, no questions were asked of the investigating officer as to why and how the delay occurred. It is true that the burden of establishing the guilt is on the prosecution but that theory cannot be carried so far as to hold that the prosecution must lead evidence to rebut all possible defences. If the contention was that the identification parade was held in an irregular manner or that there was an undue delay in holding it, the Magistrate who held the parade and the police officer who conducted the investigation should have been cross-examined in that behalf."

In the instant case, we find that the defence has not imputed any motive to the prosecution for the delay in holding the test identification parade, nor has the defence alleged that there was any irregularity in the holding of the test identification parade. The evidence of the Magistrates conducting the test identification parade as well as the investigating officer has gone unchallenged. Learned counsel for the State is, therefore, justified in contending that in the facts and circumstances of this case the holding of the test identification parade, about one month after the occurrence, is not fatal to the case of the prosecution as there is nothing to suggest that there was any motive for the prosecution to delay the holding of the test identification parade or that any irregularity was committed in holding the test identification parade."... .....

"20. It is neither possible nor prudent to lay down any invariable rule as to the period within which a test identification parade must be held, or the number of witnesses who must correctly identify the accused, to

> *sustain his conviction. These matters must be left to the courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the test identification parade must be held, it would only benefit the professional criminals in whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They, therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be unknown to the victim and the case depends solely on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness? Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the matter in the light of the evidence on record before pronouncing upon the acceptability or rejection of such identification."*

64. It is therefore abundantly clear that it is neither possible nor prudent to lay down any invariable rule as to the period within which a TIP must be held and there is no hard and fast rule about such delay being fatal to the prosecution.

65. The Ld. Counsel for the Appellant also vehemently argued that the TIP was not conducted as per the required procedure mentioned in the Criminal Manual. It was argued that P.W. 6 Mukesh Kawale admitted during the cross-examination that he was taken into the jail as well as into the parade room by a police officer and therefore the submission of the Ld. Counsel for the Appellant was that the presence of the police officer at the time of TIP entirely vitiated the same. To buttress his submission, the Ld. Counsel has placed reliance on the judgment of the Hon'ble Apex Court in

the case of ***Chunthuram v/s The State of Chhattisgarh***[42] and invited the attention of this Court specifically to paragraph 11, wherein it has been observed that:

> *"11. The infirmities in the conduct of the test identification parade would next bear scrutiny. The major flaw in the exercise here was the presence of the police during the exercise. When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of statements made by the identifiers to a police officer Section 162 of the Code."*

66. There can be no doubt this proposition of law, however, we find that the above case law can be distinguished on facts from the present case. P.W. 6 Mukesh Kawale stated that the police person brought him to the parade room and it was further deposed that during the actual conduct of the identification exercise only the six dummy persons, the Tahsildar and the Panch witnesses were present. The said deposition of P.W. 6 therefore, by itself rules out the presence of any police officer during the identification parade. Hence, the foundational premise upon which the ratio of ***Chunthuram(supra)*** operates is neither established nor borne out from the evidence on record.

67. The Ld. Counsel for the Appellant has also contended that there has been an inordinate delay in conducting the TIP, which creates doubt about the validity of the TIP as there is a possibility that the witnesses might not remember the actual person due to passage of time. However, if the

42 (2020) 10 SCC 733.

documents on record are perused, the prosecution cannot be blamed for holding TIP after two months. The investigating agency on 19.11.2013 had written a letter to the Tahsildar for conducting the TI Parade, however the date assigned by the Tahsildar was 27.12.2013. In any event, it is a settled law that TIP is only a rule of prudence and serves as a corroborative piece of evidence under Section 9 of the Indian Evidence Act, while the substantive evidence is the identification made before the Court. In this regard, the following judgments can be appropriately relied upon. In the case of ***Anil Pal son of Ram Pyare Lal v/s The State of Jharkhand, Criminal Appeal (DB No. 1278 of 2024)***, it was held as under:

> *"118. However, it is equally settled that TIP is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant. The evidence of a TIP is admissible under Section 9 of the Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Reference in this regard may be taken from judgment as rendered by the Hon'ble Apex Court in State of H.P. v. Lekh Raj (2000) 1 SCC 247, and C. Muniappan v. State of T.N. (2010) 9 SCC 567. 119."*

68. In the present case, P.W. 2 and P.W. 6 have identified the Appellant in the TIP as well as in the court during the trial. Further, the argument that the witnesses could not have remembered the Appellant after two months deserves to be rejected in the peculiar facts of the case. P.W. 2 and P.W. 6 witnessed the Appellant while disposing off a bag claimed by the Appellant to contain *havan* articles, but upon immediately retrieving the bag from the same place where it was disposed by the Appellant, they found the same bag

to actually contain a human body with no hands, legs and head (torso). Such an incident was a rather unusual, shocking and an unprecedented occurrence which is likely to leave a lasting impression on their minds and therefore identifying the person in the TI Parade even after a gap of two months cannot be said to be unusual.

69. The Ld. Counsel for the Appellant has relied upon the judgment of ***Mohd. Sajjad v/s The State of West Bengal*** [43] and has referred to paragraph 16 and 19 where it has been held as under :

> *"16. In the case in hand, apart from the fact that there was delay in holding the test, identification parade, one striking feature is that none of the prosecution witnesses concerned had given any identification marks or disclosed special features or attributes of any of those four persons in general and the accused in particular. Further, no incident or crime had actually taken place in the presence of those prosecution witnesses nor had any special circumstances occurred which would invite their attention so as to register the features or special attributes of the accused concerned. Their chance meeting, as alleged, was in the night and was only for some fleeting moments.*
>
> *..... ...*
>
> *19. In the instant case none of the witnesses had disclosed any features for identification which would lend some corroboration. The identification parade itself was held 25 days after the arrest. Their chance meeting was also in the night without there being any special occasion for them to notice the features of any of the accused which would then register in their minds so as to enable them to identify them on a future date. The chance meeting was also for few minutes. In the circumstances, in our considered view such identification simpliciter cannot form the basis or be taken as the fulcrum for the entire case of prosecution. The suspicion expressed by PW 8 Saraswati Singh was also not enough to record the finding of guilt against the appellant. We therefore grant benefit of doubt to the appellant and hold that the prosecution has failed to establish its case against the appellant."*

43 (2017) 11 SCC 150.

70. The Appellant has placed reliance upon the aforesaid judgment to contend that the identification of the Appellant by P.W. 2 and P.W. 6 cannot be relied upon. This Court finds the aforementioned judgment distinguishable on facts. The ratio of the judgment, as expressly stated herein above rests on specific findings namely, that none of the witnesses had given any identification marks or disclosed special features of the accused; that no incident had occurred in their presence which would invite their attention so as to register the features of the accused in their minds; that the encounter was a chance meeting in the night and was only for a few fleeting moments; and that there were no special circumstances which would cause the appearance of the accused to be imprinted in the memory of the witnesses. We are of the opinion, that none of these features are present in the case at hand. The encounter of P.W. 2 and P.W. 6 with the Appellant cannot be said to have been fleeting or ephemeral in any manner. They had a sustained, direct and active interaction with the Appellant at Charai Talao. They questioned him about the contents of the bag, observed him at close quarters for a considerable period, and harbored suspicion about his conduct throughout. Their encounter with the Appellant was therefore not a chance meeting for a few moments in the night but an impressionable encounter of sufficient duration which was immediately followed by the circumstance of an extraordinary and disturbing nature i.e. the discovery of a female torso in the very bag he had just disposed off. This, in our opinion,

precisely fixes the features of the Appellant enduringly in the memory of the witnesses.

71. In order to lay emphasis on the above, this Court places reliance in the case of ***Raja(supra)***

> *"18. It is, thus, clear that if the material on record sufficiently indicates that reasons for "gaining an enduring impression of the identity on the mind and memory of the witnesses" are available on record, the matter stands in a completely different perspective."*

72. The Ld. Counsel for the Appellant further attempted to cast serious aspersions on the TIP on the ground that the panchas for the TIP were selected by the police and not by the Tahsildar who also failed to determine their independence. A perusal of *Clause 16 (3)(iii) of the Criminal Manual* issued by The High Court of Judicature at Bombay makes it abundantly clear that the arrangement of Panch witnesses by the Police is not only permissible but is in fact the established procedure. The said clause expressly provides that "*the police themselves will have normally arranged to call up such persons*", and the role of the Executive Magistrate is thereafter to question them and satisfy himself that they are independent and fairly intelligent persons. The Ld. Counsel for the Appellant has failed to establish that there was a failure on the part of P.W. 12- the Tahsildar, in performing his due diligence during the TIP. P.W. 12 in his deposition states as follows:

> *"2. Accordingly by giving letter on 18.12.2013, I have informed Sr. PI Chembur police station that I am going to conduct identification parade on 27.12.2013. On*

27.12.2013, at about 11.00 am, I reached to Arthur road jail. I saw that, three witnesses and two panchas were there along with police in front of door of Arthur road jail. First of all, I got introduced all the witnesses and panchas. I had asked them that whether they were shown, photograph of accused, of whose identification parade is to be conducted. They replied in negative. Then myself, three witnesses, two panchas by effecting entry in register, entered in jail premises, at about 11.20 am. I met with jailer and asked him that he should make certain arrangement for holding identification parade of accused. I caused witnesses to sit in the cabin of jailer. Myself and two panchas went to the hall of TI Parade. Jail police brought the accused Prabhakar Shetty in that hall. In presence of panchas I asked his named to which accused stated his name as Prabhakar Shetty. I asked jail police that they should call other six dummy accused. Accordingly, six dummy accused, of age of Prabhakar Shetty were brought there. Then, dummy accused were asked to stand in a row. I asked accused Prabhakar Shetty to stand in that row at 7th place. I get it confirmed that nobody from outside should see the accused and dummy accused."

"3. I asked one of the panch Sharad Kishor Jadhav, that he should call one of the witnesses, who were sitting in cabin of jailer. So also I told him that he should not enter in that hall, alongwith witness unless he called. Thereafter, I asked accused Prabhakar Shetty whether he wants to change his clothes, to which he replied yes. Accordingly, he changed his clothes, in that hall itself. I asked accused that he can change his position in the row of dummy accused. So, accused stand between dummy accused No. 2 and 3. then I called panch and one witness Mukesh Gautam Khawale in that hall. I asked Mukesh Gautam Khawale that the accused is standing in the row of dummy accused person , he should identify the accused by touching his person. Witness observed and identified the accused by touching his person. At that time, accused was standing between 2nd and 3rd dummy accused in that row. Accordingly, The TI parade by 1st witness is completed.

73. Therefore, taking into consideration the above deposition we are of the view that no prejudice was caused to the Appellant and there was no infraction of the provisions of law whilst holding TIP.

74. It was also argued by the Ld. Counsel for the Appellant that the conduct of the Tahsildar with regard to the non- selection of dummies by him for the TIP was in contravention of the procedure laid down by the Criminal Manual. A reference to *Clause 16(3)(v)* clarifies the position to the effect that the arrangement for the persons to be put in the parade is normally made by the police themselves and the same finds reinforcement in the case of ***Suresh Vyankati Chavan V. State of Maharashtra***[44], as can be seen below:

> "*69. Upon perusal of the clause (iv), while conducting the parade, the parade should be arranged in a room or a place which is such that the identifying witnesses, as well as the persons connected with the Police, should not be able to look into it. In clause (v), it is stated that, if there is only one accused person to be identified, at-least half a dozen dummy persons should be placed in the parade. If two accused persons are to be identified, then there should be about 10 or 12 persons in the parade. Not more than two accused should be placed in any single identification parade. Normally, the police themselves will have called up the persons to be put in the parade, but the Executive Magistrate/Honourary Magistrate should see that they are persons of more or less same physical appearance, and approximately of the same age, as the person to be identified. It is desirable that dummy persons to be mixed should be different for such parade.*"

75. The Ld. Counsel for the Appellant has relied upon the judgments of this Hon'ble Court in the cases of ***Vilas Vasantrao Patil v/s The State of***

44 (2018) SCC OnLine Bom 3390

Maharashtra[45] and ***The State of Maharashtra v/s Rajesh***[46] to contend that a TIP conducted in violation of the procedure prescribed under the Criminal Manual vitiates the same completely. In support thereof, various submissions were also advanced during the course of oral arguments regarding the appointment of dummies and role of panch witnesses, those contentions have already been dealt with. In addition, a reading of the cross-examination of P.W. 12 does not disclose any material irregularity so as to cast a doubt upon the validity of the TIP.

76. The Ld. APP has contradicted the arguments of the Appellant, by rightly relying upon a judgment of the Hon'ble Apex Court in ***The State of Maharashtra v/s Suresh***[47], wherein it was held:

> "*22. If potholes were to be ferreted out from the proceedings of the magistrates holding such parades possibly no Test Identification Parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every Test Identification Parade would become unusable. We remind ourselves that identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is really the one who was seen by them in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held [vide Budhsen v. State of Uttar*

45 1995 SCC OnLine Bom 399

46 1997 SCC OnLine Bom 39

47 AIROnline 1999 SC 169

Pradesh, 1970(2) SCC 128; Ramanathan v. State of Tamil Nadu, 1978(3) SCC 86]."

77. The Trial Court while believing the TIP has rightly relied upon the judgment of ***Babubhai @ Zaverchand Harjivan Sheth v/s The State of Maharashtra***[48] to clarify the intent of conducting a TIP wherein it is observed as under –

> "*72. In our view, regarding the test identification Parade, the precautions as contained in the guidelines issued by the High Court in the criminal Manual are required to be observed to make the exercise of holding the TIP meaningful and reliable. If there is inordinate delay in holding TIP, the delay ought to be explained by the prosecution. A witness of fact who is required to attend the test identification to identify the unknown offender from the assemblage of accused intermingled with group of dummies at the TIP must not have any prior opportunity to see the suspect or the accused after his arrest or while the accused is continuing in custody pending investigation, before the TIP is held. If TIP is held in jail, the responsible authority holding TIP will have the facility to take precautions including the selection of the appropriate similar dummies in age, appearance, dress etc. to stand along with the suspects. At the same time it must be remembered that the TIP belongs to the stage of investigation and essentially governed by Section 162 of the Cr PC and does not constitute the substantive evidence. Hence cannot be decisive factor for recording conviction. There is no provision in the Code of Criminal Procedure to make it compulsory for the investigating agency to hold test identification parade because the substantive evidence is identification of the culprit before the Court. Failure to hold the TIP would not make the evidence of identification in the Court absolutely meaningless or inadmissible. The evidence of TIP provides only corroboration to the main evidence before the Court when required by way of the abundant precaution in view of Section 9 of the Indian Evidence Act. The object of holding TIP at the stage of investigation is to help the investigating agency to assure itself that the investigation is proceeding at right direction, on correct lines. The*

48 2013 SCC OnLine Bom 2260

> *purpose of the holding prior test identification is to test trustworthiness of the witness at the stage when investigation is still at its preliminary stage. The holding of the TIP is felt necessary in a case wherein the accused were not known to the accused since prior to the incident. The accused cannot as of right claim that the test identification parade must be held at the stage of investigation. The trial Court is not precluded from accepting the evidence of the identification of the offender on the basis of sworn testimony in the Court without insisting upon the corroboration. Though sole rule of prudence is to look for corroboration. It is for the learned trial judge, as a Court of fact, who has opportunity to see & have live experience of watching demeanor of the witness while he or she is deposing before the Court, to attach the appropriate weight to the evidence of the witness. In an appropriate case the trial Judge may accept the evidence of identification in the Court even without insisting upon the corroborative evidence. In case the trial Judge find it unsafe to rely upon the substantive evidence of actual identification of the offender before the trial Court, it may look upon the evidence of the TIP for the purpose of corroboration and may then find it out whether corroborative evidence adduced is dependable and reliable to base conviction……"*

78. Taking into consideration the authorities cited on this issue, we find it appropriate to hold that the object of holding TIP at the stage of investigation is to help the investigating agency ensure that it is proceeding on the correct line. The purpose of conducting the TIP is primarily to test the trustworthiness of the witness at a nascent stage. The necessity of TIP arises only in those circumstances when the accused is unknown to the witnesses prior to the incident. Further, mere failure to hold the TIP would also not make the evidence of identification in the Court absolutely meaningless or inadmissible.

79. Additionally, taking into consideration the evidence on record, we also find that no motive can be attributed to the prosecution for holding of the TIP belatedly. As far as the identification of P.W. 3 is concerned, he has given an explanation in his evidence as to why he did not, during the TIP point towards the Appellant as the person who had come in his auto rickshaw. This witness in the natural course of deposition has stated that out of fear he did not point out. This witness however has identified the Appellant in his substantive evidence in the court. We have no reason to cast any doubt over the conduct of P.W. 3, who has not resiled from his statement. Further in the cross-examination, this witness has stated that he saw the accused for the first time after the incident in the TIP at the jail.

80. In the light of the above, we find that there is nothing to disbelieve the Test Identification Parade and there is no deviation from the due process laid down in the Criminal Manual and hence the contention of the Ld. Counsel for the Appellant deserves to be rejected.

E] DISCLOSURE AND RECOVERY

81. This Court now proceeds to consider the recoveries effected pursuant to the disclosure statements made by the Appellant under Section 27 of the Indian Evidence Act. There are multiple recoveries, some at the instance of the Appellant and some through the witnesses.

82. The first disclosure statement of the Appellant was recorded on the day on which the Appellant was arrested i.e. 05.11.2013, in the presence of

P.W. 7, which was regarding the disposal of the head of the deceased. P.W. 7 has deposed that upon disclosure, the police and the panchas were led to a nala (canal) near a temple where one black coloured plastic bag was recovered and upon opening the same, it was found to contain the head of the deceased. The relevant part of the said deposition is reproduced herein below:

> "*5. Thereafter, we left Chembur police station by one government vehicle. Police officer Khanvilkar, Dhas, 2-3 police staff, myself, anther panch witness and accused were in the said vehicle. We went from R.C. Marg, Chembur Naka, Cell Colony via Tembhi bridge, and then at near one canal (nala), near one temple, we stopped our vehicle, where the accused was asked to stop. We all alighted from the vehicle and went by walk at some distance. The accused pointed canal (nala) in which one black colour black colour plastic polythene bag which he thrown. Thereafter, one person went inside the nala and took out the said black colour plastic polythene bag from said nala, but I do not remember name of said person. The said black colour plastic polythene bag was given to Police Officer Dhas. The said black colour plastic polythene bag was dirty with mud and there was knot at top (mouth) of the said polythene bag. Some insects were there on polythene bag. The said knot was cut by blade . In which we found one female head, decomposed/ rotten condition, eyes closed, black hairs, mouth open and long teeth and there was bad smelling. Photographer was called. Photographer took the photographs of said female head, decomposed in condition. The said female head decomposed/ rotten in condition was taken in charge by preparing panchnama. I can identify photographs of female head which found in polythene bag."*

83. We have also gone through the cross-examination, however, we find that nothing could be elicited by the defence to discredit this witness. Although the defence was successful in bringing on record that this panch witness had acted as a panch in 2 to 4 cases earlier, however that by itself

cannot be a ground to reject the evidence, which is otherwise believable as held by the Hon'ble Supreme Court in the case of ***Nana Keshav Lagad v/s State of Maharashtra***[49].

84. This Court believes the recovery of the head from the nala for reasons stated herein. Although, the said nala is to be considered as a place with wide public access, the material aspect in the peculiar facts of the case, is not the nature of the place but the fact that the location of disposal was within the exclusive knowledge of the Appellant. A severed human head is not an article ordinarily to be found in such a place and the recovery was effected only after the Appellant led the police and the panchas to the specific spot and pointed out to the exact location.

85. In this context, the Ld. Counsel for the Appellant has relied upon the judgment of ***The State of Haryana v/s Jagbir Singh*** [50] to contend that the recovery of the head, in the present case falls outside the purview of Section 27 of the Evidence Act, inasmuch as the location was already within the knowledge of the police, prior to the disclosure. The relevant paragraph referred to by the Ld. Counsel for the Appellant during his arguments is enumerated herein below:

> *"21. What remains now to be seen is whether the recovery of the dead body from the premises of the accused establishes the prosecution version. According to the prosecution when the Panchayat gave time to the accused to produce the boy alive or dead, he accepted that the dead body was buried in his compound. The accused dug the land and on seeing the leg of the dead*

49 (2013) 12 SCC 721

50(2003) 11 SCC 261

> *body they stopped digging and went to the police. The High Court has found that the prosecution claimed that the two accused were arrested by the Sub-Inspector Mahender Singh Bhatti (PW 12) on 9-9-1995 on the culvert of Jai Canal at about 8.00 p.m. in the presence of one Chatter Singh and Om Parkash. However, Om Parkash (PW 10) has denied about the arrest of the accused by PW 12 near the canal. From the statement of PW 12, it appears that the accused persons after their arrest made disclosure or the statement about the ransom, concealment of the dead body and that the dead body recovered in the presence of the aforesaid Chatter Singh and Om Parkash (PW 10). It is belied by the statement of Om Parkash (PW 10). According to this witness, when the accused made a voluntary statement in the presence of many others he pointed out where the body was buried. They went to the police station where they met PW 12 and told him about finding the dead body. PW 10 told him that the dead body was to be handed over to Sr. SP or the Dy. SP. Evidence of PW 10 further shows that PW 12 accompanied by another ASI and other police officials went to the village. There many people had assembled and as the villagers started shouting and agitating that led to an altercation; both the accused were arrested by the Dy. SP. Thereafter it is stated that the accused Jagbir made a disclosure statement, where he (PW 10) and Chatter Singh were stated to be eyewitnesses. One thing is clear that there are unexplained contradictions about the place where the accused were arrested and the manner of recovery. Since the dead body was recovered on the basis of information already known, Section 27 of the Evidence Act has no application. As observed by this Court in Aher Raja Khima v. State of Saurashtra [AIR 1956 SC 217 : 1956 Cri LJ 426] a recovery of the incriminating articles alleged to have been made by the accused while in custody is inadmissible in evidence if the police already knew where they were hidden. That takes the case out of the purview of Section 27 of the Evidence Act."*

86. This Court finds the said judgment distinguishable on facts. In ***The State of Haryana v/s Jagbir Singh(supra)***, the recovery of the dead body was held to be outside Section 27 because the location was already known, as the accused had pointed out the burial spot in the presence of the Panchayat

before any formal disclosure statement was recorded. It was in this specific circumstance, that Section 27 was held inapplicable. However, the same does not hold good in the instant case. There is nothing on record to suggest that the location of the head near the nala at Sai Baba Nagar was known to the investigating agency prior to the Appellant's disclosure. The same is accordingly distinguishable and does not assist the case of the Appellant.

87. The Ld. APP has rightly relied upon the judgment of ***Neelu @Nilesh Koshti v/s The State of Madhya Pradesh***[51]**,** in order to emphasize upon the validity of the recovery of the head of the deceased, under Section 27 of the Indian Evidence Act. The Court observed thus:

> *"22.....This Court held that for evidence under Section 27 to be admissible, the information must emanate from an accused who is in police custody. The Court elucidated that the basic idea embedded in Section 27 is the doctrine of confirmation by subsequent events- when a fact is discovered on the strength of information obtained from a prisoner, such discovery serves as a guarantee of the truthfulness of the information supplied. The Court further observed that whether the information is confessional or non- inculpatory in nature, if it results in the discovery of a fact, it becomes reliable information. Significantly, it was held that the mere recovery of an object does not constitute the discovery of fact envisaged in the section.....*
>
> *23.....As laid down in Udai Bhan (supra), the discovery of a fact includes the object found, the place from which it is produced, and the knowledge of the accused as to its existence.In the present case, the information given by the appellant while in Police custody distinctly relates to the fact discovered, namely, recovery of the dead body of the deceased concealed in a sack and thrown in a specific well. This constitutes a "distinct fact" as contemplated under Section 27 of the Evidence Act, as the recovery of the body from that precise location could only have been made on the basis of*

51Cr. Appeal No. 5357 of 2025

> *information furnished by someone who had personal knowledge of its disposal. The recovery embodies the "doctrine of confirmation by subsequent events" as explained in Bodhraj (supra)—the actual discovery of the body from the exact location disclosed by the appellant is a guarantee that the information supplied by him is true. The fact discovered embraces the place from where the object was recovered (the well near Tasaali Dhaba) and the knowledge of the appellant as to its existence at that location. This information is not within public domain or capable of discovery through routine investigation. These circumstances constitute a formidable link in the chain pointing towards the culpability of the appellant."*

88. It would be appropriate to state that in the present case, the recovery of the head of the deceased from the particular spot (nala) would constitute a 'distinct fact', as such a recovery would not have been possible unless a disclosure statement to that effect was made by someone who had personal knowledge of its disposal. Thereby upholding the 'doctrine of confirmation by subsequent events', it can be said that such a discovery of a severed head is not possible through routine investigation or without information provided by the Appellant himself. Hence, we believe the recovery of the head of the deceased at the instance of the Appellant, under Section 27 of the Indian Evidence Act.

89. As far as the discovered legs of the deceased are concerned, the evidence on record discloses that the same were not recovered at the instance of the Appellant. P.W. 19, on 30.10.2013, stumbled upon the legs in a black coloured polythene bag lying in shrubs near Trombay Jetty and immediately informed the police. The police then recorded the statement of P.W. 19 and prepared a spot panchama for the legs and the four blood-

stained black coloured polythene bags. The relevant portion of his deposition is as follows:

> "*On 30/10/2013 I was going towards Trombay Jetty. I saw two legs in a torn black coloured polythene bag which was lying in shrubs. There were four black coloured polythene bags. I scared and ran towards jetty. I informed the police at jetty. I showed the police the spot. Police recorded my statement on the same day*".

90. The testimony of this witness has gone unchallenged as the defence chose not to cross-examine this witness.

91. Further, the FSL analysis establishes that the black coloured plastic bags, so recovered, are of the same type and nature as the black coloured plastic bag in which the torso was disposed off at Charai talao. The discovery of the legs of the deceased cannot be considered a recovery under Section 27 of the Evidence Act because it was not at the instance of the Appellant. However, in the opinion of this Court, the relevance of the said discovery may lie in the fact that the recovery of the legs, from the same type of plastic bag as that of the torso and head, is a circumstance which corroborates the knowledge possessed by the Appellant regarding the manner in which the body parts had been concealed and disposed off. Therefore, even though this recovery is not pursuant to any disclosure statement made by the Appellant, this can also be considered as one forming a part in the chain of the disposal of the dismembered parts of the body of the deceased. We conclude as above, after giving due consideration to the proved corroborative evidence and the attendant circumstances.

92. The prosecution has further relied on the disclosure statement of the Appellant recorded on 16.11.2013 in the presence of P.W. 9. The Appellant had made a disclosure statement with respect to the place where he disposed off the mobile phones, clothes, chappals and ornaments of the deceased. The Trial Court has erroneously recorded that the aforementioned articles were recovered and hence came to an incorrect conclusion that the discovery was established. However, the evidence on record points to the contrary. The evidence of P.W. 9 shows that none of the articles were recovered pursuant to the disclosure statement. In the absence of any article having been actually recovered, consequent to the disclosure statement, the Trial Court's conclusion on the same being an established recovery under Section 27 of the Indian Evidence Act cannot be sustained.

93. It is the case of the prosecution, that as per the deposition of P.W. 7, the Appellant also made a disclosure statement on 05.11.2013, regarding the ascertainment of the spot of murder. Pursuant to this, the police were led to Room No. 224 and a number of articles were seized viz., a plastic bucket, pieces of cement concrete, a bathroom metal jali, two full jeans pants, two half t-shirts and a piece of cloth, some of which bore bloodstains. This Court, having considered the evidence on record, finds that the said recovery was effected on the same day of the arrest and in pursuance of the disclosure statement made by the Appellant. There is no substantial cross-examination on this aspect. However, the issue that now falls for consideration is the evidentiary value of the bloodstained articles recovered during the

investigation. While the reports confirm the presence of human blood on the seized articles, they do not conclusively establish the blood group.

94. On this aspect, this Court finds it necessary to refer to the recent decision of the Supreme Court in ***Madhav v/s State of Madhya Pradesh***[52], wherein the Apex Court, having considered the entire spectrum of case laws on this aspect, has settled that there exists no fixed formula and that what is required is that the judicial conscience of the Court should be satisfied both as to the genuineness of the recovery and as to the origin of the human blood. The judgments relied upon by the learned APP in ***Kishore Bhadke v/s State of Maharashtra***[53], ***Prabhu Dayal v/s State of Rajasthan***[54], which consider ***State of Rajasthan v/s Teja Ram and Others***[55], have already been evaluated and reconciled by the Hon'ble Supreme Court in ***Madhav*** (supra). Since the principles emerging from the aforesaid decisions stand comprehensively dealt with in ***Madhav(supra)***, on which this Court has placed reliance, we do not find it necessary to further independently dilate upon the abovementioned judgments relied by the Ld. APP. The relevant observations of ***Madhav(supra)*** are reproduced hereunder:

> *"28. .....In Surinder Singh vs. State of Punjab (1989) Supp.(2) SCC 21), the blood stains found on the knife allegedly used for the commission of the offence, were established to be human blood. But this Court rejected the prosecution theory on the ground that those blood stains on the knife were not shown to be of the same group as the blood of the deceased. In Raghunath,*

52 Criminal Appeal No. 852 of 2021

53 (2017) 3 SCC 760

54 (2018) 8 SCC 127

55 (1999) 3 SCC 507

> *Ramkishan & Ors. vs. State of Haryana, this Court held that the blood stain, though of a human blood, is not conclusive evidence to show that it belongs to the blood group of the deceased. In Sattatiya vs. State of Maharashtra, this Court found the credibility of the evidence relating to the recovery of the object used for the commission of the crime, substantially dented, on account of the fact that the blood stains, though found to be of human source, could not be linked with the blood of the deceased.*
>
> *29. In contrast, this Court held in State of Rajasthan vs. Teja Ram and Others, that at times the Serologist may fail to deduct the origin of the blood, either because the stain is too insufficient or because of hematological changes and plasmatic coagulation. After referring to the Constitution Bench decision in Raghav Prapanna Tripathi (supra), this Court held in Teja Ram (supra) that it is not as though the circumstances arising from the recovery of the weapon would stand relegated to disutility, in all cases where there was failure of detecting the origin of the blood. This Court indicated in Teja Ram (supra) that, "...the effort of the Criminal Court should not be to prowl for imaginative doubts..." and that the doubts should be of reasonable dimension, which a judicially conscientious mind entertains with some objectivity.*
>
> *30. The decision Teja Ram (supra) was followed in Gura Singh vs. State of Rajasthan and in Prabhu Dayal vs. State of Rajasthan.*
>
> *31. In R. Shaji vs. State of Kerala, this Court took note of almost all previous decisions starting from Prabhu Babaji Navle vs. State of Bombay and including those in Raghav Prapanna Tripathi (supra); Teja Ram (supra), Gura Singh (supra); John Pandian vs. State; and Sunil Clifford Daniel vs. State of Punjab and came to the conclusion that once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or nonmatching of blood groups loses significance.*
>
> *"32. Therefore, as pointed out by this Court in Balwan Singh vs. State of Chhattisgarh, there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. But the judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood."*

95. In view of the above, this Court is satisfied that the recovery of articles from Room No.224, stands duly proved under Section 27 of the Evidence

Act, and the Chemical Analyzer's Reports establish the presence of human blood on the articles so recovered, even though the results are inconclusive.

96. Having considered the submissions of the Ld. Counsel for the Appellant and the Ld. APP, and having perused the relevant case laws, this Court is of the considered opinion, that the mere fact that the bloodstains were inconclusive, the Appellant cannot claim the benefit on those grounds. However, we hold that the inconclusive blood stains by themselves do not establish a distinct and incriminating link in the chain of circumstances in the peculiar facts and circumstances of this case, for the reasons set out hereunder. First, the evidence on record establishes that Room No. 224 was not within the exclusive possession of the Appellant, as it was shared among three other persons residing therein, as deposed by P.W. 5 and P.W. 14. In the absence of exclusive access, it cannot be said with certainty that the Appellant had exclusive knowledge of the scene of the offence. Therefore, the most that can be inferred therefrom, is that the Appellant possessed knowledge of the commission of murder in that room and the existence of those articles in that room. Secondly, the prosecution alleges that the Appellant dismembered the body and disposed of the body parts at different locations to destroy the evidence. If that be so, it appears inherently improbable that he would simultaneously leave behind numerous blood-stained articles at the very place where the offence was committed and which also served as his residence, only for the police to effect a recovery. Such conduct is inconsistent with ordinary human behaviour and renders

the prosecution version susceptible to doubt. For these reasons, the judicial conscience does not permit to accept this recovery as a circumstance pointing unerringly towards the Appellant.

97. It has come in the evidence/deposition of P.W. 8 that the disclosure statement, with respect to the knife which is the weapon of murder, was recorded on 07.11.2013. It has also come in the evidence that the very same disclosure statement also pertained to the limbs, for which the police first went to Trombay Jetty where nothing was found. Immediately, thereafter the Appellant led them to the place where he claimed to have discarded the weapon of murder- knife. It is to be noted that the knife was recovered from a nala, accessible to the public in general and therefore the Appellant cannot be said to have exclusive access to the same. Additionally, there is nothing on record to suggest that the particular nala was outside the reach of passerbys. Further, the deposition of P.W. 8 (panch witness) only discloses the fact, that the Appellant pointed towards the general area of the nala where the knife was thrown by him. It has also come in the evidence of P.W. 8, that a knife was not visible in water from outside the nala and that the local people by entering into the nala took the search of the weapon with hands. It has also come in the cross-examination of P.W. 8, that few other articles were also taken out by the local people from nala water. It has also come in the cross-examination that after taking out the knife it was put to dry and it was measured by the police and not by the panchas. Further, there is also a discrepancy regarding the length of the knife. It is common

knowledge that a nala, ordinarily contains a number of discarded articles and a knife being a common household object, the exclusivity is not established.

98. The Ld. Counsel for the Appellant has relied upon the judgment of ***Makhan Singh v/s The State of Punjab***[56] , drawing our attention specifically to para 14:

> "*14. Then we are left with the recovery of the dead bodies. Investigating Officer SI Puran Singh (PW 8) admitted in cross-examination that after recording the statement of Amrik Singh he could not know the correct place where the bodies and other articles were kept buried and concealed. This clearly indicates that he could get some information from the statement of Amrik Singh. As seen earlier, the field is an open place surrounded by other fields and according to Nihal Singh the adjacent field is his own as he had taken it on lease and therefore it cannot be said that anyone could not have known about the bodies being buried in the field. The Investigating Officer himself admitted that after recording the statement of Amrik Singh he knew that the bodies were buried in the field but he felt that information was not sufficient. It cannot therefore, be said that the place from where the bodies were recovered was such a place about which knowledge could only be attributed to the appellant and none else. Since the exclusive knowledge to the appellant cannot be attributed, the evidence under Section 27 also cannot be said to be a circumstance against the appellant.*"

99. Taking into consideration, the above-mentioned judgment, this Court is also of the view, that the nala is a place with public access and therefore the exclusive access of the nala and subsequently the exclusive knowledge about the knife, cannot be attributed to the Appellant. This, therefore significantly diminishes the propriety of the recovery of knife under Section

56(1988) SUPP SCC 526

27 of the Evidence Act. We hold that while the disclosure statement was made regarding the knife and the same was recovered, the evidentiary weight of this recovery is insufficient to attribute it to the Appellant, more so, considering the duration after which it was recovered. Therefore, in the light of the above stated reasons, we are not inclined to accept the recovery of the knife as an incriminating circumstance against the Appellant.

100. This Court, taking into consideration the discoveries and recoveries of the dismembered body parts of the deceased, comes to a conclusion that the black coloured plastic bag constitutes a significant corroborative circumstance running through the chain of disposal. The torso was found disposed of in a black coloured plastic bag at Charai talao at the hands of the Appellant. The head was recovered in a black coloured plastic bag near a nala (canal) at the instance of the Appellant. The legs were found in a black coloured plastic bag near Trombay Jetty along with four blood-stained plastic bags lying around it. The FSL analysis further establishes that the black coloured plastic bags are of the same nature and type. Therefore, the recovery of the bags cannot be viewed in isolation. The common use of identical black coloured plastic bags for concealing the torso, head and legs, coupled with the FSL opinion at Exhibit 128 Colly., regarding their similarity, provides an important corroborative link in the chain of circumstances and lends credence to the Appellant with regards to the knowledge regarding the disposal of the body parts of the deceased.

101. The Ld. Counsel for the Appellant has relied upon the judgment of the

Hon'ble Supreme Court in ***Himachal Pradesh Administration v/s Om Prakash***[57]. The relevant paragraph is reproduced hereunder:

> *8..... We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the Investigating Officer, the protection afforded by Section 25 and Section 26 of the Evidence Act. While considering the evidence relating to the recovery we shall have to exercise that caution and care which is necessary to lend assurance that the information furnished and the fact discovered is credible.*

102. The aforesaid observations cast a duty upon the Court to exercise due caution in appreciating discovery evidence and to satisfy itself of the credibility of both, the information furnished and the fact discovered. In the present case, this Court has independently scrutinized each recovery on its own merits and has relied only upon those recoveries which inspire confidence and satisfy the test of admissibility and reliability in law.

103. The Ld. Counsel for the Appellant placed reliance on ***Gambhir v/s The State of Maharashtra***[58]***, Kashinath Baban Palkar v/s The State of Maharashtra***[59] and ***Sattatiya v/s The State of Maharashtra***[60] to contend that the recoveries in the present case are piece meal in nature and are the result of duress, rather than a voluntary disclosure and hence should be discarded. As there can be no doubt about this proposition laid down by the Apex Court, the same does not seem to be applicable as in the peculiar facts of the

57(1972) 1 SCC 249

58(1982) 2 SCC 351

591995 SCC OnLine Bom 167

60(2008) 3 SCC 210

case, we do not find it to be the result of any duress or absence of voluntary disclosure.

F] REPORTS OF POST-MORTEM AND CHEMICAL ANALYZER

104. The Chemical Analyser and Post-Mortem(PM) Reports are an important link in establishing a complete chain of circumstantial evidence, the analysis of which is essential. To establish the commission of the offence of murder at the hands of the Appellant, this circumstance must be considered in two parts. First, insofar as they establish the identity of the deceased and the cause of death and second, whether they can be sought to be used to connect the Appellant with the commission of such an offence of murder.

105. On the question of the identity of the deceased, this Court has already discussed this circumstance in detail and come to the conclusion that there is no doubt about the identity of the deceased being one Kanti Karunakar Shetty, as established by DNA Reports.

106. To establish the Post-Mortem report and the injuries mentioned therein, the prosecution has examined P.W. 17- Dr. Sunil Jawale who deposed that on 05.11.2013, he was on duty and on that day a skull of a female suspected Kanta Prabhakar Shetty wrapped in plastic bag which was found in nala was brought by PSI Ravindra Mohite. He further deposed that they started P.M. on the skull at 11:45 p.m. and found that it showed signs of adipocere formation which is a special change occurring when a body is

lying in moist condition. On external examination of injuries, he has further deposed as follows:

> *"4. On external examination of the injuries which are mentioned in Column No.17, the neck skin shows sharp cut boarders at the level of lower end of C6. Orophayranx, pharynx intact. Neck muscles shows sharp cut at the level of injury. Cartilages at the level of injury shows sharp cut boarders. Vertebra above the lower end of C6 are intact. Spinal cord shows sharp cut, changes of adipocere and evidence of infiltration of blood stains seen at the injured site. From all these findings, the injury was ante mortem in nature. There was no any injury on skull wall. Brain matter was liquefied. The samples which we preserved were scalp hairs, vertebra and tooth for DNA, another tooth for grouping, hair clip for analysis.*
>
> *5. Accordingly I have prepared the P.M. report. Today I have brought with me the original P.M. Report. It is in my handwriting. It bears my signature and signatures of Dr. H. Meshram and Dr. P.S. Dode. I am acquainted with their signatures. P.M. Report is taken on record and mark Exh.93.*
>
> *6. The cause of death is decapited head. After examination of all CA reports, the cause of death in our opinion is hemorrhage shock due to decapitation of head, unnatural. Now I am shown cause of death certificate. It is the same. It bears my signature and signature of three more Doctors. The contents therein are true and correct. It is at Exh.94.*
>
> *……8. On the basis of changes in the body, the death of the body might have occurred prior to 5-7 days of the postmortern. The abovesaid injury is possible by means sharp edged knife. Now I am shown the knife (Art.14). The abovesaid injury is possible with this knife."*
>
> *There is no dent caused to the evidence of this witness in the cross-examination.*
>
> *P.W. 20, Dr. Harshal Tubhe who has also conducted the Post Mortem has deposed as follows:*
>
> *"3. In para 17 I have recorded external injuries as :*
>
> *1) Complete decapitation at the level of C7-Cervical vertebra with clean cut margins of skin; soft tissues; muscle, blood vessels oesophagus, trachea, other cartilages with infiltration of blood at margins (neck circumferance 30 cm)*
>
> *2) Abrasion of 2cm x 1 cm, dark red over right lower abdomen just above right iliac crest.*
>
> *3) Abrasion of 2cm x 1 cm, dark red over left lower*

abdomen, 10 cm below and left lateral to umbilicus.

4) Chopped off injury over right iliac region separating leg from acetabular cavity; exposing under lying muscles; fat.

5) Chopped off injury over left iliac region separating leg from acetabular cavity exposing underlying muscle; fat.

6) Chopped off injuries over both shoulder region separation both upper limbs from shoulder exposing underlying muscle; fat.

....

6. On the same day at 8.35 p.m. we received two human legs along with inquest panchanama and ADR report by PSI Adsul of Trombay police station. I along with Dr. G.D. Niturkar conducted the postmortem examination between 8.40 p.m. to 9.40 p.m.

....

8. In para 17 I have recorded external injuries as:

1) Contusion of 2cm x 1 cm, muscle deep; over anterior thigh region of left leg, 10 cm below head of femur.

2) Both legs chopped off from iliac region exposing head of femur along along with underlying muscles, fat and soft tissues.

.....

11. In P.M. report Exh.101, Injury No.1 corresponding to injury mentioned in column No.22 is possible with the weapon like knife Art.14, now shown to me. All the injuries individually or collectively sufficient to cause the death."
There is no cross-examination of the said witness.

107. We find that the PM Reports conclusively establishes the following findings. Firstly, that the victim met with an unnatural death. The cause of death was ascertained as hemorrhage and shock due to decapitation of head. Secondly, the nature of injuries, namely decapitation at C7 vertebrae and dismemberment of the body of the deceased into several parts is consistent with the premise that the injuries were caused by a deliberate and intentional human intervention. Thirdly, the injuries and dismemberment were caused by a sharp edged weapon. On these counts, this Court is of the

opinion that the Post- Mortem evidence stands proved in establishing the cause of the death of the deceased.

108. We now proceed to deal with the findings of the Chemical Analyser (CA) Reports of the articles seized from the spot of incident, Room No. 224. Pursuant to the Appellant leading the police to Room No. 224, several blood stained articles were seized. However, upon a careful perusal of the CA reports, this Court finds that, while the blood stains found on the articles have been found to be of human origin, the said reports are inconclusive insofar as the identification of the blood samples are concerned. This Court has, in the preceding parts, held that the recovery of articles from Room No. 224 to be proper within the meaning of Section 27 of the Evidence Act. On the question of the evidentiary value of such inconclusive bloodstain evidence, this Court placed reliance on ***Madhav*** (supra) that the inconclusive nature of the serological reports does not enure to the benefit of the Appellant. However, for the reasons stated and recorded herein above, this Court is unable to attach substantial incriminating value to the Chemical Analyser's Reports qua the Appellant. Therefore, even though the recovery stands proved pursuant to the disclosure statement by the accused, it does not constitute an independent link in the chain of circumstances, particularly when the recoveries were effected from a room not within the exclusive use of the Appellant and the same fails to unerringly attribute the guilt of the murder of the deceased to the Appellant.

109. Consequently, while the medical and FSL reports conclusively prove

the fact of homicidal death and the identity of the victim, it does not by itself and by its very nature fix the authorship of the crime upon the Appellant. The question, whether the Appellant is the person who committed the murder of the deceased must be determined on the basis of the other links in the chain of circumstantial evidence, to which this Court has already iterated and has come to a conclusion that the evidence on record does not prove beyond reasonable doubt that the Appellant is the person who can be held liable for the same.

110. Therefore, this Court finds that the medical and FSL evidence does not unerringly point towards the guilt of the Appellant, and it does not constitute a link in the chain of circumstances for the purposes of the charge under Section 302 of the IPC.

111. Apart from the above circumstances, it was also argued on behalf of the prosecution by the Ld. APP, that the Appellant has not given any plausible explanation in his statement under Section 313 of the Cr.P.C and has also not led any defence evidence or examined himself on oath to disprove the case of the prosecution. No doubt, it is the duty of the prosecution to prove the case against the accused beyond reasonable doubt and the accused has the right to remain silent. However, law provides the accused an opportunity to explain the circumstances which appear against him in the evidence, but if the accused remains silent or takes the defence of denial, the court may, if it deems appropriate, draw such inferences against the accused, as is permissible under law. In support of the contention, the

prosecution has relied upon the following two judgments.

112. In the case of ***Phula Singh v/s The State of Himachal Pradesh***[61], it has been observed thus:

> "*8. The accused has a duty to furnish an explanation in his statement under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide: Ramnaresh & Ors. v. State of Chhattisgarh, AIR 2012 SC 1357; Munish Mubar v. State of Haryana, AIR 2013 SC 912; and Raj Kumar Singh alias Raju @ Batya v. State of Rajasthan, AIR 2013 SC 3150).*"

113. A similar principle has also been laid in ***Munish Mubar v/s The State of Haryana***[62]. It states thus:

> *"25. Moreso, it was the duty of the appellant to furnish some explanation in his statement under Section 313 Cr.P.C., as under what circumstances his car had been parked at the Delhi Airport and it remained there for 3 hours on the date of occurrence. More so, the call records of his telephone make it evident that he was present in the vicinity of the place of occurrence and under what circumstances recovery of incriminating material had been made on his voluntary disclosure statement. Merely making a bald statement that he was innocent and recoveries had been planted and the call records were false and fabricated documents, is not enough as none of the said allegations made by the appellant could be established.*

114. These judgments make it clear that, the Appellant upon being given

61 AIR 2014 Supreme Court 1256

62 AIR 2013 Supreme Court 912

an opportunity to defend himself, if chooses to simply deny them or term them false without adducing any evidence to prove the same, is inadequate to write off the guilt of the accused. In the present case, the Appellant has blatantly denied the circumstances put forth by the prosecution and also stated that he was falsely implicated. Additionally, the Appellant chose not to examine any witness or lead any evidence on record to establish the same. The statement given by the accused under 313 Cr.P.C., fails to adequately deny the allegations put forth by the prosecution. It also does not bring to light any alternative hypothesis to establish the case of the defence.

115. At this stage, it is pertinent to take note of certain answers furnished by the Appellant in his examination under Section 313 Cr.P.C. The Appellant has chosen to deny the circumstances in totality, even those, which this Court has upon appreciation of the evidence on record, found to have been conclusively established. Some of the relevant questions and answers are reproduced herein below to elucidate the same:

> *"Q.3: It has further come in their evidence that at about 9.40 to 9.45 p.m. you came there in one auto rickshaw, got down with a black coloured polythene bag on your back. What have you to say ?*
>
> *Ans: It is false.*
>
> *Q.12: It has further come in the evidence of P.W. 2 and P.W. 6 that you then went near the staircase of talao and with the help of a small boat, threw the said black coloured polythene bag in the water of said talao. What have you to say ?*
>
> *Ans: It is false.*
>
> *Q. 48: It has further in his evidence that you were found in possession of two mobile phones, one black coloured*

> *Samsung mobile alongwith SIM card and other white Micromax mobile alongwith SIM card. What have you to say ?*
> *Ans: It is false."*

116. The aforesaid answers demonstrate that the Appellant has offered a bare and blanket denial even with respect to circumstances which stand proved by cogent and reliable evidence. While such denial cannot by itself establish guilt, it is a relevant circumstance which the Court is entitled to take into consideration while appreciating the evidence on record. Therefore, in view of the above-mentioned judgments, this Court deems it appropriate to draw an adverse inference against the Appellant as far as the disposal of the body of the deceased is concerned, after a close scrutiny of all the evidence on record.

117. Lastly, it will also be pertinent to mention here, that in a case of circumstantial evidence, such as this one, even if the motive is attributed to the Appellant and is accepted by the Court, it cannot stand as the sole ground for conviction, given that the entire chain of circumstances is otherwise held to be incomplete. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in ***Subhash Aggarwal v/s The State NCT of Delhi***[63]***:***

> *"19. Reliance was placed on State of U.P. v. Kishanpal6 wherein it was held that motive is something which is primarily known to the accused themselves and it is not possible for the prosecution to always explain what prompted or excited them to commit a particular crime. Motive is a very important link in the circumstances*

63 2025 SCCOnLine SC 808

> *which could prove the guilt of the accused, and it loses its importance only when there is direct evidence of eyewitnesses, which is convincing and conclusive as to the guilt of the accused. However, it was also noticed that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances is not complete.*
>
> *20. The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence."*

118. Further, the Ld. Counsel for the Appellant has also relied on ***Murli v/s The State of Rajasthan***[64]***, Madaiah v/s State by Yelandur Police***[65] ***and Rohidas Manik Kasrale v/s The State of Maharashtra***[66]. Through these judgments, it has been contended that, in case of murder, if a confession is made by the accused to the police, then such an explanation regarding the motive or provocation must be taken into consideration for reduction of sentence or establish self-defense. We do not find these judgments to be applicable in the facts of the present case.

119. Having considered the entire evidence on record and overall conspectus of the matter, we are of the opinion that the present case rests

64 1995 SUPP (1) SCC 39

65 1991 SCC OnLine Kar 572

66 2011 SCC OnLine Bom 1587

entirely on circumstantial evidence, since there are no eyewitnesses or direct evidence to the actual commission of the offence of murder. As noted above, it is well settled that in such cases, the chain of circumstances must be complete and cogent and must unerringly point towards the guilt of the accused and exclude every other reasonable hypothesis. Additionally, as affirmed by the Hon'ble Apex Court in ***Anand Jakkappa Pujari*** (supra), the prosecution has to prove its case beyond reasonable doubt and a case that 'may be true' is not sufficient, rather it 'must be true' in order to exclude every other hypothesis. This Court is of the view that the prosecution has proved itself inadequate in meeting the said standards in the present case as far as the homicidal death of the deceased qua the Appellant is concerned.

120. The law places a stringent burden upon the prosecution in cases founded on circumstantial evidence. It is incumbent upon the prosecution to establish each incriminating circumstance beyond reasonable doubt and to connect such circumstances so as to form a complete, continuous and unbroken chain. Unless every link in the chain is satisfactorily proved, the Court cannot draw an inference of guilt. A missing or doubtful link creates a reasonable doubt in the prosecution case, rendering it unsafe to record a conviction and that failure to prove even a single circumstance cogently can cause a snap in the chain of circumstances. This principle has been laid down in ***Darshan Singh v/s The State of Punjab***[67]. The relevant paragraph is stated as below:

67[2024] 1 S.C.R. 248

> *"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 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. [See: Bhimsingh Vs. State of Uttarakhand, (2015) 4 SCC 281.]"*

121. The prosecution has failed to establish, beyond reasonable doubt, several material incriminating circumstances which were intended to constitute the essential links in the chain of circumstantial evidence against the Appellant for the offence of murder. The circumstances of the Appellant and the deceased being last seen together, the recovery of the weapon of offence, namely the knife, and the recovery of blood-stained articles from Room No. 224 have not been satisfactorily proved to point towards the guilt of the Appellant with regards to the commission of murder. Significantly, although blood stains were detected on the articles recovered from the said room, the same does not constitute an incriminating circumstance against the Appellant, in the peculiar facts of this case. Therefore, these circumstances do not lend assurance to the prosecution case. This Court is consequently unable to hold that the evidence on record forms a complete and unbroken chain, leading only to the hypothesis of the Appellant's guilt. On the contrary, the Call Detail Record (CDR) evidence of the deceased, produced by the prosecution itself discloses the presence of an unidentified

third person at the relevant location during the material time on the evening of the incident. The possibility of intervention by a third person, therefore, remains a plausible alternative hypothesis which cannot be excluded. In a case resting solely on circumstantial evidence, such a lacuna assumes considerable significance.

122. On a cumulative consideration of the aforementioned circumstances, the case of the prosecution raises a grave suspicion on the Appellant, with respect to the murder of the deceased. However, it has not been shown to be 'must be true' to the exclusion of every other reasonable hypothesis. The chain of circumstances is incomplete and the link is snapped and hence the benefit of doubt must accordingly enure to the Appellant. It is a settled principle of criminal jurisprudence that suspicion, however grave, cannot take the place of legal proof. In the absence of unimpeachable evidence establishing the involvement of the accused in the commission of murder, this Court deems it fit to extend the benefit of doubt to the accused insofar as the offence punishable under Section 302 of the IPC is concerned. Accordingly, the Appellant stands acquitted of the charge under Section 302 of the IPC.

123. However, the evidence on record unequivocally establishes that subsequent to the occurrence of the offence of murder, the Appellant undertook acts to conceal and dispose material evidence connected with the commission of the offence and the prosecution has been able to prove and establish each and every link so far as the destruction of the evidence by the

Appellant is concerned.

124. In such peculiar circumstances, it is beneficial to take note of the observations pertaining to Section 201 of the IPC, as stated by this Hon'ble Court in ***Satish Purshottam Girhe v/s The State of Maharashtra And Others***[68]:

> *"18. The Hon'ble Apex Court further observes that having regard to the language used, mere suspicion would not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown. The fore-most necessity being that the accused must have the knowledge or have reason to believe that such an offence has been committed. This observation finds support in the earlier decision* ***Palvinder Kaur v/s State of Punjab (AIR 1952 SC 354)*** *and in* ***Roshan Lal v/s State of Punjab (AIR 1965 SC 1413)*** *wherein the observation are as follows:*
>
> *"(12) Section 201 is somewhat clumsily drafted, but we think that the expression knowing or having reason to believe in the first paragraph and the expression 'knows or believes' in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe than an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under S.201. If it be supposed that the word 'believes' was used in a sense different from the expression 'having reason to believe', it would be necessary for the purpose of inflicting punishment upon the accused to prove that he 'believes' in addition to 'having reason to believe'. We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved."*

125. Before adverting to Section 201 of IPC, it will be advantageous to reproduce Section 201 for quick reference

Section 201. Causing disappearance of evidence of offence,

68 Cr. Revision Application No. 154 of 2024

> ***or giving false information, to screen offender***
>
> *Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,*
>
> *if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*
> *if punishable with imprisonment for life.—and if the offence is punishable with [1][imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*
> *if punishable with less than ten years imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.*

126. On the charge of Section 201 IPC, it will also be advantageous to take into consideration the essential requirements to bring home the offence under the said charge. This Court finds it necessary to refer to the Hon'ble Supreme Court's verdict in ***Palvinder Kaur v/s The State of Punjab***[69]:

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

69 1952 AIR 354

127. In the present case, for bringing home a charge under Section 201 of the Indian Penal Code, the prosecution is required to establish: (i) that an offence has in fact been committed; and (ii) that the accused knew or had reason to believe that such offence had been committed, and thereafter caused the disappearance of evidence or furnished false information with the intention of screening the offender from legal punishment. Upon the appreciation of the evidence on record, this Court is satisfied that the prosecution has conclusively established that the death of the deceased was homicidal in nature. The medical and other attendant circumstances leave no manner of doubt that an offence of murder had been committed. The testimony of the eye-witnesses i.e. P.W. 2 and P.W. 6, further establishes that the Appellant was seen dumping the torso of the deceased into Charai talao. Such conduct is not a mere neutral circumstance; but a highly incriminating circumstance demonstrating that the Appellant possessed knowledge and had reason to believe that a serious offence had been committed. The circumstances proved on record reasonably lead to the inference that the Appellant possessed knowledge regarding the commission of the homicidal act and acted in a manner intended to conceal the offence and screen the person responsible for the murder from the consequences of law. Accordingly, the evidence on record, is sufficient to prove beyond reasonable doubt that the Appellant, having knowledge or reason to believe that the offence of murder had been committed, participated in the concealment of the offence by disposing off the torso with the intention of

screening the offender, thereby attracting the provisions of Section 201 IPC.

128. The question then arises, whether the conviction under Section 201 of the IPC can be sustained even when a conviction under Section 302 of the IPC has not been recorded. The reason why this present case gains further peculiarity is because there is only one accused (the Appellant) who is charged for offences under both, Section 302 and Section 201 of the IPC, in relation to the said offence. It is under consideration before us, the question, whether the Appellant can be selectively convicted under Section 201 of the IPC while disbelieving the circumstantial evidence as led by the prosecution, thereby acquitting him for the offence under Section 302 of the IPC.

129. In order to adequately answer this pertinent question, a profitable reference can be made to a judgment of the Apex Court in the case of ***State of Karnataka v/s Madesha and Ors.***[70]. The relevant para is stated as follows:

> *"9. It is to be noted that there can be no dispute that Sec.201 would have application even if the main offence is not established in view of what has been stated in V.L. Tresa's* (supra)*....."*

130. This position of law is clarified, as is observed in the above-mentioned judgment, that the lack of establishment of the primary offence cannot undermine the applicability of Section 201 of the IPC.

131. The issue of applicability of Section 201 of the IPC in the given circumstance that the main offence is not proved by the prosecution, has

---

70 (2007) 7 SCC 35

been elaborately addressed in ***Ram Saran Mahto v/s The State of Bihar***[71].

The relevant portions are as follows:

> *"It is not necessary that the offender himself should have been found guilty of the main offence for the purpose of convicting him of offence under Section 201. Nor is it absolutely necessary that somebody else should have been found guilty of the main offence. Nonetheless, it is imperative that prosecution should have established two premises. First is that an offence has been committed and second is that the accused knew about it or he had reasons to believe the commission of that offence. Then and then alone the prosecution can succeed, provided the remaining postulates of the offence are also established."*
>
> *.....*
>
> *"It is well to remind that the Bench gave a note of caution that the court should safeguard itself against the danger of basing its conclusion on suspicions however strong they may be. In Kalawati and Anr. v. The State of Himachal Pradesh, [1953] SCR 546 a Constitution Bench of this Court has, no doubt, convicted an accused under Section 201 IPC even though he was acquitted of the offence under Section 302. But the said course was adopted by this Court after entering the finding that another accused had committed the murder and the appellant destroyed the evidence of it with full knowledge thereof. In a later decision in Nathu and Anr. v. State of Uttar Pradesh, [1979] 3 SCC 574 this Court has repeated the caution in the following words:*
>
> *"Before a conviction under Section 201 can be recorded, it must be shown to the satisfaction of the court that the accused knew or had reason to believe that an offence had been committed and having got this knowledge, tried to screen the offender by disposing of the dead body."*
>
> *In this context a reference to a more recent decision of this Court would be apposite. The following observations of the Bench in Hanuman and Ors. v. State of Rajasthan, [l 994] Supple. 2 SCC 39 are relevant:*
>
> *"The mere fact that the deceased allegedly died an unnatural death would not be sufficient to bring home a charge under Section 201 IPC, unless the prosecution was further able to establish that the accused persons knew or had reason to believe that an offence had been committed, causing the evidence of the commission of the offence to disappear."*

132. This Court draws significant parallels between the case of ***V.L. Tresa***

71 SCR [1999] SUPP 2

v/s The State of Kerala[72] and the present case, both on facts as well as the points of law under consideration. A perusal of the relevant paragraph reproduced here, makes it clear:

> *"18. In the contextual facts, the situation however, is slightly different since the wife alone could explain the death of the husband in the manner as noted above. The crowbar was not available for few days and it is a subsequent discovery and on a further search, the crowbar contained human blood which has been proved to be that of the deceased. Both the Sessions Judge and the High Court have categorically disbelieved the evidence of the wife and it is in this regard, it cannot but be said that the falsity of information given by the accused cannot but warrant a punishment under 201 since information regarding the incident was available only with the accused and there was a deliberate attempt to screen the offender from legal punishment by way of providing false information regarding the offence."*

133. The facts of the present case bear a resemblance to the facts which fell for consideration in *V.L. Tresa v/s State of Kerala (supra)*. In the above mentioned case, it was established by the prosecution that the death of the deceased was homicidal in nature. However, the evidence on record fell short of proving, beyond reasonable doubt, that it was the accused, who had committed the act of causing the fatal injury. Consequently, the chain of circumstances was held insufficient to sustain a conviction for the offence punishable under Section 302 of the IPC. Nevertheless, if the fatal injury was inflicted by somebody else, not being the accused, the accused was liable to possess special knowledge of the same as she was the only person in the house except their infant child who was asleep at the time of incident. It was also taken into consideration that the accused, told others, that the deceased

72(2001) 3 SCC 549

was trying to commit suicide. The weapon (crowbar) was not found for several days and was later recovered with human blood which was later proved to be that of the deceased. Therefore, the court held that these circumstances warranted a punishment under Section 201 of the IPC as the information was only available with the accused and there was a deliberate attempt to screen the offender from legal punishment by providing false information about the offence. Accordingly, the accused was held guilty under Section 201 of the IPC. The factual matrix of the present case demonstrates that the accused possessed knowledge of the death of the deceased and the circumstances in which the deceased met with a homicidal death. The prosecution has conclusively established, and this Court has already held, that the accused was the very person seen carrying and then disposing of the black-coloured plastic bag containing the torso of the deceased. Once the identity of the accused as the person disposing of the deceased's torso stands established, it is wholly untenable for him to plead ignorance as to the contents of the bag. In the ordinary course of human conduct, it can safely be inferred that a person who knowingly carries and disposes of a bag containing the dismembered torso of a deceased individual is fully aware of its contents and the incriminating nature thereof. The conduct of the accused, viewed in conjunction with the evidence on record, further reveals that he deliberately acted in a calculated manner to conceal material evidence relating to the commission of the offence and thereby attempted to screen the person responsible for the murder from legal

punishment. Such conduct squarely attracts the ingredients of Section 201 of the Indian Penal Code. The Appellant upon being asked by P.W. 2 and P.W. 6 about the contents of the bag, persistently claimed it to be *havan* articles that need to be put into the Charai Talao, which was obviously for causing destruction of the evidence. Therefore, his conduct was incriminating as he continued to provide false information regarding the offence with the intention to screen the offender and for destruction of evidence.

134. However, upon the analysis of the evidence in its entirety, it cannot be ascertained, for sure, if the accused was the person who caused the death of the deceased. The ratio laid down by the above mentioned case squarely applies to the present case. The Supreme Court categorically held that even where the prosecution fails to establish that the accused himself committed the murder, the deliberate furnishing of false information concerning an offence, coupled with conduct intended to shield the offender from legal punishment, would attract the ingredients of Section 201 of the IPC. The gravamen of the offence under Section 201 IPC, is not the identity of the offender but the knowledge of the accused or reason to believe that an offence has been committed and his intentional act of causing the disappearance of evidence or giving false information with the object of screening the offender.

135. Similarly, in the present case, while this Court is not persuaded that the prosecution has proved beyond reasonable doubt that the accused-

appellant was the perpetrator of the homicidal death, so as to uphold conviction under Section 302 of the IPC, however the evidence on record unequivocally establishes that the accused was fully aware and had reason to believe, as to who had caused the death of the deceased. Instead of disclosing the true facts, the accused consciously furnished false information and adopted such a conduct intended to conceal the offence and protect the offender from the consequences of law. This conduct is sufficient to attract the guilt under Section 201 of the IPC.

136. Therefore, we conclude by stating that the acquittal under Section 302 of the IPC does not *ipso facto* result in acquittal under Section 201 of the IPC. Once it is proved that an offence was committed and the accused knowingly caused disappearance of evidence with the intention of screening the offender, conviction under Section 201 of the IPC can be sustained irrespective of the failure to prove the charge under Section 302 of the IPC. Merely because the prosecution has failed to prove beyond reasonable doubt that the Appellant himself committed the murder, does not automatically exonerate him from criminal liability under Section 201 of the IPC.

137. Thus, taking into consideration the entire evidence on record, we are of the considered opinion that the prosecution has failed to prove the offence under Section 302 of the IPC. However, we hold that the prosecution has proved the offence under Section 201 of the IPC and accordingly we confirm the conviction of the Appellant under Section 201 of the IPC.

138. The conviction under Section 201 of the IPC and the sentence for a

period of two years is upheld as awarded by the Trial Court, in the absence of any cross appeal by the State.

139. Accordingly, the Appeal is partly allowed.

140. The Ld. Counsel for the Appellant has informed this Court that the Appellant has already undergone and served the sentence for a period of almost 13 years and therefore the Appellant, having undergone the punishment for the offence under section 201 of the IPC, for which he is convicted, shall be released forthwith unless he is required in any other case.

141. The Appellant shall within a period of one week from the date of the order execute P R Bond in the sum of Rs. 25000/- under section 481 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (corresponding to Section 437A of the Cr.PC) for his appearance, in the event an appeal is preferred against acquittal for the offence under section 302 of the Indian Penal Code.

142. Thus, the Appeal is disposed of in above terms and all other pending applications also stand disposed of.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**