

(2025) 07 JH CK 1220

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 800 Of 2014

Bharti Singh wife of Rahul Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 09-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 294, 294(3), 313, 374(2)

Indian Penal Code, 1860 — Section 34, 120B, 302, 394, 411, 449

Evidence Act, 1872 — Section 8, 25, 26, 27, 106

Citation : (2025) 07 JH CK 1220

Hon'ble Judges : Sujit Narayan Prasad, J;Rajesh Kumar, J

Bench : Division Bench

Advocate : Anup Kumar, Atma Ram Chaudhary, Vishnu Prabhakar Pathak, Vineet Kumar Vashistha, Indrajit Sinha, Akhouri Awinash Kumar, Ashwini Priya

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

1. The instant appeal has been filed under Sections 374(2) of the Criminal Procedure Code, 1973 against the judgment of conviction as well as order of sentence dated 15.07.2014, passed by the learned Sessions Judge Bokaro in S.T. No. 422 of 2013 arising out of Chandrapura P.S. Case No.87 of 2013 registered under Section 394,302/34 of the IPC whereby and whereunder, the appellants herein have been convicted under Section 302/34, 394/34, 449/34 and 411/34 of the IPC and have been directed to undergo Rigorous Imprisonment for life and fine of Rs. 10,000/- each for the offence committed under Section 302/34 of the IPC, further, all the appellants have been directed to undergo Rigorous Imprisonment for ten years and fine of Rs. 5000/- each for the offence committed under Section 394/34 of the IPC. Further, the appellants have also been directed to undergo Rigorous Imprisonment for five years and fine of Rs. 5000/- each for the offence committed under Section 449/34 of the IPC and they have also been directed to undergo Rigorous Imprisonment for three years and

fine of Rs. 2000/-each for the offence committed under Section 411/34 of the IPC.

Factual Matrix

2. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence, deems it fit and proper to refer the background of institution of prosecution case. The prosecution story in brief as per the written report based upon which the First Information Report had been instituted reads hereunder as:-

According to the written statement of the informant Akil Ahmad S.I of police, the case of prosecution is that on 04.09.2013 at about 01.00 p.m. he received information that in the Chandrapura Colony one husband and wife have been killed. Thereafter, he along with other police personnel came there and he came to know that in Qr. No. MC-2E Ajay Kumar Singh and his wife has been killed and the dead body was lying there. He saw the dead bodies and the blood inside the house. The dead body of the wife of Ajay Kumar Singh was lying in the Kitchen and in the room the dead body of Ajay Kumar Singh was found. The Almirah of the room was opened. He came to know that in the house of the deceased one Bharti Singh was working as a maid-servant and her mother-in-law Seema Singh was also working as a maid-servant. They were residing along with two sons Rahul Singh and Amit Singh in the servant quarter. It was told by the neighbors of the deceased that when they came inside the house, they saw the dead body. Thereafter, they informed to the police. It was found by the informant that the deceased were killed by sharp cutting weapons and near the dead body bangles and one silver payal were found. Thereafter, he prepared the inquest report and seized the articles. He also searched the house of Seema Singh but they were not found and inside the house of Seema Singh he found the blood stain near the door and also blood on the sink. It was told by near-by persons that they have seen going all the family members of Seema Singh out of the gate. Thereafter, the case was instituted and the appellants herein has been convicted vide judgment dated 15.07.2014.

On the basis of the written statement of the informant (PW.24), FIR being Chandrapura P.S. Case No.87 of 2013 corresponding to G.R.Case No.1017/2013 was registered under Section 394, 302/34 of the Indian Penal Code and after due investigation chargesheet was submitted against the appellants.

After cognizance of the offence, the case was committed to the Court of Sessions. After commitment Charge under Sections u/s 302/34,394/34,449/34, 411/34 and 120B of the I.P.C. were framed against the appellants/accused to which the accused pleaded not guilty and claimed to be tried.

The prosecution has altogether examined 26 prosecution witnesses namely, PW 1 Sarita Singh, P.W 2 Minakshi Das, PW 3 Kiran Singh, PW 4 Nilesh Kumar Das, P.W 5 Anand Mohan Prasad, PW 6 Rinki Prasad, P.W 7 Manju Gorain, PW 8 Priyanka Singh, PW 9 Dilip Kr. Singh, P.W 10 Anita Prasad, PW 11 Lipika Nagalia,

PW 12 Vijay Yadav, PW 13 Kali Kisku, PW 14 Dwarika Pd. Nagalia, PW 15 Dr. S. Hembrum, PW 16 Nilli Ujjain, PW 17 Sathakshi Ujjain, PW 18 Ranjit Singh, PW 19 Subhash Singh, PW 20 Rang Bahadur Singh, PW 21 Kamta Prasad, PW 22 Dr. Bikash Kumar, PW 23 A.S.I. Ramakant Rai, PW 24 Akil Ahmad, PW 25 Ramjee Prasad and PW 26 Prabhat Kumar.

The trial Court, after recording the evidence of witnesses, examination-in-chief and cross-examination, recorded the statement of the accused persons, found the charges levelled against the appellants proved beyond all reasonable doubts.

Accordingly, the appellants had been found guilty and convicted under Section 302/34, 394/34, 449/34 and 411/34 and have been sentenced accordingly.

The aforesaid order of conviction and sentence is subject matter of instant appeal.

Submissions advanced by the learned counsel appearing on behalf of the appellants:

3. Learned counsel for the appellants has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court cannot be sustained in the eyes of law.

4. The following grounds have been taken by the learned counsel for the appellants in assailing the impugned judgment of conviction: -

(i) It is a case where the judgment of conviction is not based upon the testimony of eye-witness, since there is no eye-witness to the occurrence.

(ii) The conviction is based upon the circumstantial evidence but the chain of circumstances is not complete and further not conclusive pointing towards the guilt of the present appellants.

(iii) It has been contended that the expert who conducted the DNA examination of the alleged recovered incriminating articles were not examined as witness and said DNA report was merely exhibited in the evidence by the prosecution, as such non examination of said expert as witness cast doubt upon the prosecution story and such type of report is not admissible as evidence. In the aforesaid context the learned counsel has put his reliance on the judgment rendered by the Hon'ble Apex Court in the case of Karandeep Sharma @ Razia @ Raju Vs. state of Uttarakhand 2025 SCC OnLine SC 773.

(iv) The learned trial court has based its finding against the appellants on the confessional of the appellant No. 1 and 2 but such confession cannot be basis of conviction of the appellant in view of the bar contained in Section 25 of the Indian Evidence Act.

(v) If the entire circumstances will be taken into consideration, then it would be evident that the prosecution has mainly based upon the suspicion on the ground that the appellant No. 1 was working as a maid servant and she immediately

after the

occurrence has fled away from the place of occurrence along with her husband and mother-in-law and son, and the said conduct of the appellants has been taken into consideration by the learned trial court as one of the ground of conviction but act of absconding from the said place cannot be a ground for conviction in absence of any cogent evidence. In order to buttress this limb of argument the learned counsel put his reliance upon the judgment rendered by the Hon'ble Apex Court in the case of *Matru Vs. State of U.P.* (1971) 2 SCC 75.

(vi) The conviction is also based upon the DNA profile test said to be matched with the blood found on the knife and the Dupatta; said to be of the appellant No. 1, and the T-shirt; said to be of the appellant No. 2, but such evidence cannot be implied against the appellant No. 1 and 2 since these will not come under the fold of recovery said to applying Section 27 of the Evidence Act, reason being that the knife or the T-shirt or the Dupatta can also be purchased from the open market and throw away at the place of occurrence.

(vii) The conviction is based upon the recovery of the jewelry, ATM and the looted money from the house of the deceased found to be recovered from the conscious possession of the appellants, but the said looted articles since has not been put to TIP and as such, the same cannot be connected with the commission of crime showing the culpability said to be committed by the appellants.

(viii) The learned counsel has submitted that the principle which is to be made applicable in a case of circumstantial evidence is completion of chain in all sense has laid down in the case of *Sharad Birdhichand Vs. State of Maharashtra* (1984) 4 SCC 116 has not been followed.

(ix) The learned counsel, in particular, has assailed the conviction of the appellant No. 3, who has been convicted with the aid of Section 34 but no attributability has been substantiated by the prosecution so far as the commission of crime said to be committed by the appellant No. 3.

5. The learned counsel for the appellants, based upon the aforesaid ground, has submitted that the trial court has not taken in to consideration of the aforesaid facts as such impugned judgment requires interference, hence not sustainable in the eyes of law.

Submissions of the learned counsel for the respondent-State:

6. Per contra, Mr. Vineet Kumar, learned Public Prosecutor appearing for the State assisted by Mr. Indrajit Sinha, learned counsel appearing for the deceased's father, by defending the impugned judgment, has submitted by taking the following grounds:

(i) It is a case where the prosecution has fully been able to prove the case said to be of beyond all reasonable doubt.

(ii) The appellant No. 1 was working as maid servant in the house of the

deceased, she in the morning, when came to perform her duty, at that time the commission of crime of murder of the deceased, namely, Bharti Singh, first, was committed. The husband of Bharti Singh, namely, Ajay Singh, has gone by accompanying their two daughters who were going to school to leave them in the school bus and when he has rushed to his house, then he has also been killed.

(iii) It has been submitted that the knife from which the murder was committed, the T-shirt of appellant No. 2 and the Dupatta of Appellant No. 1 have been found near-by bush of the house on disclosure made by the appellant No. 1 and 2 in their confessional statement.

(iv) The knife along with the blood-stains, the Dupatta and the T-shirt with the blood-stains have been recovered from the place which has been disclosed by the appellant Nos. 1 and 2 in the confessional statement. The blood was also found at the door of the outhouse where the appellant No. 1 and 2 were residing.

(v) The blood either found in the knife or Dupatta or T-shirt and the blood found at the door of the outhouse where the appellants resided have been sent to the FSL, for DNA Profile Test, where after following all the procedures, it has been matched with the blood found in the kitchen and the room where the dead body of the deceased had been found.

(vi) The argument has been advanced that by dint of Section 27 of the Evidence Act the aforesaid evidence will be relevant and admissible herein since the knife; Dupatta and the T-shirt have been recovered on the disclosure made by the appellant Nos. 1 and 2 in independent confessional statement recorded while they were in the police custody.

(vii) It has been submitted by referring to the testimony of the Investigating Officer, who has been examined as PW-25 that the appellant No. 1 was maid servant but when the Investigation Officer has reached to the place of occurrence, then it was found that the bucket was full with water and the instrument from which the floor of the house was to be washed was intact, but there is no plausible explanation have been put by the appellants that they have gone to duty, then why leaving the duty in the mid-way and left the house.

(viii) The argument has been advanced, in response to the argument that unless the expert who has furnished the report of DNA profile will be examined in the Court of law, then only DNA Profile Test will have the admissible value but it has been submitted that since the entire procedure/method in conducting the DNA Profile Test had been followed and the DNA Profile Test was performed by the Director In-charge and as such as per the stipulation made under Section 294 of Cr.P.C, there is no requirement of calling the expert for examination for the purpose of ascertaining the DNA Profile Test, unless the DNA Profile Test would have challenged, then only the provision as contained under Section 294(3) would have been weighed but the DNA Profile Test had never been questioned by the appellants. In order to fortify this limb of argument the reliance, has been placed on the judgment rendered by the Hon'ble Apex Court in the case of

(ix) Learned Special Public Prosecutor, particularly, has raised the ground that appellants has not explained the circumstances properly while recording their statements in Section 313 Cr.P.C rather new case is tried to be made out as the fact and the present case wherein it has been stated by the appellant No. 2- Rahul Singh that he has gone to his maternal grand-mother house, but no such defence has been taken by him either before the Investigating Officer or any of the witnesses by taking such plea of Alibi, hence, the said statement will not any aid to the appellant rather it will also be said to be a step in completing the chain in the case of circumstantial evidence. In this context of the aforesaid fact the learned Special P.P. has relied upon the Judgment rendered by the Hon'ble Apex Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681.

7. Learned counsels appearing for the State assisted by Mr. Indrajit Sinha, based upon the aforesaid premise, has submitted that the impugned judgment does not suffer from any error, hence the instant appeals is fit to be dismissed.

Analysis:

8. We have heard learned counsel for the parties, perused the documents available on record as also the finding recorded by the trial court in the impugned judgment.

9. We have also gone through the testimonies of the witnesses as available in the LCR as also the exhibits.

10. This Court before considering the argument advanced on behalf of the parties is now proceeding to consider the deposition of witnesses, as per the testimony as recorded by learned trial Court.

11. The prosecution has examined altogether 26 witnesses. For ready reference, the evidences led on behalf of the prosecution are being referred as under:

12. PW-1 Sarita Singh had stated in her evidence that on 04.09.2013 she was in her quarter. At about 12 hours Smt. Das came and asked about Mrs. Vandana. She said that she is not her in house. It was told to her that the gate of Mrs. Vandana is locked from outside. Thereafter, she made a call by land line to Vandana but she did not receive any reply. Further this witness has said that then she went to the house of Vandana. From outside the door was locked then she raised alarm but no one came outside the house.

13. Further this witness had stated that at that time Smt. Das and Smt. Lipika Nagalia came with her and they entered into the house of Vandana Singh(deceased). Inside the house she saw the Almirah was opened and things were lying there. They saw the mark of sign of hand and foot with blood. Further she has said that she saw one bucket for the purpose of cleaning of floor. Later on, they returned and told in this regard to her husband. Again, other persons

went to the house of Vandana Singh. The door of the bed room was opened and the dead body of Ajay Singh was found lying there. In the kitchen room the dead body of Vandana Singh was found lying there.

14. This witness had further stated that thereafter, she returned to her quarter and went to the outhouse to search the maid-servant who was working in the house of Vandana but the outhouse was locked. This witness has said that Vandana and Ajay have two minor daughters aged about 9 years and 6 years and at that time they were in the school. The reason behind the occurrence as said by this witness to be looting of the articles by the accused persons.

15. In cross-examination, this witness had stated that in the ground floor of the outhouse Rahul Singh and Bharti Singh (appellants herein) were residing. She has not seen from which part of the dead body blood was coming out. At about 12.45 hours they have seen the dead body. She has seen the blood clot. Further she has stated in her cross-examination that she had not seen any one committing the said offence.

16. PW 2 Minakshi Das has said in her evidence that in the outhouse of Vandana Singh, Rahul Singh and his wife were residing. Seema Singh was working as a maid-servant in her house and the wife of Rahul Singh in the house of Vandana Singh. Further in the evidence of this witness it has come that on the date of occurrence in the morning she called Seema but she did not come, then she came and saw the outhouse to be locked. Later on, she received telephonic call from Mrs. Surender Prasad that whether Seema Singh has come to work or not then she came out from her house.

17. The wife of Surendra Prasad told that when Seema was working in her house at that time her daughter-in-law called her. This witness has said in her evidence that she went to the house of Vandana Singh where daughter-in-law of Seema Singh was working. She pressed the call bell but no reply was given to her. Thereafter, she inquired from other persons. Then to search Vandana Singh, she along with other persons entered into the house of Vandana and saw the blood stain. The other persons came there and all of them came inside the house where the dead body of Vandana and Ajay Kumar Singh were found.

18. In cross-examination, this witness has said that after the occurrence for the first time in the court she has seen Seema Singh and her daughter-in-law. Ajay Singh was residing in the said quarter since 2011 and he was working as an Executive Engineer in the D.V.C.

19. PW 3 Kiran Singh has said in her evidence that on the date of occurrence at about 12.30 hours she was in her house. At that time, she heard some sound and came to know that Vandana and Ajay have been killed in their quarter. In cross-examination, this witness has said that on notice she came to depose as a witness.

20. PW 4 Nilesh Kumar Das has said in his evidence that on the date of

occurrence when he was in his office, his wife made a telephonic call that the quarter of Ajay was locked and no sound was coming from inside. After this information, he came there and saw crowd near the quarter of Ajay Singh and thereafter, he saw the dead body of the wife of Ajay Singh in the kitchen and the dead body of Ajay Singh in the bed room.

21. Further he has said that Seema Singh was working as a maid-servant in his house and the daughter-in-law of Seema Singh was working as a maid-servant in the house of Ajay Singh. In cross-examination, this witness has said that on the date of occurrence she did not come to work in his house and he cannot say that on that day they have come to work in the house of Ajay Singh or not. It is not true that two days prior from the date of occurrence the accused persons had gone to their village.

22. PW 5 Anand Mohan Prasad has said in his evidence that on the date of occurrence he was on his duty. At about 12.30 hours his wife made a telephonic call to him and informed with regard to the occurrence. Then he came to the quarter of Ajay Singh and saw the dead body of Ajay Singh in the bed room and dead body of Vandana Singh in the Kitchen. He saw one bucket kept in the drawing room for the purpose of cleaning the floor. The maid-servant was not there. In cross-examination, this witness has said that he has got no information whether on that day the maid-servant has come to work in the house of Ajay Singh or not.

23. PW 6 Rinki Prasad has said in her evidence that on the date of occurrence she was in her house, then she heard hulla and came to know that Ajay Singh and his wife Vandana Singh has been killed. She has got suspicion that this act has been done by maid-servant who was working in the house of Ajay Singh. In cross-examination, this witness has said that she has also made her suspicion on the maidservant before the police.

24. PW 7 Manju Gorain has been declared hostile by the prosecution.

25. PW 8 Priyanka Singh has said in her evidence that on the date of occurrence Seema made a call to him that Vandana is not picking the phone and quarter of the door is locked from outside. Then she also made a call to Vandana but no one received the call. Further this witness has said that Sarita Singh said that some blood is lying there. Then she informed to her husband and went to the house of Vandana where Almirah was opened and there was blood in the floor and also mark of foot.

26. The outhouse of Vandana was found locked, no one was there. She saw the dead body of Ajay and Vandana. The Almirah was opened and all the jewelry were removed which shows that it has been looted by some persons. In cross-examination, this witness has said that she told before the police that Almirah of the room was opened and the jewelry were removed. But she cannot say which type of jewelery was kept there.

27. PW 9 Dilip Kumar Singh has said in his evidence that on the date of occurrence at about 12.30 hours he was on duty. At that time, he came to know with regard to the occurrence, then he came there and saw so many persons gathered near the quarter of Ajay Singh and some persons were weeping. There he saw the dead body of Ajay Singh full of blood and on same condition of the dead body of Vandana Singh was also there. He came to know that maid-servant working in the house of Vandana has fled away from there. In cross-examination, this witness has said that who was working as a maid-servant in the house of Ajay Singh he cannot say.

28. PW 10 Anita Prasad has said in her evidence that Seema Singh was working as a maid-servant in her house and at the time of occurrence at about 8.30 a.m in the morning she came and has done domestic job in her house. Meanwhile her daughter-in-law came there and called her mother-in-law. Further she has said that the daughter-in-law of Seema Singh said that her finger has been cut while she was cutting vegetables.

29. This witness has said that she saw cut mark of the finger of daughter-in-law of Seema Singh. This witness has said that thereafter, Seema Singh and her daughter-in-law went from there. Further she has said in her evidence that at about 12.30 hours she heard hulla and came to know that Ajay Singh and Vandana Singh has been killed and no one is in servant out house.

30. In cross-examination, this witness has said that maid-servant came to her house for working at about 8.30 a.m in the morning. She remained there about half an hour. She has not done any treatment of the injury which was found in the finger of daughter-in-law of her maid-servant.

31. PW 11 is Lipika Nagalia has said in her evidence that on the date of occurrence she was taking tea in the quarter of Sarita Singh. At that time Minakshi Devi came there and inquired from her regarding Vandana Singh. She said that the door of Vandana Singh was locked from outside and on call no response has been made from inside. Thereafter, all of them went to the quarter of Vandana Singh but on call no response was given. She saw blood on the floor and further saw the Almirah of the bed room was opened. Thereafter, other persons were informed and all of them came there, her husband also came there. She saw that one bucket was kept there for the purpose of cleaning the floor.

32. In the outhouse the servants were not in the quarter and the room was locked. Further this witness has said that inside the house the dead body of the deceased Ajay Singh was found in the bed room and in the kitchen the dead body of Vandana Singh has been found. In cross-examination, this witness has said that two months prior to the occurrence she has seen the accused persons.

33. PW 12 Vijay Yadav has said in his evidence that on the date of occurrence he went to the quarter of Ajay Singh for giving milk at about 7.45 a.m. Earlier Ajay Singh or his wife has been taking milk from him but on that day the maid-

servant took milk from him. When he was returning then he saw that Ajay Singh plucking the flowers in the garden. In the evening, he came to know that Ajay Singh and Vandana Singh has died. In cross-examination, this witness has said that on notice he came to depose as a witness in this case.

34. PW 13 Kali Kisko has said in his evidence that he is security guard in the colony. On the date of occurrence in the morning at about 9.00 a.m, he saw the maid-servant of Ajay Singh was going with bag in her hand. They were two female and one male. This witness has identified the accused Rahul Singh, Bharti Singh and Seema Singh in the court. Further this witness has said that in an abnormal way they were going outside the gate. Later on, he heard with regard to the death of Ajay Singh and his wife.

35. In cross-examination, this witness has said that he told before the police that in the morning he saw two female and one male who were going in which one was the maidservant of Ajay Singh.

36. PW 14 Dwarika Prasad Nagelia has said in his evidence that on information that Ajay Singh has been killed he came there and saw the dead body of Ajay Singh and his wife. The outhouse of Ajay Singh was locked and the servants were fled away. In cross-examination, this witness has said that he knows the accused persons prior to the occurrence.

37. PW 15 Dr. S. Hembrum has said in his evidence that he had examined Rahul Singh on 05.09.2013 and found following injuries on his person

(i) Small superficial sharp cut injury on the dorsum of left hand 1 ½" x 1".

(ii) Small lacerated wound on left forearm 1 ½" x ½"

(iii) Sharp cut injury on right forearm ½" x ½" Age of injury about 12 hours old.

38. Further this witness has said that on the same day he examined Bharti Singh and found following injuries –

(i) Small abrasion left base of thumb.

(ii) Small abrasion on right side of nose. Age of injury about 12 hours old.

39. Further this witness has said that on the same day he examined Seema Singh and Amit Singh and he found no external injury and the person was mentally and physically fit. In cross-examination, this witness has said that the injury which was caused to Rahul Singh may be caused by assault and injury to Bharti is also caused by assault.

40. PW 16 Nilli Ujjain daughter of the deceased has identified the accused Bharti Singh and has said that she was working as a maid-servant in her house. In cross-examination, this witness has said that on the date of occurrence his father left her in school at about 7.30 a.m. It is not true that from two day prior to the occurrence the maid-servant was not coming to work in her house.

41. PW 17 Sathakshi Ujjain has identified the accused Bharti Singh and has said that she is working as a maid-servant in her house. On the date of occurrence at about 7.30 a.m she left the house and went to school along with her father. At that time her mother was cooking the food and the maid-servant was cleaning the house. In cross-examination, this witness has denied that on the date of occurrence maid-servant has not come to work in her house.

42. PW 18 Ranjeet Singh has said in his evidence that on the date of occurrence when he was in his office at that time he was informed by his wife that the door of the quarter of Ajay Singh was locked from outside and she has seen blood stain there. On this information, he came and along with other persons went inside the quarter of Ajay Singh and he found Almirah kept in the bed room was opened and the articles were lying on the floor.

43. Further this witness has said that in a room the dead body of Ajay Singh was found which was full of blood. At that place he found one bangle and one silver payal lying there. In the kitchen the dead body of Vandana Singh was found lying there, she was also full of blood. He has said that hitter was in burning condition and the bread which was on the pan was fully burnt. In the drawing room he saw the bucket water was there for the purpose of cleaning the room and the drawing room was also found to be clean. The outhouse of the servant quarter was found locked and no one was there and he came to know that at about 9 a.m all of them have left the servant quarter.

44. Further this witness has said that on 05.09.2013 in the evening police came along with Rahul and Bharti and on the identification of Bharti Singh her black colour Dupatta in which there was blood was recovered near the boundary wall of the outhouse of Ajay Singh near from the bush and on identification of Rahul from the bush one blue colour T-shirt in which there was blood stain and one iron chaku was recovered. Thereafter, seizure list was prepared in which he has mentioned his signature.

45. In cross-examination, this witness has said that on 05.09.2013 he did not go to his duty. Firstly, he has opened the door where the dead body of Ajay Singh was found lying. In the kitchen he saw that in the pan the bread was burnt. He did not remember that the confessional statement of accused persons was recorded in his presence or not, but in his presence on the identification of Bharti Singh and Rahul Singh the articles were recovered.

46. PW 19 Subhash Singh has said in his evidence that on information he came from his office and he along with other persons came to the quarter of Ajay Singh. Inside the house he saw the door of the bed room was bolted but he saw blood on the bolt and the door of the room and in that room the dead body of Ajay Singh was found and he saw mark of injury on the neck. There was blood on the floor. The dead body of Vandana Singh was found in the kitchen.

47. This witness has said that the inquest report was prepared by the police in which he has mentioned his signature. The articles kept in the room was seized

by the police in which he has mentioned his signature. Further this witness has said that police has also collected the blood from the servant quarter and prepared the seizure list in which he has mentioned his signature.

48. He has said that on 05.09.2013 on the identification of Rahul Singh and Bharti Singh the blood stain clothes as well chaku(knife) was recovered and he put his signature on the seizure list. In cross-examination, this witness has said that after reading the inquest report he has made his signature. Before police he has said that on the identification of Bharti Singh and Rahul Singh the articles were recovered.

49. PW 20 Rang Bahadur Singh has said in his evidence that he came to know that Ajay Singh and Vandana Singh have been killed then he along with other persons came to the quarter of Ajay Singh and found the dead body of Ajay Singh in a room and the dead body of Vandana Singh in the kitchen. The Almirah was opened and the articles were lying on the floor. He has said that guard said that he has seen two female and one male were going outside from the gate of the colony at 9.00 a.m in the morning. In cross-examination, this witness has said that he has seen the dead body. He came to the colony at 12.30 hours.

50. PW 21 Kamta Prasad has said in his evidence that on a telephonic call he came to the colony and along with other persons he came near the quarter of Ajay Singh and inside of the quarter the dead body of Ajay Singh and Vandana Singh was found. The inquest report was prepared in which he has mentioned his signature. From the place of occurrence blood samples were collected by the police and some articles were also seized. In the seizure list he has mentioned his signature. He came to know that maid-servant was working in the house of Ajay Singh has fled away. In cross-examination, this witness has said that he did not know that from how many time the maid-servant of Ajay Singh was working in his house.

51. PW 22 is Dr. Bikash Kumar has said in his evidence that he conducted autopsy on the dead body of Ajay Kumar Singh aged about 35 years and found some injuries: -

On general examination it was found rigor mortis present on all four limbs, eyes closed, mouth partially open, tongue inside.

External injuries –

- (i) Incised wound 1" x 1/2" x muscle deep, mid on the frontal region of the head.
- (ii) Incised wound 1/2" x 1/4" x skin deep left side on the chin.
- (iii) Incised wound 1" x 1/2" x 1" deep right side of the neck.
- (iv) Incised wound 1" x 1/4" x 1 1/4" deep left side of the neck.
- (v) Incised wound 1 1/2" x 1/2" x 1 1/2" deep mid of the frontal region of the neck.

(vi) Incised wound 1" x 1/4" x muscle deep left shoulder joints.

(vii) Incised wound 1 1/2" x 1/2" x muscle deep back side of the right chest upper zone.

On dissection skull intact, brain -NAD, neck, hyoid bone, trachea, larynx, thyroid cartilage, esophagus clean sharp cut, well defined everted edge size in 1 1/2" deep and blood and blood clots found edge and adjacent tissue. Heart both chamber empty on blood. Liver, lung, kidney-mild congested. Spleen congested, stomach contains semi digestive food, bladder empty.

52. Further this witness has said that cause of death was hemorrhage and shock due to above mentioned injuries.

53. He has said that on the same day he conducted autopsy on the dead body of Vandana Singh aged about 32 years and has found following injuries - External injuries -

(i) Incised wound 1 1/2" x 1/2" x 1 1/4" deep front of the neck.

(ii) Incised wound 1" x 1/4" x skin deep mid of the sternum region.

On dissection, skull-intact, brain-NAD, neck hyoid bone, trachea, larynx, thyroid cartilage, esophagus-clean sharp cut well defined everted edge size in 1 1/4" deep, blood and blood clot found edge and adjacent tissues. Heart-both chamber empty, lung liver, kidney mild congested, Spleen congested, stomach contains semi digested food, bladder empty, uterus small in size.

54. This witness has said that cause of death due to shock caused by above injuries as mentioned. In cross-examination, this witness has said that time of death has been assessed by him on the basis of rigor mortis. In the Post-Mortem report he has not specifically mentioned as to which injury was fatal in nature.

55. PW 23 ASI Ramakant Rai has said in his evidence that on the instruction of senior police officer he along with other police officer went to Purulia Police station and from there he came to know that in the Godam village, Rahul and his wife Bharti (appellants) are there. Thereafter, he made raid but the accused persons were not found. Further this witness has said that near by the house of maternal uncle of Rahul all the accused persons were found sleeping on the roof, they were searched and from the possession of Rahul one Samsung mobile and Rs. 4000/-cash, from the possession of Amit Singh four ATM Card in which one ATM card was in the name of Vandana Singh and three ATM card was in the name of Ajay Singh of different bank were recovered.

56. From the possession of Bharti Singh one gold chain and from the possession of Seema Singh two pairs of silver payal and one gold nose pin was recovered which was seized and the seizure list was prepared. This witness has proved the cash amount of Rs. 4000/- as well mobile of Samsung company which has been marked as material Exhibit I and II in this case. The four ATM cards has been marked material Exhibit III to III/3. The golden chain has also been marked as

materials exhibit IV and two pairs of payal and one gold nose pin and three pieces of gold nose pin has been marked as material exhibit V to V/3 and VI.

57. In cross-examination, this witness has said that for conducting raid officer-in-charge of Purulia P.S was also with him. He did not know the owner of the house from where the accused persons were arrested. He has not recorded the statement of the accused persons. He has denied that no such articles were recovered from the possession of the accused persons.

58. PW 24 ASI Akil Ahmad has said in his evidence that on 04.09.2013 he received information that in DVC colony one wife and husband have been killed. On this information, he went to the place of occurrence and entered into the quarter and saw the dead body of Vandana Singh was lying in kitchen and there was in pool of blood and the hitter was in burning condition and the bread was on the pan which was fully burnt. He also saw some prepared bread.

59. Further this witness has said that in a room he saw the dead body of Ajay Singh which was also in pool of blood. The blood stain was found on the bed sheet near the dead body of Ajay Singh. He also found bangle and one payal in which there was blood. In the floor there was pool of blood. Almirah was opened and the articles were lying on the floor. In the drawing room a bucket with water and cloth for cleaning was also lying there. Thereafter, he prepared the inquest report.

60. This witness has said that he found the mark of injury on the neck of Ajay Kumar Singh and also mark of injury on the neck and other parts of the body of Vandana Singh. He came to know that in the house of Ajay Kumar Singh, Bharti Singh was working as a maid-servant who was residing along with her mother-in-law Seema Singh, Rahul Singh and Amit Singh. All of them fled away.

61. The servant quarter was searched. In the outside wall of door of servant quarter blood was found. In the room on the floor fresh blood as well in the sink blood was found. The blood was also found on the plastic carry bag. This witness has said prima facie case appears that accused Rahul Singh, Bharti Singh, Seema Singh and Amit Singh with intention to commit loot in the house of deceased has killed them and all of them have fled away.

62. In cross-examination, he has said that when he went to the place of occurrence at that time the persons who were present there told that deceased has been killed. There was light smoke in the kitchen, the hitter was burning and the bread which was on the pan was burnt and smoke was coming out. Attempt was made to take finger print but finger print expert did not succeed. The family members of the deceased came there but they were not in a position to say with regard to the looted articles from the house of the accused. This witness has further examined and on his further examination he has proved photographs which has been marked as material Exhibit VII to VII/1, VIII and IX in this case.

63. PW 25 Ramjee Prasad has said in his evidence that charge of investigation

was handed over to him then he went to the place of occurrence. He saw that dead body of Ajay Kumar Singh was in the bed room cum Puja room and the dead body of his wife Vandana Singh was in the Kitchen. The articles were lying on the floor and the Almirah was opened. Further this witness has said that he recorded the statement of the witnesses and inspected the place of occurrence.

64. He has further deposed that the accused persons were arrested and on the basis of their confessional statement, the clothes, chaku in which the blood stain marked were recovered. The confessional statement of the accused persons was recorded.

65. The seized materials were sent for chemical analysis before F.S.L. Ranchi. In cross-examination, this witness has said that on which time he went to search the accused persons cannot say. He has said that he has not mentioned in the case diary that dead body was sent for post-mortem at 20.55 hours. The Test Identification Parade of looted articles were not made because both adult persons were killed. On his further examination he has proved the sketch of the place from where the dead body was recovered.

66. PW 26 Prabhat Kumar has said in his evidence that he collected the blood stain near from the place where the dead body was lying. He has collected the blood stain from bangles as well the payal. The blood samples were also collected from the place where the dead body were found. From the servant quarter he has collected the blood samples. All the blood samples were seized and the seizure list was prepared. He recorded the confessional statement of the accused Rahul Singh, Bharti Singh and Amit Singh. The accused persons put their signatures on their confessional statement and A.S.I. Ramjee Singh also put his signature. In cross-examination, this witness has said that he has got no written direction to prepare the seizure list. In the seizure list it is not mentioned that on whose identification which articles was recovered.

67. This Court, after having considered the testimony of witnesses is now proceeding to consider the argument advanced by learned counsel for the appellants.

68. The ground has been agitated on behalf of appellants that there is no eye witness and the judgment is based upon the principle of circumstantial evidence but the chain of circumstances is not complete and further not conclusive pointing towards the guilt of the present appellants. It has further been contended that the learned trial court has based its finding against the appellants on the basis of confessional statement of the appellant No. 1 and 2 but such confession cannot be basis of conviction of the appellant in view of the bar contained in Section 25 of the Indian Evidence Act.

69. It has further been contended that after occurrence the appellant had allegedly fled away and the said conduct of the appellants has been taken into consideration by the learned trial court as one of the grounds of conviction but the act of absconding from the said place cannot be a ground for conviction in

absence of any cogent evidence. Further, it has been contended that the expert who conducted the DNA examination of the alleged recovered incriminating articles was not examined as witness and said DNA report was merely exhibited in the evidence by the prosecution, as such non examination of said expert as witness cast doubt upon the prosecution story and such type of report is not admissible as evidence.

70. Per contra, the learned Spl. P.P. assisted by Mr. Indrajit Sinha, learned counsel, has contended that the knife from which the murder was committed, the T-shirt of appellant No. 2 and the Dupatta of Appellant No. 1 have been found near-by bush of the house on disclosure made by the appellant No. 1 and 2 in their confessional statement. Further the argument has been advanced that by dint of Section 27 of the Evidence Act the aforesaid evidence will be relevant and admissible herein since the knife; Dupatta and the T-shirt have been recovered on the disclosure made by the appellant Nos. 1 and 2 in independent confessional statement recorded while they were in the police custody.

71. The argument has been advanced, in response to the argument that unless the expert who has furnished the report of DNA profile will be examined in the Court of law, then only DNA Profile Test will have the admissible value but it has been submitted that since the entire procedure/method in conducting the DNA Profile Test had been followed and the DNA Profile Test was performed by the Director In-charge and as such as per the stipulation made under Section 294 of Cr.P.C, there is no requirement of calling the expert for examination for the purpose of ascertaining the DNA Profile Test, unless the DNA Profile Test would have challenged, then only the provision as contained under Section 294(3) would have been weighed but the DNA Profile Test had never been questioned by the appellants.

72. In the backdrop of the aforesaid contention this Court is now adverting to factual aspect of the case. Admittedly, it is not a case of direct evidence as such this Court is now proceeding to examine as to whether it is a case of circumstantial evidence completing the chain of the circumstances in order to prove the guilt of the appellant accused beyond reasonable doubt.

73. Before appreciating the aforesaid issue, it would be apt to refer settled proposition of law relating to circumstantial evidence. The Hon'ble Apex Court in the year 1952, in the judgment rendered in Hanumant Son of Govind Nargundkar vs. State of Madhya Pradesh [AIR 1952 SC 343] has laid down the parameters under which, the case of circumstantial evidence is to be evaluated, which suggests that: "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.”

74. The judgment referred in Hanumant (supra) has been consistently followed by Hon’ble Apex Court in the judgment rendered in Tufail (Alias) Simmi Vs. State of Uttar Pradesh [(1969) 3 SCC 198]; Ram Gopal Vs. State of Maharashtra [(1972) 4 SCC 625] and Sharad Birdhichand Sarda Vs. State of Maharashtra [(1984) 4 SCC 116 and also in Musheer Khan alias Badshah Khan & Anr. Vs. State of Madhya Pradesh [(2010) 2 SCC 748.

75. The Hon’ble Apex Court in Musheer Khan (Supra) while discussing the nature of circumstantial evidence and the burden of proof of prosecution has held as under paragraph nos. 39 to 46 as under:

“39. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is “inferential evidence” and proof in such a case is derivable by inference from circumstances.

40. Chief Justice Fletcher Moulton once observed that “proof does not mean rigid mathematical formula” since “that is impossible”. However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion. Circumstantial evidence, on the other hand, has been compared by Lord Coleridge “like a gossamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches”. The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.

41. To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. (See Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74 : (1963) 1 Cri LJ 70])

42. The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused. (See State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : 1992 Cri LJ 3693] , SCC p. 309, para 20.)

43. While appreciating circumstantial evidence, we must remember the principle laid down in Ashraf Ali v. King Emperor [21 CWN 1152 : 43 IC 241] (IC at para

14) that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

44. The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and are incapable of explanation upon any other reasonable hypothesis except his guilt.

45. When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role. In *Nibaran Chandra Roy v. King Emperor* [11 CWN 1085] it was held that the fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence.

46. The same principles have been followed by the Constitution Bench of this Court in *Govinda Reddy v. State of Mysore* [AIR 1960 SC 29 : 1960 Cri LJ 137] where the learned Judges quoted the principles laid down in *Hanumant Govind Nargundkar v. State of M.P.* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] The ratio in *Govind* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] quoted in AIR para 5, p. 30 of the Report in *Govinda Reddy* [AIR 1960 SC 29 : 1960 Cri LJ 137] are:

"5. ... ?10. ... in cases where the evidence is of a circumstantial nature, the circumstances [which lead to the conclusion of guilt should be in the first instance] 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 [shown] that within all human probability the act must have been [committed] by the accused.? [As observed in *Hanumant Govind Nargundkar v. State of M.P.*, (1952) 2 SCC 71 : AIR 1952 SC 343 at pp. 345-46, para 10.] " The same principle has also been followed by this Court in *Mohan Lal Pangasa v. State of U.P.* [(1974) 4 SCC 607 : 1974 SCC (Cri) 643 : AIR 1974 SC 1144]"

76. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is 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.

77. There is no dispute regarding the settled position of law that in the case of circumstantial evidence, the chain is to be complete then only there will be conviction of the concerned accused person but, 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.

78. The same view has been taken by the Hon'ble Apex Court in *Bakhshish Singh vs. State of Punjab*, (1971) 3 SCC 182 wherein the Hon'ble Apex Court has observed that the principle in a case resting on circumstantial evidence is well settled that the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. These 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.

79. The Hon'ble Apex Court while laying down such proposition in the said case has considered the factual aspect revolving around therein and while considering the fact has only found the incriminating evidence against the appellant was his pointing the place where the dead body of the deceased had been thrown which the Hon'ble Apex Court has not considered to be circumstantial evidence though undoubtedly it raises a strong suspicion against the appellant. the Hon'ble Apex Court while coming to such conclusion has observed that even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In that pretext, the law has been laid down at paragraph-9 thereof, which reads as under:

"9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those 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.”

80. It is, thus, evident from the close analysis of the aforesaid judgments the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

(ii) 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,

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

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

(v) 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.

81. The authoritative judgment in the aforesaid context is the Sharad Birdhichand Sarda vs. State of Maharashtra, (supra) wherein the Hon'ble Apex Court has held all the above five principles to be the golden principles which constitute the “panchsheel” of the proof of a case based on circumstantial evidence. The Hon'ble Apex Court in the said case as under paragraph-155, 156, 157, 158 and 159 has been pleased to hold that if these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. Paragraphs-155, 156, 157, 158 and 159 of the said judgment read as under:

“155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus: “Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.”

156. Lord Goddard slightly modified the expression “morally certain” by “such circumstances as render the commission of the crime certain”.

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500] Lagu case [AIR 1960 SC 500] as also the principles enunciated by

this Court in Hanumant case [(1952) 2 SCC 71] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — Tufail case [(1969) 3 SCC 198] , Ramgopal case [(1972) 4 SCC 625] , Chandrakant Nyalchand Seth v. State of Bombay [Criminal Appeal No 120 of 1957,], Dharambir Singh v. State of Punjab [Criminal Appeal No 98 of 1958,]. There are a number of other cases where although Hanumant case [(1952) 2 SCC] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration [(1974) 3 SCC 668, 670] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607,] , Shankarlal Gyarasilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405,] — a five-Judge Bench decision.

158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: "But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. such absence of explanation or false explanation would itself be an additional link which completes the chain."

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation."

82. The foremost requirement in the case of circumstantial evidence is that the chain is to be completed. In Padala Veera Reddy v. State of A.P. [1989 Supp. (2) SCC 706], the Hon'ble Apex Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

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

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

(3) the circumstances, taken cumulatively, should form a chain so complete that

there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

83. In *Balwinder Singh v. State of Punjab* [1995 Supp (4) SCC 259], it has been laid down by the Hon’ble Apex Court as that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. Relevant paragraph of the aforesaid judgment is being quoted as under:

“4. ... the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof.....”

84. In *Harishchandra Ladaku Thange v. State of Maharashtra* [(2007) 11 SCC 436], while dealing with the validity of inferences to be drawn from circumstantial evidence, it has been emphasized by the Hon’ble Apex Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person and further the circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

85. In *Ram Singh v. Sonia* (2007) 3 SCC 1, while referring to the settled proof pertaining to circumstantial evidence, the Hon’ble Apex Court reiterated the principles about the caution to be kept in mind by Court. It has been stated therein as follows:

“39. ... in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of

the accused beyond all reasonable doubts.”

86. In *Ujjagar Singh v. State of Punjab* (2007) 13 SCC 90, after referring to the aforesaid principles pertaining to the evaluation of circumstantial evidence, the Hon’ble Apex Court observed as under:

“14. ... It must nonetheless be emphasised that whether a chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted.”

87. The Hon’ble Apex Court in the case of *Laxman Prasad @ Laxman vs. The State of Madhya Pradesh* in Criminal Appeal No. 821 of 2012 dated 14.06.2023 has held at paragraphs-3 & 4 as follows:

“3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases: (i) *Sharad Birdhichand Sarda vs. -State of Maharashtra*, (1984) 4 SCC 116; (ii) *Sailendra Rajdev Pasvan vs. State of Gujarat Etc.*, AIR 2020 SC 180.

4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with.”

88. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is 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.

89. A theory of “accused last seen in the company of the deceased” is a strong circumstance against the accused while appreciating the circumstantial evidence. In such cases, unless the accused is able to explain properly the material circumstances appearing against him, he can be held guilty for commission of offence for which he is charged.

90. The Hon’ble Apex Court in the case of *Satpal v. State of Haryana*, (2018) 6 SCC 610 has observed that when there is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant, the Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. For ready reference the relevant paragraph is being quoted as under:

"6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

91. It is alleged by the prosecution that the recovery of the incriminating articles were made on the basis of confessional statement of the accused/appellants no.1 and 2, thus at this juncture this court would like to discuss the implication of Section 27 of the Evidence Act .

92. There is no dispute about the position of law as mandated under Section 27 of the Evidence Act that the same is exception to Section 25 to 26, which prohibit the proof of a confession made before the police officer while a person is in police custody unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not", which relates distinctly to the fact thereby discovered to be proved. Thus, even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27, it is only that part distinctly relates to the discovery which is admissible.

93. Thus, the recovery pursuant to the disclosure statement made by the accused under Section 27 of the Evidence Act is admissible in evidence. It is also settled that the Court must disregard the inadmissible part of the statement and take note only that part of his evidence, which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. It is further settled proposition of law that discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to his existence.

94. Reference with respect to the aforesaid settled proposition may be made to the judgment of the Hon'ble Apex Court in the case of *Earabhadrapa v. State of*

Karnataka, AIR 1983 SC 446. Paragraph-7 of the said judgment reads as under:

"7. There is no controversy that the statement made by the appellant Ex. P-35 is admissible under Section 27 of the Evidence Act. Under Section 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word "fact" means some concrete or material fact to which the information directly relates. As explained by Sir John Beaumont in *Pulukuri Kotayya v. King-Emperor* [(1947) 74 IA 65 :AIR 1947 PC 67 : 230 IC 135] :

"... it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact."

95. Further, in *Nisar Khan @ Guddu v. State of Uttaranchal*, 2006 (9) SCC 386, the Hon'ble Apex Court at paras-6 to 8 has been pleased to observe which read as under:

"6. Regarding the second contention that the recovery of arms has not been proved by the prosecution has also no substance. It is evidence on record that the accused were arrested on 17-12-1999 and pursuant to a disclosure statement made by them, the arms were recovered from the bank of Gaula river where these had been hidden under the sand and covered by the stones. All the arms were recovered as pointed out by each accused hidden under the stones. The High Court fell in error in holding that the recovery has not been proved as these were recovered from a place which is frequented by the public. This finding of the High Court is contrary to the evidence on record. It is now well-settled principle of law that the recovery pursuant to the disclosure statement made by the accused under Section 27 of the Evidence Act is admissible in evidence. In *Dhananjay Chatterjee v. State of W.B.* [(1994) 2 SCC 220 : 1994 SCC (Cri) 358] it is held that the entire statement made by an accused person before the police is inadmissible in evidence being hit by Sections 25 and 26 but that part of his statement which led to the discovery of the articles is clearly admissible under Section 27 of the Act. It is also held that the Court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. It is further held that the discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence.

7. In *Golakonda Venkateswara Rao v. State of A.P.* [(2003) 9 SCC 277 : 2003 SCC (Cri) 1904] this Court reiterated the view and held that the discovery statement of an accused leading to recovery of crime articles from concealed place, even though the discovery statement and the recovery memo did not bear the accused's signature, the fact of recovery from the well and dug out was from a place which was pointed out by the appellant and, therefore, such discovery was voluntary. That the recovery was in consequence to the information given

was fortified and confirmed by the discovery of the apparel worn and skeletal remains of the deceased and, therefore, the information and statement cannot be held to be false. In the present case on the recovery memo the signatures of all the accused have been obtained. In *Praveen Kumar v. State of Karnataka* [(2003) 12 SCC 199 : 2004 SCC (Cri) Supp 357] the same view has been reiterated.

8. As already noted, in the instant case the discovery of the arms was pursuant to the disclosure statement made by the accused immediately after the arrest and the offending arms were recovered at the place pointed out by each of the accused which were concealed under the sand and covered by the stones. The High Court in this regard fell in grave error by disbelieving the recovery memo solely on the ground that the place is a common place which is frequented by the public. The High Court failed to take notice that the recovery has been made from underneath the sand covered by the stones pursuant to the disclosure statement pointed out by each of the accused."

96. In *Anil v. Admn. of Daman & Diu* [(2006) 13 SCC 36 :] the Hon'ble Supreme Court held as under:

"23. The information disclosed by the evidences leading to the discovery of a fact which is based on mental state of affair of the accused is, thus, admissible in evidence."

97. Further, the Hon'ble Apex Court in *State of H.P. v. Jeet Singh* [(1999) 4 SCC 370] opined that when an object is discovered from an isolated place pointed out by the accused, the same would be admissible in evidence.

98. The Hon'ble Apex Court in *Selvi v. State of Karnataka* [(2010) 7 SCC 263] has held as under:

"133.----- However, Section 27 of the Evidence Act incorporates the "theory of confirmation by subsequent facts" i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which "furnish a link in the chain of evidence" needed for a successful prosecution. This provision reads as follows:

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

134. This provision permits the derivative use of custodial statements in the ordinary course of events. In Indian law, there is no automatic presumption that the custodial statements have been extracted through compulsion. In short,

there is no requirement of additional diligence akin to the administration of Miranda [Miranda v. Arizona, 1966 SCC OnLine US SC 112 : 16 L Ed 2d 694 : 384 US 436 (1966)] warnings. However, in circumstances where it is shown that a person was indeed compelled to make statements while in custody, relying on such testimony as well as its derivative use will offend Article 20(3)."

99. In Madhu v. State of Kerala (2012) 2 SCC 399, the Hon'ble Apex Court while discussing the mandate of Section 27 of the Evidence Act held as under:

"49. As an exception, Section 27 of the Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of Sections 25 and 26 of the Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under Section 27 of the Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Section 27 aforesaid, is limited "... as relates distinctly to the fact thereby discovered...". The rationale behind Section 27 of the Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. The discovery of facts itself, therefore, substantiates the truth of the confessional statement. And since it is truth that a court must endeavour to search, Section 27 aforesaid has been incorporated as an exception to the mandate contained in Sections 25 and 26 of the Evidence Act."

100. Thus, it is evident that Section 27 of the Indian Evidence Act, 1872 (in short "the Evidence Act") is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by the Hon'ble Apex Court in Delhi Admn. v. Bal Krishan [(1972) 4 SCC 659] and Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828].

101. The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban was imposed by the preceding sections was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect.

102. The object of the provision, i.e., Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. Under Section 27 as it stands

in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer.

103. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved.

104. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information.

105. Decision of the Privy Council in *Pulukuri Kottaya v. Emperor* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most-quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered".

106. Keeping in view the aforesaid settled connotation of law, we shall presently proceed to scrutinize and evaluate the circumstances, whether the said circumstances coupled with the recovery of incriminating Articles establish the guilt of the accused/ appellants beyond reasonable doubt.

107. In the backdrop of the aforesaid this Court is going to revisit the testimony of the witnesses and evidences available on record in order to come to the conclusion that whether the charge on the basis of circumstantial evidence against the present appellants has been established or not.

108. After carefully considering the evidence of the witnesses and the materials which has been brought on record, it is evident from the evidence of prosecution witnesses who were residing nearby place of occurrence it has come that the

deceased Vandana Singh wife of Ajay Kumar Singh was not found in the morning then PW 2, PW 8, PW 9, PW 10, PW 11 and another witnesses made query to each other and PW 1 made a telephonic call to deceased Vandana but she did not receive any reply. The witnesses have witnessed that the house of the deceased locked from outside thereafter PW 1, PW 2 and PW 11 came near the house of the deceased. It was seen by them that the Almirah of the house was opened and the things of the Almirah was found lying there. These witnesses had seen mark of blood and they also saw one water bucket kept there for the purpose of cleaning of the floor. These witnesses after seeing this returned back and they informed in this regard to their husband and other persons. Thereafter, all these witnesses along with PW 4, PW 5, PW 8, PW 9, PW 10, PW 18, PW 19, PW 20 and another witness entered into the house of the deceased Vandana and Ajay Singh. They saw the dead body of Vandana Singh wife of Ajay Singh in the Kitchen and the dead body of Ajay Singh in the bed room. They also saw pool of blood there.

109. In the evidence of prosecution witnesses it has come that they have found one bucket of water kept in the Drawing room for the purpose of cleaning of the room. PW 1, PW 2, PW 4, PW 8, PW 9, PW 10, PW 11, PW 18, PW 19, PW 20 have said in their evidence that in the house of deceased one Bharti Singh (appellant no.1) was working as a maid-servant. The witnesses have said that in the morning when PW 1, PW 2 and PW 11 returned from the house of the deceased they also went to search the maid-servant. The outhouse of the said quarter in which the servant was living was found locked.

110. It has come in the evidence of the witnesses that the daughter-in-law of Seema Singh namely Bharti Singh (appellant no.1) was working as a maid servant in the house of the deceased. Seema Singh (appellant no.3) was working as a maid-servant in the house of other witnesses. In the servant quarter along with these two persons Rahul Singh and Amit Singh were also residing.

111. Thus, from aforesaid logical deduction it has firmly been established that the appellants no.1 had been working as maid in the deceased house and appellant no.2 being a husband of appellant no.1 was accompanying with the appellant no.1 in the outhouse of the quarter of the deceased. However, it has also come n record that appellant no.3 had not been engaged as maid servant in the deceased's house.

112. In the testimony of PW 24 and other witnesses it has come that when they entered into the house of the deceased, they found one bangle and one payal lying near the dead body of deceased. PW 24 has said that he has found mark of injury on the neck of Ajay Kumar Singh and mark of injury on the neck of another part of the body of Vandana Singh. This witness has prepared inquest report. He has said that in the house of Ajay Singh maid-servant Bharti Singh was working who was residing along with her mother-in-law, Rahul Singh and Amit Singh and they fled away.

113. This witness had further stated that the servant quarter where the

appellants were residing had been searched and on search in the outer side of the wall of the door in the servant quarter, he found the blood. He also saw fresh blood in the room as well in the sink of the servant quarter and further, in the plastic carry bag he found blood. This testimony of PW 24 i.e. informant has been supported by other witnesses in their evidence.

114. Further it has come in the evidence of PW 25 that during the course of investigation, the blood clots were recovered and seized and were sent for chemical analysis to the Forensic Science Laboratory, Ranchi.

115. PW 12 is the witnesses who has said in his evidence that he was giving milk to Ajay Kumar Singh. On the date of occurrence, he had gone to the quarter of Ajay Kumar Singh for giving milk at about 7.45 a.m. and on that day the maid-servant took milk from him whereas usually the milk was taken by Ajay Kumar Singh or his wife. He saw that at that time Ajay Kumar Singh was plucking the flowers in the garden.

116. In the evidence of PW 10 it has come that Seema Singh was working as a maid servant in her house and at about 8.30 a.m in the morning she was in her house and was doing domestic job. At that time her daughter-in-law came and called Seema Singh. This witness has said that she has saw mark of cut injury on the finger of the daughter-in-law of Seema Singh. Thereafter, Seema Singh and her daughter-in-law Bharti Singh went from her house.

117. PW 16 and PW 17 are the minor daughters of the deceased persons. It has come in the evidence of both these witnesses that at about 7.30 a.m in the morning they left for school from the house and at that time accused Bharti Singh was working in her house. It has come in the evidence of these witnesses that they left the house to go to the school along with her father.

118. Thus, from the aforesaid it is evident that in the morning at about 7.30 a.m Bharti Singh was present in the house of deceased and the evidence of PW 12 shows that at about 7.45 a.m he saw Ajay Singh was plucking flowers in the garden which shows that deceased Ajay Singh after leaving the children in the school in the morning returned back and at about 7.45 a.m and he was in the garden of his house.

119. Thus, it is apparent from the testimony of the aforesaid witnesses that deceased were seen with appellant no.1 by the witnesses on the fateful day meaning thereby the appellant no.1 was present lastly at the residence of deceased and theory of circumstantial evidence in the form of last seen theory will be applicable herein. Further it is pertinent to mention herein that in near proximity of time, the dead body was found in the house of the deceased where appellant no.1 was lastly present and her presence was witnessed by the independent witness like P.W.12.

120. The evidence of PW 10 shows that Bharti Singh came into her house and called Seema Singh at about 8.30 a.m in the morning and the evidence of PW 13

who is working as a security guard in the colony where the quarter of deceased and other quarters were situated, has said that he saw that at about 9.00 a.m the maid-servant of Ajay Singh was going having bag in her hand, they were two female and one male in a very unusual manner. This witness has identified the accused persons in court, to whom he has seen on that day as accused Rahul Singh, Bharti Singh and Seema Singh.

121. Admittedly, there is no eye-witness of the occurrence, who have seen committing the alleged occurrence by the accused persons/appellants but, as discussed in the preceding paragraph that there were circumstances which indicates involvement of accused no.1 in the aforesaid occurrence.

122. The evidence of PW 23 shows that the raid was conducted where the accused persons were hidden and it has come in the evidence of this witness that on raid in a house the accused persons were found sleeping on the roof. They were searched and from the possession of accused Rahul Singh one Samsung mobile and Rs. 4000/- in cash, from the possession of Amit Singh four ATM cards in which one ATM card was in the name of Vandana Singh and three ATM card was in the name of Ajay Kumar Singh were recovered. From the possession of Bharti Singh one gold chain and from the possession of Seema Singh two pairs of silver payal and one gold nose pin was recovered. All these articles were seized and the seizure list was prepared.

123. It has come in the evidence of P.W. 26 that on the basis of confessional statement of the arrested accused Rahul Singh search was made and the T-shirt in which there was blood and also chaku (knife) which was used in committing the murder of the deceased was recovered near the boundary wall of the quarter from a bush. Further, on the basis of confessional statement of Bharti Singh and on her identification the dupatta of Bharti Singh in which the blood mark was present, was recovered. All these articles were seized.

124. The evidence of PW 24,25 and 26 shows that the blood stain which were seized from the servant quarter of the accused persons and also the samples of the blood found near the place of occurrence was seized and were sent to the Forensic Science Laboratory, Ranchi for its examination.

125. The blood samples were collected from the room where the dead body was lying and from the room, the bed sheet and one Lahati, bangle and silver payal were seized. The F.S.L report of the blood samples are marked as Exhibit 15 and 15/1. In the exhibit 15/1 it has been mentioned that the blood stain found on the bed sheet, bangle, payal, T-Shirt and knife is from one and the same source of human male.

126. This finding in Exhibit 15/1 shows that in the knife and the T-Shirt the blood was found to be the same male origin with the blood sample collected near the place where dead body of Ajay Singh was found. The blood stain found in the kitchen and the wall near the door are from one and the same source of human female. The blood stain which was collected from the kitchen of servant quarter

is from one and the same source of another human female which did not match with the female profile of source of Exhibit F which is the blood samples which was collected from the place where the dead body of the deceased Vandana Singh was found lying.

127. Further it has come on record that when neighbourers prosecution witnesses of deceased came and made searched in the servant quarter at that time all these accused persons found fled away. It has come in the evidence of PW 25 and PW 26 that on the basis of the confessional statement of the accused persons the knife which was used in committing the offence was recovered as well the blood stain, T-shirt and Dupatta of Bharti Singh was recovered. All these materials show that after committing the offence the accused persons left the house and went to his servant quarter and due to got injury to them there was blood mark in the room of servant quarter and in the sink.

128. PW 15 has examined accused Rahul Singh and Bharti Singh and he has found injury on these persons. PW 22 has conducted Post-Mortem on the dead body of the deceased Ajay Kumar Singh and Vandana Singh and he has found incised wound on the neck of both deceased. The knife which was used in committing offence has been recovered on the basis of the confessional statement of accused persons.

129. The motive behind the occurrence is narrated by the accused persons in their confessional statement which has been marked as Exhibit 16 and 17 that Rahul Singh had pledged his motor cycle to one Doman Ansari and they were in need of money. Accused Bharti Singh told Rahul Singh that there is too much money in possession of Ajay Singh and also jewelry in possession of his wife kept in the Almirah in the bed room. Then under a conspiracy, the accused persons planned to commit murder of Ajay Singh and Vandana Singh and committed theft of jewelery, cash and ATM Card. This confessional statement of the accused persons is leading to the recovery of the articles. The witnesses have found Almirah kept in the bed room was in the opened condition and the things were scattered there.

130. Thus, from the aforesaid it is evident that from confessional statement of Appellant no.1 and 2 the recovery of incriminating articles particularly knife which was used in committing offence has been recovered on the basis of the said confessional statement of appellant no.1 and 2. Further the scientific examination of the incriminating articles like dupatta, T-shirt and knife had firmly establish the complicity of the appellant no.1 and 2 in the alleged commission of crime.

131. At this juncture it will be purposeful to answer the contention of learned counsel that the expert who conducted the DNA examination of the alleged recovered incriminating articles was not examined as witness and said DNA report was merely exhibited in the evidence by the prosecution, as such non examination of said expert as witness cast doubt upon the prosecution story and

such type of report is not admissible as evidence. In the aforesaid context the learned counsel has put his reliance on the judgment rendered by the Hon'ble Apex Court in the case of Karandeep Sharma @ Razia @ Raju Vs. state of Uttarakhand (supra).

132. In order to appreciate the aforesaid contention of the learned counsel for the appellants it would be apt to discuss the scope of Section 294 of the Cr.P.C. For ready reference same is being quoted as under:

"Section 294 - No formal proof of certain documents

1. Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

2. The list of documents shall be in such form as may be prescribed by the State Government.

3. Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved."

133. A bare reading of the aforesaid provision, in particular, sub-section (3) provides that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. That is to say that if the authors of such documents do not enter the witness box to prove their signatures, the said documents could still be read in evidence. Further, under the proviso the Court has the jurisdiction in its discretion to require such signature to be proved.

134. The Hon'ble Apex Court in the case of Shyam Narayan Ram Vs. State of U.P. (supra) has observed about the applicability of the Section 294 Cr.P.C which reads as under:

15. A bare reading of the aforesaid provision, in particular, sub-section (3) provides that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. That is to say that if the authors of such documents does not enter the witness box to prove their signatures, the said documents could still be read in evidence. Further, under the proviso the Court has the jurisdiction in its discretion to require such signature to be proved. In the present case, the documents filed by the investigating agency were all public documents duly

signed by public servants in their respective capacities either as Investigating Officer or the doctor conducting the autopsy or other police officials preparing the memo of recoveries etc. As such the Trial Court had rightly relied upon the same and exhibited them in view of the specific repeated stand taken by the defence in admitting the genuineness of the said documents. In so far as the police papers which had been signed by private persons like the informant, the same had been duly proved.

16. Thus the only job left for the Court was to appreciate, analyse and test the credit-worthiness of the evidence led by the prosecution which was available on record and if such evidence beyond reasonable doubt established the charges, the conviction could be recorded. However, if the evidence was not credit-worthy and worthy of reliance, the accused could be given benefit of doubt or clean acquittal.

135. Further, the Hon'ble Apex Court in the case of Sonu alias Amar v. State of Haryana (2017) 8 SCC 570 wherein the Hon'ble Apex Court had held in para 30 as follows:

"35. Section 294 of the Cr. P.C. 1973 provides a procedure for filing documents in a Court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act."

136. Similarly, the Hon'ble Apex Court in the case of Shamsheer Singh Verma v. State of Haryana (2016) 15 SCC 485, has held in para 14 as under:

"14..... It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence."

137. In the case of Akhtar v. State of Uttaranchal (2009) 13 SCC 722 has held in para 21 as under:

"21. It has been argued that non-examination of the concerned medical officers is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post-mortem examination reports before the trial court. So the genuineness and authenticity

of the documents stands proved and shall be treated as valid evidence under Section 294 of the CrPC. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined."

138. Thus, on a plain reading of section 294 of the CrPC and its interpretation by the Hon'ble Apex Court in the above judgments, the contention of the learned counsel for the appellants is hereby negated, particularly considering the facts of the present case where the defence repeatedly continued to admit the genuineness of the prosecution documents exempting them from formal proof.

139. Further the learned counsel for the appellant has contended that If the entire circumstances will be taken into consideration, then it would be evident that the prosecution has mainly based upon the suspicion on the ground that the appellant No. 1 was working as a maid servant and she immediately after the occurrence has fled away from the place of occurrence along with her husband and mother-in-law and son, and the said conduct of the appellants has been taken into consideration by the learned trial court as one of the ground of conviction but act of absconding from the said place cannot be a ground for conviction in absence of any cogent evidence. In order to buttress this limb of argument the learned counsel for the appellants put his reliance upon the judgment rendered by the Hon'ble Apex Court in the case of *Matru Vs. State of U.P.* (supra).

140. It requires to refer herein that this Court is conscious with the settled position of law that mere absconding by itself does not constitute a guilty mind but the act of abscondence is certainly a material piece of evidence to be considered along with other corroborative piece of evidence.

141. The learned counsel for the appellant has relied upon the judgment rendered by the Hon'ble Apex Court in the case of *Matru Vs. State of U.P.* (supra) particularly paragraph 19 of the said Judgment. This Court has gone through the aforesaid Judgment, for ready reference the same is being quoted as under:

"19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain

of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.

142. Thus, the Hon'ble Apex Court even in the said judgment has observed that the act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case.

143. Further, it needs to refer herein that recently the Hon'ble Apex Court in the case of Chetan Vs. State of Karnataka 2025 SCC OnLine SC 1262 while referring the ratio of Matru Vs. State of U.P. (supra) has observed which reads as under:

"10.9.2 It is trite that mere absconding by itself does not constitute a guilty mind as even an innocent man may feel panicky and may seek to evade the police when wrongly suspected of being involvement as an instinct of self-preservation. But the act of abscondence is certainly a relevant piece of evidence to be considered along with other evidence and is a conduct under Section 8 of the Evidence Act, 1872, which points to his guilty mind. The needle of suspicion gets strengthened by the act."

144. In the backdrop of the aforesaid settled position of law this Court has revisited the entire testimony of the prosecution witnesses wherefrom it is evident that after the alleged occurrence the appellants have left/fled their place of residence, i.e., outhouse of the quarter of the deceased.

145. It requires to refer herein that PW 12 is the witnesses who has said in his evidence that he was giving milk to Ajay Kumar Singh. On the date of occurrence, he went to the quarter of Ajay Kumar Singh for giving milk at about 7.45 a.m., on that day the maid-servant took milk from him whereas usually the milk was taken by Ajay Kumar Singh or his wife. This witness saw that at that time Ajay Kumar Singh was plucking the flowers in the garden. Further in the evidence of PW 16 and PW 17 daughter of the deceased it has come that in the morning at about 7.30 a.m Bharti Singh (appellant herein) was present in their house. From the aforesaid it is evident that the appellant no.1 was present on the date of occurrence in the house of the deceased.

146. Now coming to the evidence of PW 13 who is working as a security guard in the colony where the quarter of deceased and other quarters were situated, has categorically that he saw at about 9.00 a.m the maid-servant of Ajay Singh was going having bag in her hand, and they were two female and one male in a very unusual manner. This witness has identified the accused persons in court, to whom he has seen on that day as accused Rahul Singh, Bharti Singh and Seema Singh.

147. It is pertinent to mention here that during recording of the statement under Section 313 Cr.P.C., the appellant no.1 and appellant no.2 had taken the plea of alibi and has stated that on the day of alleged occurrence they were not present at the place of occurrence.

148. But the aforesaid statement of the appellant no.1 and 2 has been contradicted by the appellant no.3 who has stated in her statement under section 313 Cr.P.C. that on 04.09.13(date of occurrence) when she was working in house of P.W.10 then her-daughter in law has come there and call him.

149. The aforesaid fact has fully been substantiated by the testimony of P.W.10 who has categorically stated that Seema Singh(appellant no.3) was working as a maid-servant in her house and at the time of occurrence at about 8.30 a.m in the morning she came and has done domestic job in her house. She had further deposed that meanwhile her daughter-in-law came there and called her mother-in-law. Further she has said that the daughter-in-law of Seema Singh said that her finger has been cut while she was cutting vegetables.

150. Thus, from the aforesaid it is evident that the appellant no.1 and 2 has given wrong explanation and falsely taken the plea of alibi.

151. Further, from perusal of statement of the appellants/accused under section 313 Cr.P.C, it is evident that the other circumstances which have been put before the accused/appellant has been denied in cryptic manner only and further false ground in the form of plea of alibi has been taken by appellant no.1 and 2 herein.

152. The law is well settled in this regard that the accused may choose to maintain silence or complete denial even when his statement under Section 313CrPC is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law.

153. In Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257 the Hon'ble Apex Court has, though recognized the right of the accused to maintain silence during investigation as also before the Court in the examination under Section 313CrPC but, at the same time, has also highlighted the consequences of maintaining silence and not availing opportunity to explain the circumstances appearing against him, including that of the permissibility to draw adverse inference in accordance with law. The relevant paragraph of the aforesaid judgment is being quoted as under:

"49. In terms of Section 313CrPC, the accused has the freedom to maintain silence during the investigation as well as before the court. The accused may choose to maintain silence or complete denial even when his statement under Section 313CrPC is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law. 52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313CrPC is upon the court. One

of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law.” (emphasis supplied)

154. This Court has also gone through the statements of appellants recorded under Section 313 Cr.P.C. and it is evident that whatever question has been put, the same has simply been denied by them and as discussed hereinabove that the false “plea of alibi” has been taken by the appellant nos. 1 and 2.

155. At this juncture it needs to refer herein that in a case based on circumstantial evidence where no eyewitness account is available and when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. Reference in this regard may be made to the judgment rendered by the Hon’ble Apex Court in the case of Trimukh Maroti Kirkan v. State of Maharashtra (supra) wherein at para 21 the Hon’ble Apex Court has held which reads as under:

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of T.N. v. Rajendran [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para 6); State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39 : AIR para 40); State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and Gulab Chand v. State of M.P. [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]

156. Further as discussed hereinabove that recovery of incriminating article has been made on the basis of the confessional statement of appellant no.1 and appellant no.2.

157. It is apparent from the testimony of PW 26 that on the basis of confessional statement of the arrested accused Rahul Singh (appellant no.2) search was made and the T-shirt in which there was blood and also chaku (knife) which was used in committing the murder of the deceased was recovered near the boundary wall of the quarter from a bush.

158. Further, it has come in the evidence of this witness that on the basis of confessional statement of Bharti Singh (appellant no.1) and on her identification the dupatta of Bharti Singh in which the blood mark was present, was recovered.

159. Further in the exhibit 15/1 there is finding that the blood stain found on the bed sheet, bangle, payal, T-Shirt and knife is from one and the same source of human male. This finding in Exhibit 15/1 indicates that in the knife and the T-Shirt the blood was found to be the same male with the blood sample collected near the place where dead body of Ajay Singh was found.

160. At this juncture it needs to refer herein which has already been discussed in preceding paragraph that there is no dispute about the position of law as mandated under Section 27 of the Evidence Act that the same is exception to Section 25 to 26, which prohibit the proof of a confession made before the police officer while a person is in police custody unless it is made in immediate presence of a Magistrate.

161. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not", which relates distinctly to the fact thereby discovered to be proved. Thus, even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27, it is only that part distinctly relates to the discovery which is admissible.

162. Thus, the recovery of incriminating articles on the basis of the confessional statement of Appellant no.1 and appellant no.2 is the additional link in completing the chain of the circumstances in the alleged commission of crime.

163. It is evident from the factual aspect that the prosecution placed reliance before the court mainly on three circumstances, firstly, the last company theory, secondly, the recovery of incriminating objects like iron knife used in the alleged commission of crime and blood-stained T-Shirt of the appellant no.2 and blood-stained dupatta of the appellant no.1 and thirdly the FSL Report marked as Ext-15/1.

164. As a consequence of the above discussion, we are of the - firm view that the prosecution has established the following links in the chain of incriminating circumstantial evidence appearing against the appellants no.1 and 2.

165. These circumstances are:

1) Accused/appellant and deceased were known to each other since it has come in testimony of prosecution witnesses that accused/appellant no.1 was engaged as maid servant in the house of deceased and appellant no.2 being husband of appellant no.1 was residing with the appellant no.1 in the outhouse of the quarter of the deceased.

2) From the testimonies of the witnesses, it is evident that the accused/appellant having motive for murder of the deceased as valuables from the house of the

deceased were missing as per the testimony of the prosecution witnesses and as per the testimony of PW.23 the ATM Cards of the both the deceased were found in conscious possession of the other co-accused Amit Kumar.

3) It has been established that on the alleged day of occurrence the appellant no.1 was present in the house of deceased which has substantiated by the testimony of P.W.12, and P.W.16 and 17.

4) Further the guard of the society which has been examined as P.W.13 has specifically testified that on the date of occurrence in the morning at about 9.00 a.m he saw the maid-servant of Ajay Singh(deceased) was going with bag in her hand. They were two female and one male. This witness has identified the accused Rahul Singh, Bharti Singh and Seema Singh in the court. Further this witness has said that in an abnormal way they were going outside the gate. Later on, he heard with regard to the death of Ajay Singh and his wife. As such by virtue of Section 8 of the Evidence Act, the conduct of the accused becomes doubtful.

5) Medical evidence establishing that the cause of death of the deceased was homicidal.

6) It has come in the testimony of PW 26 that on the basis of confessional statement of the arrested accused Rahul Singh (appellant no.2) search was made and the T-shirt in which there was blood and also chaku(knife) which was used in committing the murder of the deceased was recovered near the boundary wall of the quarter from a bush.

7) Further, it has come in the evidence of this witness that on the basis of confessional statement of Bharti Singh (appellant no.1) and on her identification the dupatta of Bharti Singh in which the blood mark was present, was recovered.

8) Further in the exhibit 15/1 there is finding that the blood stain found on the bed sheet, bangle, payal, T-Shirt and knife is from one and the same source of human male. This finding in Exhibit 15/1 indicates that in the knife and the T-Shirt the blood was found to be the same male with the blood sample collected near the place where dead body of Ajay Singh was found.

9) No satisfactory explanation has been given by the accused in his statement under Section 313 CrPC as discussed above rather the false "plea of alibi" was taken by the appellant no.1 and 2 as the most of prosecution witnesses has testified that the appellant no.1 was present in the house of the deceased on the date of occurrence.

166. Connected together, all the aforesaid circumstances form a clinching and complete chain of incriminating circumstances pointing exclusively towards the guilt of the accused appellant no.1 and 2 and totally inconsistent with their innocence in the said crime.

167. As discussed herein above there can be no trace of doubt that the

circumstances should have been proven beyond reasonable doubt but at the same time, it is worthy to remember that in *Sucha Singh v. State of Punjab* [(2003) 7 SCC 643] it has been held by the Hon'ble Apex Court that the prosecution is not required to meet any and every hypothesis put forward by the accused and a reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. For ready reference the relevant paragraph is being quoted as under:

"20. ... The prosecution is not required to meet any and every hypothesis put forward by the accused. ... A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect."

168. Thus, from the evidence on record, we find that the prosecution was successful in bringing on record the circumstantial evidence, i.e., existence of motive; the circumstances in which the deceased were last alive in the company of appellant no.1, death was homicidal and incriminating articles were also recovered on the instance of appellant no.1 and appellant no.2.

169. From the aforesaid analysis, we are of the convinced opinion that all the aforesaid circumstances which have been established by the prosecution as completion of chain to prove the guilt of the appellant no.1 Bharti Singh and the appellant no.2 Rahul Singh. The present case is one where there is no trace of doubt that all circumstances complete the chain and singularly lead to the guilt of the appellant no.1 Bharti Singh and the appellant no.2 Rahul Singh.

170. In view of the aforesaid premised reasons, we do not find any infirmity in the judgment of conviction and order of sentence passed by the learned trial court against the appellant no.1 Bharti Singh and the appellant no.2 Rahul Singh.

171. So far complicity of accused/appellant no.3 in the alleged commission of crime is concerned, it appears from the perusal of testimony of the prosecution witnesses that there is no whisper about the role of appellant no.3 in the alleged commission of crime.

172. From perusal of the impugned judgment, it is evident that the learned trial Court by taking aid of section 34 of the IPC has convicted the appellant no.3 for the alleged commission of crime.

173. It needs to refer herein that under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to

meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them.

174. Thus, from the aforesaid settled position of law it is evident that Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime.

175. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it prearranged or on the spur of the moment; but it must necessarily be before the commission of the crime.

176. The true contents of the section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

177. Further, the burden lies on the prosecution to prove that actual participation of more than one person for commission of criminal act was done in furtherance of common intention of all at a prior concert. However, it is not required for the prosecution to establish that there was a prior conspiracy or premeditation; common intention can be found in the course of occurrence.

178. To apply Section 34 apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability. But if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of *Jai Bhagwan v. State of Haryana* (1999) 3 SCC 102.

179. As held by the Constitution Bench of the Hon'ble Apex Court in *Mohan Singh v. State of Punjab* AIR 1963 SC 174, common intention denotes action in concert, and a prior meeting of minds—the acts may be different, and may vary in their

character, but they are all actuated by the same common intention. However, prior concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons. Thus, the question as to whether there is any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused persons had the common intention to commit the offence with which they could be convicted.

180. In the backdrop of the aforesaid settled position of law this Court is re-adverting to the testimony of the prosecution witnesses. Admittedly, it has come on the record that appellant no.3 was the maid servant of P.W.10 and she was living separately from appellant no.1 and 2 in the outhouse of the P.W.10. Further nothing has been recovered on her instance rather recovery of incriminating articles was made on the basis of the confessional statement of appellant no.1 and 2.

181. Further in her statement recorded under Section 313 Cr.P.C. she has specifically stated that on the alleged day of occurrence she was present at the house of P.W.10 as such she has not taken the "plea of alibi" as taken by the appellant no.1 and 2, therefore this Court is not in position to draw adverse inference from her statement.

182. On the basis of the discussion made herein above this Court is of the considered view that no cogent evidence has been brought on record by the prosecution in order to establish the complicity of the appellant no.3 namely Seema Singh in the alleged commission of the crime. Further it is evident from the material evidence available on record and from the testimony of prosecution witnesses that the prosecution has also not brought any evidence which indicates that the appellant no.3 having common intention with the appellant no.1 and appellant no.2 in alleged commission of the crime.

183. Thus, on the basis of the discussion made hereinabove this Court is of the view that since there is no cogent evidence brought on record by the prosecution against the appellant no.3 namely Seema Singh, therefore she is acquitted of all the charges levelled against her.

184. Accordingly, the Judgment of conviction and sentence dated 15.07.2014, passed by learned Sessions Judge, Bokaro, in Sessions Trial No.422 of 2013 is hereby quashed and set aside so far, the appellant no.3 is concerned.

185. Since the appellant no.3, namely Seema Singh has been acquitted and she is in custody, hence she is directed to be released forthwith, if not warranted in any other case.

186. Further, on the basis of discussion made herein above, this Court is of the view that since the chain of circumstances is completed against the appellant

no.1 and 2, therefore the impugned judgment of conviction and order of sentence dated 15.07.2014 requires no interference by this Court so far as appellant no. 1 and 2 are concerned, as there is no any infirmity in the judgment of conviction and order of sentence passed by the learned trial court against the appellant no.1 Bharti Singh and the appellant no.2 Rahul Singh.

187. Accordingly, so far, the appellant no.1 Bharti Singh and the appellant no.2 Rahul Singh, is concerned the instant criminal appeal stands dismissed.

188. Pending interlocutory application(s), if any, also stands disposed of.

189. Let this order/judgment be communicated forthwith to the court concerned along with the Lower Court Records.