

(2016) 06 SHI CK 0074

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 287 of 2012.

State of Himachal Pradesh - Appellant @HASH Nanhe Lal and another

Date of Decision : 23-06-2016

Acts Referred:

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2016) ILRHP 2150

Hon'ble Judges : Sanjay Karol and Ajay Mohan Goel, JJ.

Bench : Division Bench

Advocate : Mr. V.S. Chauhan, Additional Advocate General with Mr. Vikram Thakur, Deputy Advocate General, for the Appellant; None, for the Respondents; Mr. Yudhbir Singh Thakur, Amicus Curiae, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Ajay Mohan Goel, J. - By way of this appeal, appellant/State has challenged the judgment passed by the Court of learned Sessions Judge, Sirmaur District at Nahan, in Sessions Trial No. 28-ST/7 of 2011/2010, dated 12.12.2011, vide which learned trial Court has acquitted the accused persons of charge under Section 302 read with Section 34 I.P.C.

2. Vide order dated 14.12.2015, this Court appointed Mr. Yudhbir Singh Thakur as Amicus Curiae and he very efficiently assisted this Court in the adjudication of the present appeal.

3. The case of the prosecution was that on 23.02.2010 a message was received on telephone by the then Inspector/SHO of Police Station, Nahan from Police Post Kala Amb that a dead body was lying in All Knight Industry on Trilokpur Kala Amb road. On receipt of the said information, SHO along with other police staff proceeded to the spot in Government vehicle, where one Upender Kumar son of Ram Singh got his statement recorded under Section 154 Cr.P.C. to the effect that he was working as Helper in All Knight Factory since November, 2009, whereas Jaiveer Singh was working as Supervisor in the said factory. On 22.02.2010 at 9.00 A.M. he came to the factory and at 6.15 P.M. Supervisor

Jaiveer told him that he was going some where and would come back late and that he would keep the keys after closing the shutter on the machine.

4. On 23.02.2010 at 9.00 A.M., he found the small gate of the factory open and also noticed the door of the room of Jaiveer Supervisor was open. When complainant Upender Kumar called Jaiveer, no one responded. He went inside the room and found blood on the floor of the same and body of Jaiveer was covered with a blanket. Thereafter, he called Rajesh Mishra, who came along with Parvinder and other workers at the spot, lifted the blanket from the body of Jaiveer and noticed that the double bed was smeared with blood and that Jaiveer had sustained injuries on his head, neck and feet and he had already died. Said murder has been committed by some unknown person during night time.

5. On the basis of statement of Upender Kumar, FIR Ext. PW15/A was registered under Section 302 IPC at Police Station, Nahan. During investigation wife of Jaiveer Neelu disclosed that Nanhe Lal was residing in another room of All Knight factory along with his family. Neelu used to visit her husband Jaiveer at Kala Amb during vacations of children. When she had come to Kala Amb, she noticed that her husband had some attraction towards the wife of Nanhe. She had told her husband that till the wife of Nanhe did not leave Kala Amb, she would not return to Delhi. When her husband visited Delhi, he told her that both Nanhe and Kanahiya were residing with him. On 23.10.2010 she came to know that her husband had died and the persons residing with her husband namely Nanhe Lal and Kanahiya had fled away from the spot. She suspected that they had killed her husband as both Nanhe and Kanahiya had not made payment of ration to Jaiveer and Jaiveer had retained their T.V. and other articles. The police searched for accused Nanhe and Kanahiya. Nanhe was arrested from his village on 16.03.2010, who on interrogation made a disclosure statement on 17.03.2010 Ext. PW1/E, on the basis of which Danda Ext. P-2 concealed in a Nali near Craft factory was taken into possession vide Ext. PW1/F. Accused Kanahiya was arrested on 19.03.2010 from his village Manpur, District Pilibhit and during interrogation he made a disclosure statement Ext. PW10/A on 21.03.2010 on the basis of which he got recovered weapon of offence Danda, one Pajama and mobile phone concealed at different places. Site plans were also prepared by the Investigating Officer and after completion of the investigation, challan was presented against the accused persons.

6. As a prima facie case was found against the accused, they were accordingly charged for the offence under Section 302 read with Section 34 I.P.C., to which both of them pleaded not guilty and claimed to be tried.

7. In order to substantiate its case, the prosecution in all produced 23 witnesses. On the basis of material produced on record by the prosecution, the learned trial Court came to the conclusion that the entire links in chain of circumstances, did not connect the accused with the commission of offence and hence it held that the prosecution had failed to prove its case against the accused beyond reasonable doubt. The learned trial Court accordingly acquitted the accused

persons.

8. We have heard Mr. V.S. Chauhan, learned Additional Advocate General as well as Mr. Yudhbir Singh Thakur, learned Amicus Curiae. We have also gone through the judgment passed by the learned trial Court as well as perused the entire record of the case minutely.

9. Mr. V.S. Chauhan, learned Additional Advocate General, has argued that the judgment passed by the learned trial Court was not sustainable in law. According to him, the conclusion arrived at by the learned trial Court were based on surmises and the same were not borne out from the record. According to him, the prosecution has been able to bring home the guilt of the accused. It was submitted on behalf of the appellant that it stood proved beyond reasonable doubt that the accused were guilty of the charges framed against them. Mr. Chauhan submitted that in the present case there was no direct evidence. However, the circumstantial evidence led on record made a complete chain and it was sufficient to link the accused with the crime. According to Mr. Chauhan, the evidence led by the prosecution connected the accused with the crime and the prosecution had proved that there was enough motive with the accused to kill the deceased. According to him, it stood proved on record that the deceased was attracted towards wife of Nanhe Lal one of the accused and further both accused Nanhe Lal as well as Kanahiya Lal owed money to the deceased and as they had not made payment of ration to him in lieu of this, the deceased had retained their T.V. and other articles. He further submitted that Nanhe Lal had withdrawn an amount of Rs. 10,000/- from the account of Kanahiya Lal with his ATM and had not paid this amount to Sonu, whereas the fact of the matter was that Sonu had deposited the said amount in the account of Kanahiya Lal, which in fact belonged to Jaiveer and there was a dispute about the withdrawal of the said money. He further argued that the disclosure statements made by both the accused had led to the recovery of Danda as well as one Pazama and Mobile phone. Thus, according to him, all the circumstances stood proved on record by the prosecution made a complete chain to link the accused with the crime in issue. On these basis, he submitted that the judgment passed by the learned trial Court acquitting the accused was totally unsustainable in law and was liable to be set aside. Mr. Chauhan also argued that the learned trial Court erred in brushing aside the testimony of PW-1 who had categorically proved the case of the prosecution. He further submitted that similarly statement of PW-5 has been brushed aside by the learned trial Court without any cogent explanation, though the said witness had also corroborated the case of the prosecution, which linked the accused with the commission of the offence. According to Mr. Chauhan, similar was the case with the testimony of PW-7 Harvir Singh, brother-in-law of deceased Jaiveer, which testimony was also ignored by the learned trial Court without any sufficient reason. According to him, a harmonious reading of the testimony of these witnesses along with other prosecution witnesses proved beyond reasonable doubt that the prosecution has been able to bring home the guilt of the accused, and, therefore, according to him, the learned trial Court was

not justified in acquitting of the accused of the charges framed against them. Accordingly, he submitted and prayed that the judgment passed by the learned trial Court be set aside and the accused be convicted for the charges allegedly framed against them.

10. Learned Amicus Curiae also assisted us in adjudication of the present appeal. He has very effectively and efficiently and without being partison drawn the attention of this Court towards various aspects of the matter including contradictions and discrepancies in the case of the prosecution, on the basis of which, according to the learned Amicus Curiae, it could not be said that the judgment passed by the learned trial Court was not sustainable in law.

11. Undisputedly, there is no direct witness who has seen the commission of the alleged offence, therefore, the present case is a case of circumstantial evidence. The learned Additional Advocated General has culled out following circumstances, which according to him were duly proved on record by the prosecution and the chain of which circumstances according to him was unbroken and which linked the accused with the commission of the offence.

12. The circumstances upon which the appellant/ State has relied upon are as under:-

Circumstance No. 1:

Accused and deceased were working together and residing in the adjoining premises.

Circumstance No. 2:

10 days prior to the occurrence of incident both accused Nanhe Lal and deceased left their wives at their native place and started residing together in the same premises. Accused Kanahiya Lal also joined them in the same premises.

Circumstance No. 3:

Dispute erupted between deceased and the accused relating to payment of charges of ration.

Circumstance No. 4:

Motive.

Circumstance No. 5:

Recovery of dead body.

Circumstance No. 6:

Disclosure statements of accused Nanhe Lal and Kanahiya Lal.

Circumstance No. 7:

Recoveries effected pursuant to the said disclosure statements.

Circumstance No. 8:

Conduct of the accused after the commission of the offence.

Circumstance No. 9:

Medical evidence.

13. At this stage, it is relevant to take note of the judgment of the Hon^{ble} Supreme Court on circumstantial evidence in *Vijay Thakur v. State of Himachal Pradesh*, (2014) 14 SCC 609, relevant paras of which are quoted below:

"18. It is to be emphasised at this stage that except the so-called recoveries, there is no other circumstances worth the name which has been proved against these two appellants. It is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. Insofar as these two appellants are concerned, there is no circumstance attributed except that they were with Rajinder Thakur till Sainj and the alleged disclosure leading to recoveries, which appears to be doubtful. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

19. In *Mani v. State of Tamil Nadu*, (2008) 1 SCR 228, this Court made following pertinent observation on this very aspect:

"26. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case...."

20. There is a reiteration of the same sentiment in *Manthuri Laxmi Narsaiah v. State of Andhra Pradesh*, (2011) 14 SCC 117 in the following manner:

"6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

21. Likewise, in *Mustkeem alias Sirajudeen v. State of Rajasthan*, (2011) 11 SCC 724, this Court observed as under:

"24. In a most celebrated case of this Court, *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient

features once again which are as under: (SCC p.185)

"(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may 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."

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution."

It is settled position of law that suspicion, however strong, cannot take the character of proof.

22. We, therefore, have no hesitation in allowing these appeals and setting aside the conviction and sentence of the two appellants under Section 302 read with Section 34 of the Penal Code. We order accordingly. The appellants are directed to be released from jail forthwith, if not required in any other case."

14. Thus, the salient points which have been carved out by the Hon"ble Supreme Court in the case of circumstantial evidence, on the basis of which the guilt of the accused can be brought home are as under:

"(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may 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

(viii) 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."

15. The Hon^{ble} Supreme Court in *Sangili alias Sangathan v. State of Tamil Nadu*, (2014) 10 SCC 264 has held as under:

"15. To sum up what is discussed above, it is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. In the present case, we find, in the first instance, that the appellant was roped in with suspicion that it was a case of triangular love and since he also loved PW-3, he eliminated the deceased when he found that the deceased and PW-3 are in love with each other. However, we are of the view that this motive has not been proved. The evidence of last seen is also not established. Father of the deceased only said that the deceased had received a call and after receiving that call he left the house. In his deposition, he admitted that he had not seen the appellant before and he did not recognise his voice either. Therefore, he was unable to say as to whether the phone call received was that of the appellant. Proceeding further, we find that the deceased was not seen by anybody after he left the house. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

16. In *Mani v. State of Tamil Nadu*, (2009) 17 SCC 273, this Court made following pertinent observation on this very aspect:

"26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case...."

There is a reiteration of the same sentiment in *Manthuri Laxmi Narsaiah v. State of Andhra Pradesh*, (2011) 14 SCC 117 in the following manner:

"6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

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Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185) "(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established;

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(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."

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution."

(emphasis supplied)

18. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only to one conclusion, that is, the guilt of the accused. In our opinion, it is not safe to record a finding of guilt of the appellant and the appellant is entitled to get the benefit of doubt. We, therefore, allow the appeal and set-aside the conviction and sentence of the appellant. The appellant be set at liberty unless required in any other case."

16. In these circumstances because it is a case of circumstantial evidence, this Court has to satisfy its judicial conscience as to whether by way of circumstantial evidence produced on record by the prosecution, it has been able to link the commission of the offence with the accused or not.

17. Now, we will apply the above salient features to the facts of the present case in order to ascertain as to whether there is any infirmity or perversity with the judgment passed by the learned trial Court in the present case. Neither there is any direct evidence nor there is any eye witness who allegedly has seen the accused committing the crime. Thus, the case of the prosecution is solely based

on circumstantial evidence. Where a case rests upon circumstantial evidence, such evidence in order to base conviction, must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

18. We will test all the circumstances vis-a-vis material produced on record regarding each circumstance by the State separately.

Circumstance No. 1:

Accused and deceased were working together and residing in the adjoining premises.

19. According to the appellant/State, this circumstance stood proved by PW-1, PW-5, PW-8 and PW-11. It has come in the statement of PW-1 Rajesh Mishra who was working as Supervisor in Besta Appliances Company situated at Kala Amb, that Jaiveer was working as Foreman in All Knight factory for the last 4-5 years and he knew Jaiveer. He also stated that family of Jaiveer was living in Delhi, but used to visit him during the vacation of his children. Accused Nanhe also used to stay in one of the rooms situated inside All Knight factory along with his family. Wife of Jaiveer was reluctant to return to Delhi after she came with her children in January, 2010, as she was suspecting that Jaiveer was having illicit relations with some lady. Similarly, PW-5 Neelam alias Neelu also deposed that deceased (her husband) was working in All Knight factory and he was living in a room provided by the factory owner in the factory premises. There was another adjoining room which was occupied by accused Nanhe. PW-8 Parvinder had deposed that Jaiveer was Supervisor in All Knight factory and he was residing in one room in the factory premises. He deposed that there was another quarter adjoining to quarter of Jaiveer in All Knight factory, in which both the accused were residing. PW-11 Harcharan Singh had also deposed that Jaiveer was his employee, he was working in All Knight factory and he was living in a room inside the premises of the factory.

20. It is evident from the testimony of PW-1, PW-5 and PW-8 that deceased and accused No. 1 were working in all Knight factory and they were residing in adjoining premises. PW-11 also deposed that the deceased was serving in All Knight factory.

Circumstance No. 2:

10 days prior to the occurrence of incident both accused Nanhe Lal and deceased left their wives at their native place and started residing together in the same premises. Accused Kanahiya Lal also joined them in the same premises.

21. According to the appellant/State, this circumstance stood proved by PW-1, PW-5 and PW-8. PW-1 stated that after completion of vacation of children, wife of Jaiveer Singh was reluctant to return to Delhi as she was suspecting that Jaiveer had some illicit relations with some lady. Later, accused Nanhe left his

wife and children at his native place and thereafter wife of Jaiveer had also left for Delhi along with her children. He had also deposed that accused Kanahiya Lal used to work in H.M. Steel factory at Kala Amb. He had also deposed that when children of Nanhe had left, thereafter accused Kanahiya started living with accused Nanhe. PW-5 had deposed that after she returned back to Delhi with her children, her husband came to Delhi after few days and told her that Kanahiya was also staying with Nanhe in the adjoining room. She further deposed that on telephone her husband told her that he along with Nanhe and Kanahiya were living together in the factory premises and they cook food jointly. PW-8 had deposed that after the family of Nanhe and Jaiveer had left, Jaiveer, Kanahiya and Nanhe, used to cook food together.

22. The testimony of the said three witnesses goes on to prove that after the family of Jaiveer and Nanhe had gone back, the said three persons were residing in adjoining rooms i.e. in the rooms allotted to Jaiveer and Nanhe in the factory premises of All Knight factory and they were maintaining joint kitchen.

Circumstance No. 3:

Dispute erupted between deceased and the accused relating to payment of charges of ration.

23. This circumstance also according to the appellant/ State stood proved by PW-1, PW-5 and PW-8. PW-1 deposed that there was a boy namely Sonu whom he knew. Sonu had deposited Rs. 10,000/- in the account of Kanahiya in PNB Bank, Kala Amb. There was some dispute about withdrawal of aforesaid money from bank and because of that reason, Nanhe Lal had fled away. He had also talked to bank authorities about withdrawal of aforesaid money and Jaiveer had also accompanied him to the bank in the aforesaid connection. The bank authorities told them that the said money has been withdrawn through ATM and the card holder was Kanahiya Lal. He further deposed that there was dispute about payment of ration between Jaiveer, Nanhe and Kanahiya and in lieu of non-payment of ration by Kanahiya, television belonging to Kanahiya was retained by Jaiveer deceased and thereafter Kanahiya had left the aforesaid place. PW-5 had deposed that on 23.02.2010 she received a telephonic call and came to know that her husband has been died and thereafter she rushed from Delhi to Kala Amb. After reaching at Kala Amb, she came to know that Nanhe and Kanahiya had killed her husband and had fled away. Both the accused persons did not make the payment of ration, therefore, her husband had retained the articles of these persons which included T.V. and other articles. She also deposed that her husband's mobile phone was also taken away by the accused persons. PW-8 had testified that he knew Sonu who was working in HM Steel factory at Kala Amb and he was from the village of accused. Sonu had deposited Rs. 10,000/- in the account of Kanahiya Lal in PNB Bank at Kala Amb and the aforesaid money was withdrawn. Later on, it was found that the aforesaid money was withdrawn by accused. Thereafter, Nanhe left Kala Amb. Enquiries about withdrawal of money was got conducted from the bank authorities by Rajesh Mishra and there was a

talk between them that whosoever had withdrawn money, his photo may be there in the bank. An amount of Rs. 3400/- was due towards Nanhe and Kanahiya as payment of ration and in lieu of aforesaid payment, Jaiveer had retained TV and other utensils of the accused.

24. According to the state, it stood proved on record that a dispute erupted between the deceased and the accused relating to payment of charges of ration and the same stood proved beyond doubt by the prosecution.

Circumstance No. 4:

Motive.

25. As per the State, the accused had a motive to do away with the deceased. Deceased was having illicit relationship with the wife of accused Nanhe. This was proved by way of the testimony of PW-1 as well as by way of the testimony of PW-5 who is the wife of deceased. Besides this, there also was a dispute between deceased and both the accused relating to the payment of ration charges. Deceased had retained the belongings of Kanahiya including his T.V. set. Besides this, there also was a dispute with regard to an amount of Rs. 10,000/- which actually belonged to the deceased but has been deposited in the account of Kanahiya in PNB Bank at Kala Amb Branch, which was withdrawn through ATM and the card holder was accused Kanahiya. According to the appellant, all these facts also stood proved on record by the prosecution and this clearly demonstrated that the accused had a motive to kill the deceased and that there was animus between the accused and deceased.

Circumstance No. 5:

Recovery of dead body.

26. According to the appellant/State, this circumstance stood proved by PW-1 and PW-6. PW-1 had deposed that on 23.02.2010 at around 9.30 A.M. Upender came to his company and told him that Jaiveer Singh was lying on the bed in blood. Thereafter, he, Parvinder, Upender and others came to All Knight factory and to the room where Jaiveer was lying on the bed and his body was covered with blanket. They removed blanket from the body of Jaiveer Singh and noticed that Jaiveer had injury marks on his body and blood had oozed out. Jaiveer Singh had expired and it was suspected that he has been killed by someone. They informed the owner of the factory namely Guzral, who informed the police at Kala Amb. Police came on the spot along with dog squad. PW-6 had deposed that on 22.02.2010 he came to the factory at around 9.00 A.M. and left at 6.15 P.M. Deceased had told him that he was going on his scooter somewhere and would return late, therefore, PW-6 should keep the key of the factory on upper side of machine after closing the doors. He had further deposed that on 23.02.2010 at around 9.00 A.M., he came to the factory and found that small gate of factory was open. He also found the room of Jaiveer in an open state. He called Jaiveer but there was no answer. On this, he went inside the room and

found that blood was lying under the bed and Jaiveer was covered with blanket. He went to Rajesh Mishra, who worked in adjoining factory and called him. Rajesh Mishra was accompanied by Parvinder and others to All Knight factory. When they came to factory, they picked up the Kambal from the body of Jaiveer Singh and noticed that double bed was smeared with blood and Jaiveer had received injuries on his head and on his bodily parts. The family of Jaiveer was informed by Rajesh Mishra and police was also informed.

Circumstance No. 6 and 7 :

Disclosure statements of accused Nanhe Lal and Kanahiya Lal. Recoveries effected pursuant to the said disclosure statements.

27. As per the prosecution, accused Nanhe Lal gave a disclosure statement under Section 27 of the Evidence Act in the presence of witnesses Rajesh Mishra and Harvir Singh in police custody to the effect that he can have the Danda recovered by demarcating Nali where he had thrown the same on the intervening night of 22/23.02.2010. On the basis of said statement of the accused, the recovery of Danda was made recovered vide Ext. PW1/F in the presence of witnesses Rajesh Mishra and Harvir Singh. Similarly, accused Kanahiya Lal also made a disclosure statement Ext. PW10/A under Section 27 of the Evidence Act while in police custody in presence of witnesses Jitender Singh and Jai Praksh to the effect that he could get recovered weapon of offence danda, one Pazama and one mobile phone of Jaiveer. As a result of this disclosure statement, accused Kanahiya Lal got recovered mobile phone Ext. P-4 from wheat field and handed over it to the police, which was taken into possession vide Memo Ext. PW2/A. He also got recovered Pajama bearing traces of blood, which was taken into possession vide Ext. PW3/A and one Danda was recovered from a Nali near Craft factory, which was taken into possession vide Memo Ext. PW4/A.

Circumstance No. 8:

Conduct of the accused after the commission of the offence.

28. PW-20 ASI Mool Raj had deposed that he was deputed by S.I. Dharam Singh to trace out accused Nanhe and Kanahiya from their respective native villages. He apprehended them, brought them to Nahan and handed over to S.I. Dharma Singh.

Circumstance No. 9:

Medical evidence.

29. Dr. A Chaturvedi stepped into the witness box as PW-9 and stated that on the request of police, he conducted the postmortem of dead body of Jaiveer Singh, which was identified by Heera Singh and Rajesh Mishra. The cause of death was multiple injuries. He also deposed that all the injuries were ante mortem and the injuries were caused with blunt weapon. He also stated that the injuries mentioned in postmortem report were sufficient to cause death.

30. Now, we will test all these circumstances vis-a-vis material which has been produced on record by the prosecution.

Circumstance No. 1:

31. As far as circumstances No. 1 is concerned, it stands proved on record that accused Nanhe and deceased were both working in All Knight factory and they were living in adjacent rooms. Therefore, this circumstance is concerned, the prosecution has been able to prove this circumstance.

Circumstance No. 2:

32. As far as circumstance No. 2 is concerned, it is also established from the record that Kanahiya Lal had shifted to the accommodation of Nanhe Lal in All Knight factory and he was residing with Nanhe Lal in the same premises. Thus, the prosecution has been able to prove that whereas deceased and accused Nanhe Lal were residing in adjacent room in All Knight factory, later on, Kanahiya Lal also joined them, who started residing along with accused Nanhe Lal.

Circumstance No. 3:

33. In our considered view, as far as this circumstance is concerned, the prosecution has not been able to prove beyond reasonable doubt that a dispute erupted between the deceased and accused regarding payment of charges of ration. According to the State, this circumstance has been proved by PW-1, PW-5 and PW-8. As far as PW-1 is concerned, in our considered view, his testimony on the said circumstance is nothing more than hearsay. PW-1 Rajesh Mishra was serving as Supervisor in Vesta Appliances Company situated at Kala Amb on Trilokpur road. He was neither an employee in All Knight factory nor he was residing in the premises of All Knight factory. Similarly, as far as PW-5 is concerned, her deposition is to the effect that she was told on telephone by her husband that he along with Nanhe and Kanahiya are living together in factory premises and they cook food jointly. In her cross-examination, she has deposed that her husband used to consume liquor and the accused and her husband might have shared their meals for about 7-8 days. She has also stated that she does not know as to what amount Nanhe and Kanahiya had to pay to her husband on account of ration. PW-8 Parvidner had stated that he worked as a labourer in Vesta Company in Kala Amb. Thus, he also was neither an employee of All Knight factory nor he was residing in the same premises as the deceased and the accused. Neither PW-1 nor PW-8 have disclosed as to from where they gathered this information that there was a dispute relating to payment of charges of ration. Moreover, it is not the case of the prosecution that except the deceased and the accused no other person was residing in the premises of All Knight factory. Therefore, the factum of the deceased and the accused having a joint kitchen and a dispute existing intra them with regard to payment of charges of ration could have been best proved by a worker of All Knight factory who was also residing in the premises of the factory. Not only this, the prosecution has also not produced any witness either in the form of shopkeeper etc. or otherwise

from where it could be gathered that either the deceased and the accused were having joint kitchen or that the deceased was making payments of ration for accused also in lieu of which the accused owed him money. The factum of TV and other articles of the accused having been retained by the deceased have also not been proved on record by the prosecution. Therefore, in our considered view, this circumstance has not been proved beyond reasonable doubt by the prosecution.

Circumstance No. 4:

34. According to the prosecution, both the accused were having motive to do away the deceased. Accused Nanhe had a motive to kill deceased because deceased was having illicit relations with his wife and further, he had also withdrawn Rs. 10,000/- from the account of Kanahiya through ATM which amount actually belonged to the deceased. Similarly accused Kanahiya also had a motive to kill deceased as there was a dispute with regard to payment of ration charges between them and the deceased had retained TV set and other belongings of Kanahiya.

35. In our considered view, the prosecution has miserably failed to prove beyond reasonable doubt that there was illicit relation between the deceased and the wife of the accused. PW-1 has not only turned hostile but this witness in his examination-in-chief has nowhere mentioned that the deceased was having illicit relations with Nanhe's wife. All that he has deposed is this that after completion of the vacation of the children, wife of the deceased was reluctant to return Delhi as she suspected that Jaiveer was having some illicit relation with some lady.

36. As far as statement of PW-5 is concerned, she is an interested witness, as the deceased was her husband. Therefore, her statement has to be scrutinised very carefully. In her examination-in-chief all that she has stated is this that during her stay at Kala Amb she noticed that her husband had some inclination for the wife of Nanhe and thus she suspected illicit relations between her husband and wife of Nanhe. She has also deposed that this was clarified by her to Rajesh Mishra. However, Rajesh Mishra in his cross-examination has denied this fact.

37. In our considered view, no cogent evidence has been produced on record by the prosecution to demonstrate that in fact there was illicit relation between the deceased and the wife of Nanhe. All that the prosecution has been able to place on record is the material which suggests that there was an apprehension in this regard in the mind of PW-5. There is not even an iota of evidence to suggest that Nanhe had any animus towards the deceased as he suspected that the deceased was having illicit relation with his wife. Therefore, in our considered view, the prosecution has not been able to prove beyond reasonable doubt that there was illicit relationship between the deceased and the wife of Nanhe.

38. Similarly, as far as the alleged amount due on account of ration towards deceased from the accused has also not been substantiated by cogent evidence

by any material on record. This aspect of the matter we have already dealt with while discussing Circumstance No. 3. Therefore, in our considered view, this can also not be termed as a motive with the accused to do away with the deceased. The factum of an amount of Rs. 10,000/- having been withdrawn by Nanhe from the account of Kanahiya through ATM which amount was deposited in the said account by Sonu on behalf of the deceased has also not been explained beyond reasonable doubt by the prosecution. The best witness to prove this factum was Sony, who had allegedly deposited the amount in the account of Kanahiya on behalf of the deceased. However, the prosecution has not produced Sonu in the witness box. Therefore, in our considered view, the prosecution has not been able to prove beyond reasonable doubt that the accused were having motive to do away with the deceased.

Circumstance No. 5:

39. As far as the factum of recovery of the dead body of the deceased is concerned, this stands proved by the prosecution. However, we again reiterate that the prosecution has not been able to bring home the guilt of the accused to the effect that the deceased was killed by them.

Circumstances No. 6 and 7:

40. Now we will be dealing with the issue of the disclosure statements made by Nanhe Lal and Kanahiya Lal and the recoveries effected by the prosecution on the basis of these disclosure statements. It is settled principle of law that no confession made to a police officer shall be proved as against a person accused of any offence. This is provided in Section 25 of the Evidence Act. Section 26 of the said Act further lays that no confession made by any person while he is in the custody of a police officer, shall be proved as against such person unless it be made in the immediate presence of a Magistrate. Section 27 of the said Act provides how much of an information received from accused may be proved.

41. The Hon'ble Supreme Court in Mehboob Ali & Another v. State of Rajasthan, (2015) 9 JT 512, has held as under:-

"[13] For application of section 27 of Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the Police before disclosure statement of the accused is recorded, is admissible in the evidence.

[14] Section 27 of Evidence Act refers when any "fact" is deposed. Fact has been defined in section 3 of the Act. Same is quoted below :

"Fact" means and includes"

(1) any thing, state of things, or relation of things, capable of being by the senses;

(2) any mental condition of which any person is conscious. Illustrations:

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact. "Relevant". "One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts."

[16] This Court in *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru*, 2005 11 SCC 600 has considered the question of discovery of a fact referred to in section 27. This Court has considered plethora of decisions and explained the decision in *Pulukuri Kottaya & Ors. v. Emperor*, 1947 AIR(PC) 67 and held thus :

"125. We are of the view that Kottaya case, 1947 AIR(PC) 67 is an authority for the proposition that "discovery of fact" cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.

126. We now turn our attention to the precedents of this Court which followed the track of Kottaya case. The ratio of the decision in Kottaya case reflected in the underlined passage extracted was highlighted in several decisions of this Court.

127. The crux of the ratio in Kottaya case was explained by this Court in *State of Maharashtra v. Damu*. Thomas J. observed that: (SCC p. 283, para 35)

"The decision of the Privy Council in *Pulukuri Kottaya v. Emperor* 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."

In *Mohd. Inayatullah v. State of Maharashtra*, 1976 1 SCC 828, Sarkaria, J. while clarifying that the expression "fact discovered" in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in *Pulukuri Kottaya* case. The learned Judge, speaking for the Bench observed thus: (SCC p. 832, para 13)

"Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the

knowledge of the accused as to this (see *Pulukuri Kottaya v. Emperor*; *Udai Bhan v. State of U. P.*, 1962 Supp 2 SCR 830)."

[17] In *State of Maharashtra v. Damu Gopinath Shinde & Ors.*, 2000 AIR(SC) 1691 the statement made by the accused that the dead body of the child was carried up to a particular spot and a broken glass piece recovered from the spot was found to be part of the tail lamp of the motorcycle of co-accused alleged to be used for the said purpose. The statement leading to the discovery of a fact that accused had carried dead body by a particular motorcycle up to the said spot would be admissible in evidence. This Court has laid down thus :

"36. 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 in 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. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of the Privy Council in *Pulukuri Kottaya v. Emperor*, 1947 AIR(PC) 67 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.

37. 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". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In this case, the fact discovered by PW 44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motorcycle.

38. How did the particular information led to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the Investigating Officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot.

39. In view of the said discovery of the fact, we are inclined to hold that the information supplied by A-2 Guruji that the dead body of Dipak was carried on the motorcycle up to the particular spot is admissible in evidence. That

information, therefore, proves the prosecution case to the above mentioned extent."

[18] In *Ismail v. Emperor*, 1946 AIR (Sind) 43 it was held that where as a result of information given by the accused another co-accused was found by the police the statement by the accused made to the Police as to the whereabouts of the co-accused was held to be admissible under section 27 as evidence against the accused.

[19] In *Subedar & Ors. v. King-Emperor*, 1924 AIR (All) 207 it was held that a statement made by the accused implicating himself and others cannot be called "first information report". However it was held that though it could not be treated as first information report but could be used as information furnished under section 27 of Evidence Act. It was held thus :

"The approver and one of the appellants were arrested practically red-handed. They made statements to the officer who arrested them involving admissions of guilt. They went further and gave a list of the other members of the gang. Thereupon the officer made a report in writing to his superior, containing the information which he had received, including the names of those other persons received from the two men arrested. Somehow or other, the learned Judge has described this police report, which is merely the report of a confession, as "the first information report." Now the first information report is a well known technical description of a report under section 154, Criminal Procedure Code, giving first information of a cognisable crime. This is usually made by the complainant, or by some one on his behalf. The language is inapplicable to a statement made by the accused. The novelty of a statement by an accused person being called the first information report was to me so strange, that when counsel for the appellants addressed the argument to me attacking the Judge's use of the first information report, I took no notice of the argument. The learned Judge realised that he was dealing with a confession, but he momentarily failed to appreciate that the document itself was inadmissible, and that the only way in which the information relied upon could be used was by section 27. That is to say, with regard to the other accused, the officer giving evidence might say : "I arrested them in consequence of information received from Narain and Thakuri. When I arrested them they made a statement to me which caused me to arrest these people". The use which can legitimately be made of such information is merely this, that when direct evidence is given against the accused at the trial and there was evidence against the accused, it is open to the defence to check such evidence by asking whether the name of a particular accused was mentioned or not at the time?"

42. In the present case, in our considered view, there are major discrepancies with regard to the alleged disclosure statements made by the accused and the recovery of the alleged weapon of offence and other material on the basis of the said disclosure statements. Disclosure statement of accused Nanhe is Ext. PW1/F. This disclosure statement has been made by the accused in the Police Station on

17.03.2010 in the presence of witnesses Rajesh Mishra and Harvir Singh. PW-1 Rajesh Mishra in his statement has denied that during interrogation Nanhe Lal had made any disclosure statement and any such statement was recorded in his presence. He has also denied that on the basis of the said disclosure statement the weapon of offence i.e. Danda was recovered from the spot where the same was concealed by the accused. He has stated that Danda was shown to him by the police after calling him from the factory on the shop of Tersam. It is pertinent to mention that Ext.PW1/F is the memo of recovery pursuant to the disclosure statement made by accused Nanhe Lal and it also bears the signatures of Rajesh Mishra as a witness. The second witness to Exts. PW1/E and Ext. PW1/F is Harvir Singh. If we peruse the statement of this witness carefully it will reveal that there are lot of discrepancies in his statement. In one breath he says that he, Hitender and Heera (brother of deceased) went to Police Station Nahan and accused Nanhe at Police Station Nahan made a statement that he had used iron rod, thereafter, he stated that he (Nanhe) had used Danda. He has further deposed that disclosure statement of accused Nanhe was recorded between 9-9.30 A.M., whereas the proceeded for recovery during evening hours. Keeping in view the fact that one of the witnesses to the disclosure statement as well as recovery memo has not supported the story of the prosecution and the second witness is not trustworthy. PW-7 happens to be the brother-in-law of the deceased, therefore, he is an interested witness. In our considered view, it cannot be said that the prosecution has been able to prove the factum of the accused Nanhe having made a disclosure statement which led to the recovery of weapon of offence beyond reasonable doubt. Similarly, the disclosure statement of accused Kanahiya is Ext. PW10/A. Witnesses to the same are Jitender Singh and Jai Prakash. Jitender has appeared as PW-10. A perusal of his testimony reveals that his statement is not trustworthy. This is for the reason that according to him he went to the Police Station on that day on his own when he came to know that Jaiveer has been murdered. According to him, during the course of interrogation accused Kanahiya made a disclosure statement that he can get recovered one Danda, one Pajama and one mobile of Jaiveer. On the basis of his disclosure statement, recovery of the aforesaid articles was effected. As per him, Danda is Ext. P-6, which was recovered from a Nali near Craft factory. Incidentally, as per the prosecution, Danda Ext. P-2 which was recovered on the basis of the disclosure statement of accused Nanhe was also recovered from a Nali near Craft factory. We fail to understand that if both Ext. P-2 and Ext. P-6, were hidden in a Nali near Craft factory by the accused then why were the same not recovered by the police when they first visited the spot on the basis of the disclosure statement of either of the accused. All these facts shroud clouds of suspicion over the story of the prosecution and this also shrouds the testimony of PW-10 with suspicion. Similarly, recovery of other alleged articles on the basis of the disclosure statement of accused Kanahiya does not inspire confidence. Accordingly, in our considered view, the prosecution has not been able to establish beyond reasonable doubt that either any disclosure statement was made by accused Kanahiya or the articles alleged to have been recovered on the

basis of the disclosure statement made by the accused were actually so recovered. Therefore, in our considered view, the prosecution has not been able to prove this circumstance also.

Circumstance No. 8:

43. It is a matter of record that after the death of the deceased, accused Nanhe and Kanahiya have been arrested by police from their native villages. However, the prosecution has not been able to establish either the presence of the accused at the place of occurrence of the incident or that they actually ran away from the spot after the commission of the offence. Onus in this regard was heavily on the prosecution to have proved this circumstance against the accused. In the absence of prosecution having discharged its onus, we do not deem it proper to hold this circumstance against the accused.

Circumstance No. 9:

44. Dr. A. Chaturvedi, who conducted postmortem on the body of the deceased has deposed that the cause of the demise of the deceased was on account of the deceased sustaining multiple injuries, which head injury led to intracranial Haemorrhage. He has deposed that the injuries suffered by the deceased were inflicted or sustained on account of use of blunt weapon on the head of the deceased. On this basis, it has been urged before us by the State that the medical evidence clearly demonstrated that the deceased was killed with blows of Danda and the said blows were inflicted on his head by the accused. In our considered view, even this circumstance has not been proved by the prosecution beyond reasonable doubt to connect the accused with the commission of the offence because the prosecution has not been able to prove on the basis of evidence on record that accused were present at the spot and the deceased was physically attacked by the accused with Danda and it was on account of the blows so given to the deceased by the accused that he died.

45. Therefore, in view of what we have discussed above, according to us, the prosecution has not been able to bring home the guilt of the accused. It has not been able to establish beyond reasonable doubt that the accused are guilty of the offences alleged against them. In view of this, we find neither any infirmity nor any perversity in the trial Court judgment.

46. We place on record our appreciation for the assistance rendered to the Court by learned Amicus Curiae.

47. Therefore, we uphold the judgment passed by the learned trial Court and dismiss the appeal being without merit. Bail bonds, if any, furnished by the accused are discharged.