



2024:CGHC:31362-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 191 of 2023**

Dilip Sariwan S/o Ashok Sariwan Aged 30 Years R/o. Pateratola, P.S. Gaurela, District Gaurela- Pendra- Marwahi (Chhattisgarh)

---- Appellant

**versus**

State Of Chhattisgarh Through Station House Officer, Gaurela, District Gaurela-Pendra-Marwahi (Chhattisgarh)

---- Respondent

**CRA No. 64 of 2023**

Mahendra @ Girdhari Panika S/o Puran Panika Aged About 20 Years R/o Korja, Police Station Gaurela, District : Gaurela-Pendra-Marwahi, Chhattisgarh

----Appellant

**Versus**

The State Of Chhattisgarh Through The Station House Officer, Police Station Gaurela, District : Gaurela-Pendra-Marwahi, Chhattisgarh

---- Respondent

**CRA No. 262 of 2023**

Jai Prakash Yadav S/o Amrit Lal Yadav Aged About 29 Years R/o Sinchai Colony Gaurela, Police Station - Gaurela, District : Gaurela-Pendra-Marwahi, Chhattisgarh

----Appellant

**Versus**

The State Of Chhattisgarh Through The Station House Officer, Police Station Gaurela, District : Gaurela-Pendra-Marwahi, Chhattisgarh

---- Respondent

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**CRA No. 304 of 2023**

Tirath Lal Kashipuri S/o Late Chhedi Lal Kashipuri, Aged About 31 Years R/o Amadih Dongrapara, P.S. Pendra, District-Gourela Pendra Marwahi Chhattisgarh

----Appellant

**Versus**

State Of Chhattisgarh Through Police Station Gourela, District Gourela Pendra Marwahi Chhattisgarh.

---- Respondent

**CRA No. 596 of 2023**

1. Pawan Singh Marco S/o Baijnath Marco, Aged About 29 Years R/o Pateratola, P.S.- Gaurela, District-Gaurela - Pendra - Marwahi, (C.G.)

2. Smt. Kamta Panika W/o Durgesh Panika Aged About 23 Years R/o Kadamsara, Police Chowki - Venkatnagar, P.S. - Jaithari, District - Anuppur (M.P.)

----Appellants

**Versus**

State Of Chhattisgarh Through P.S. - Gaurela, District Gaurela - Pendra Marwahi (C.G.)

---- Respondent

**And**

**CRA No. 753 of 2023**

Ritesh Verma @ Kaleji S/o Mahesh Verma, Aged About 27 Years R/o Lingiyadih, Near Kali Mandir PS Sarkanda, District : Bilaspur, Chhattisgarh

----Appellant

**Versus**

State Of Chhattisgarh Through Police Station Gourela District Gourela - Pendra Marwahi Chhattisgarh.

---- Respondent

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For Appellant: Mr.Ajay Ayachi, Advocate in CRA No.191/2023  
For Appellant: Mr.Aman Tamrakar, Advocate in CRA No.64/2023  
For Appellant: Mr.Avinash Chand Sahu, Advocate in CRA  
No.262/2023  
For Appellant: Mr.Yogendra Chaturvedi, Advocate in CRA  
No.304/2023  
For Appellants: Mr.Prahalad Panda, Advocate in CRA No.596/2023  
For Appellant: Mr.Dheerendra Pandey, Advocate in CRA No.53/2023  
For Respondent/State:  
Mr.R.S.Marhas, Additional Advocate General

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**Hon'ble Shri Ramesh Sinha, Chief Justice**  
**Hon'ble Shri Ravindra Kumar Agrawal, Judge**  
Judgment on Board

**Per Ramesh Sinha, Chief Justice**

**20/08/2024**

1. Since the aforesaid six criminal appeals have been filed against the impugned judgment dated 14.12.2022 passed by the Additional Sessions Judge, Pendra Road in Sessions Trial No.10/2020, they were clubbed & heard together and being disposed of by this common judgment.
2. Appellants-Dilip Sariwan (A1), Mahendra @ Girdhari Panika (A2), Jai Prakash Yadav (A3), Tirath Lal Kashipuri (A4), Pawan Singh Marco (A5), Smt.Kamta Panika (A6) and Ritesh Verma @ Kaleji (A7) have preferred these six criminal appeals under Section 374(2) of the CrPC questioning the impugned judgment dated 14.12.2022 passed by the Additional Sessions Judge, Pendra Road in Sessions Trial No.10/2020, by which the learned trial Court has convicted appellants-Tirath Lal, Dilip Sariwan @ Sunny, Pawan Marco, Jai Prakash Yadav @ Monu and Ritesh

Verma @ Kaleji for offence under Sections 302/34 and 201/34 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.1000/-, in default of payment of fine to further undergo RI for six months and RI for five years and fine of Rs.500/-, in default of payment of fine to further undergo RI for three months. The trial Court has also convicted appellants Tirath Lal, Dilip Sariwan @ Sunny, Pawan Marco, Jai Prakash Yadav @ Monu, Ritesh Verma @ Kaleji, Mahendra @ Girdhari and Kamta Panika for offence under Section 120B of the IPC and sentenced to undergo RI for ten years and fine of Rs.1000/-, in default of payment of fine to further undergo RI for six months.

3. Case of the prosecution, in nutshell, is that complainant Supet (PW-1) lodged merger intimation at Gaurela Police Station at 7.40 A.M. on 16.08.2020 to the effect that yesterday at 17.00 P.M. on 15.08.2020 his nephew deceased Durgesh Panika, resident of Kadamsara, Chhirhatola, Police Station Jaithari, village Medhuka came to his house and said that uncle give your motorcycle, his motorcycle is consuming too much oil, I will go to my in-laws village Korja, Jhagrakhand. Saying this, his nephew Durgesh took his motorcycle and left his motorcycle to his house. He does not know whether his nephew went to his in-laws village or not. On 16.08.2020 at about 7 A.M., his nephew Ajesh Kumar informed over the phone that his motorcycle bearing number was lying in the main road near Gulab Raj's motor pump near Harrantola and dead body was also lying there. When he went there, he saw that it was his motorcycle and the dead body lying was that of his

nephew Durgesh Panika, on which deep wound mark was visible on the back of his head. It appeared to be a case of murder by an unknown person using a deadly weapon. Based on this information, Marg Intimation (Ex.P-1) was registered, followed by a First Information Report (Ex.P-2). The investigating officer went to the scene, conducted an inspection and prepared a spot map (Ex.P-4) and a panchnama (Ex.P-3). The body of the deceased Durgesh Panika was sent to M.C.H. Sanatorium Hospital, Gourala for postmortem, where Dr.B.S.Paikra (PW-9) conducted postmortem vide Ex.P-5) and found following injuries:-

- i. Incised wound. Brain material proted out with fracture occipital bone.
- ii. Incised wound vertex 5x1cm depth fracture vertex bone.
- iii. Incised wound 3x 5cm with fracture frontal bone with bleeding.
- iv. Abrasion over left shoulder 3x2 cm. caused by hard and rough object.

The doctor has opined that cause of death was due to head injury and the death was homicidal.

4. A spot map of the incident site, Harra Tola, was prepared by the investigating officer vide Ex.P-6. Suspicion arose due to strained relationship between the deceased and his wife, Kamata Panika, and her affair with a person named Tirath. Kamata Panika, her brother Mahendra @ Giridhari Panika, and other accused were taken into custody and questioned. The accused Tirathlal, Dilip Sariwan, Pawan Singh, Jaiprakash, and Kamata Panika stated in

their memorandum that Kamata and Tirath had a love affair and they had physical relationship several times, even after Kamata's marriage. When Durgesh found out, he started beating Kamata, so she told Tirath to get rid of Durgesh if he wanted to be with her. Then Tirath conspired with his associate, Sunny alias Dilip Sariwan to kill Durgesh in an accident and offered him one lakh rupees to do so. Sunny, in turn, involved his associates Pawan Singh Marco, Monu @ Jaiprakash and Ritesh @ Kaleji to kill Durgesh.

5. On August 15, 2020 at about 6 P.M., Tirath called Durgesh to Gourala on the pretext of consuming alcohol and informed the others involved. They took Durgesh to Anjani Bagaranda Plot, made him drink alcohol, and then Ritesh and Pawan killed him using a jack rod, then they loaded the body in Swaraz Mazda vehicle and threw it in Harratola Main Road, then Tirath @ Sunny gave Rs.20,000/- to Dilip and told him to pay the remaining money later and came home. One black colour motorcycle bearing registration No.CG 10-AX-4299 registered in the name of Supet Lal, one pair shoe and one goggle have been seized from the spot vide Ex.P-8. Bloodstained soil and plain soil were recovered from the spot vide Ex.P-9. Spot panchnama was prepared vide Ex.P-10. Memorandum statement of appellant-Tirath Lal Kashipuri was recorded vide Ex.P-11 and on the basis of his memorandum statement, one Maruti Suzuki Eeco car, black colour jeans and blue shirt stains with blood and one mobile were seized vide Ex.P-20. Memorandum statement of appellant Dilip

Sariwan was recorded vide Ex.P-12 and on the basis of his memorandum statement, one ITEL mobile, white black colour half pant stains with blood, black vest stains with blood and one mobile of Samsung company were seized from him vide Exs.P-16 and P-22. Memorandum statement of appellant Pawan Singh Marco was recorded vide Ex.P-13 and on the basis of his memorandum statement, Swaraj Mazda and jack rod stains with blood, one t-shirt stains with blood and Vivo company mobile were seized vide Exs.P-19 and P-21. Memorandum statement of appellant Jaiprakash Yadav @ Monu was recorded vide Ex.P-14 and on the basis of his memorandum statement, one blue colour t-shirt and one mobile were seized from him vide Ex.P-18. Memorandum statement of appellant Smt.Kamta Panika was recorded vide Ex.P-15. One mobile was seized from appellant Mahendra Kumar @ Girdhari Panika vide Ex.P-17. Full shirt of the deceased was seized vide Ex.P.23. Bloodstained and plain soil were recovered from the spot vide Ex.P-24. Appellants were arrested on 19.8.2020 vide arrest memos Exs.P-25 to Ex.P-30. Seized articles were sent to FSL for examination vide Ex.P-54 and as per FSL report (Ex.P-55), blood was found on jack rod (Article C) and t-shirt (Article D) seized from appellant Pawan Singh Marco, t-shirt (Article E) seized from appellant Jaiprakash @ Sonu, jeans (Article F1) and shirt (Article F2) seized from appellant Tirath Lal Kashipuri and half pant (Article G1) and vest (Article G2) seized from appellant Dilip Sariwan and shirt (Article H) of deceased Durgesh Panika. Call Detail Records (CDRs) and

tower location reports of the mobile numbers used by the deceased Durgesh (7049761371, 7694004492), accused Tirath Kashipuri (8224838100), accused Jaiprakash @ Monu (8839121680), accused Giridhari @ Mahendra (6265463826), accused Dilip Sariwan @ Sunny (9165141337) and accused Pawan Marco (8770798733) for the period from 01.08.2020 to 20.08.2020 were obtained.

6. After due investigation, all the appellants were charge-sheeted for the aforesaid offences in which they abjured their guilt and entered into defence stating inter-alia that they have not committed any offence and they have falsely been implicated in crime in question.
7. In order to bring home the offence, the prosecution examined as many as 14 witnesses and exhibited 55 documents Exs.P-1 to P-55. None was examined on behalf of the defence, however, documents (Exs.D-1 and D-2 i.e. statements of Mahesh Kumar Panika and Umesh @ Motu Padwar) were brought on record.
8. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 14.12.2022, proceeded to convict the aforesaid accused persons for the aforesaid offences and sentenced them as aforementioned, against which, these criminal appeals have been preferred.
9. Mr.Ajay Ayachi, learned counsel appearing for the appellant in CRA No.191/2023 would submit that the impugned judgment of the trial Court is illegal and contrary to law applicable to the facts



and circumstances of the case. There is not a single cogent reliable witness who can independently described incident. He would further that the trial Court has failed to see that there are ingredient in the prosecution story to show that false story has been concocted against the appellant with an ulterior motive. According to the prosecution, the place of incident is a public place where so many people are working around it. He would also submit that nobody has taken the name of the present appellant during Court statements and he has been convicted only on the basis of circumstantial evidence. In the present case, memorandum and seizure witnesses were turned hostile and they have not supported the case of the prosecution and the present appellant has been made an accused only on the basis of CDR and there is no evidence on record that the present appellant was in contact with someone. There was no motive in the present case and the appellant was not seen with other co-accused. Blood was found on half pant (Article G1) and vest (Article G2) seized from appellant Dilip Sariwan, but it was not ascertained whether it was human blood. As such, appeal deserves to be allowed and the impugned judgment deserves to be set aside.

10. Mr. Avinash Chand Sahu and Rahul Tamrakar, learned counsel appearing for the appellants in CRA Nos. 64/2023 and 262/2023 would submit that there is no any direct or indirect evidence against the present appellants and there is no any circumstantial evidence against the present appellants to prove that they were

members of criminal conspiracy. The prosecution has not proved that upon phone call of the present appellants the deceased came at the place of incident. They would further submit that all the material witnesses have turned hostile and there is no evidence that the present appellants have called the deceased. There is no evidence to prove that the deceased was killed by the present appellants except memorandum and all the witnesses of memorandum were turned hostile. The trial Court has failed to appreciate that the prosecution has not established intention and the role of the present appellants to commit murder of the deceased. They would also submit that the case of the prosecution is fully based upon the circumstantial evidence, whereas chain of events are missing and are incomplete to prove the offence against the present appellants. There are material contradictions and omissions in the statements/deposition of the prosecution witnesses, which has been overlooked by the trial Court. As such, the appeals deserve to be allowed and the impugned judgment deserves to be set aside.

11. Mr. Yogendra Chaturvedi, learned counsel appearing for the appellant in CRA No.304 of 2023 would submit that the trial Court has erred in convicting the appellant holding him guilty for alleged offences whereas the prosecution has completely failed to prove its case beyond reasonable doubt. He would further submit that entire case of the prosecution is based on circumstantial evidence as there is no eye witnesses in the present case and further the prosecution is completely failed to prove the guilt of

the present appellant beyond reasonable doubt. It is well settled that in the case of circumstantial evidence the circumstances from which the conclusion of guilt is to be drawn 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. He also submit that there are material contradictions, exaggerations and omissions in the statements of the witnesses and therefore, the learned trial Court has erred in holding the appellant guilty on the basis of statements of the witnesses who are not worthy to be believed. As per FSL report, blood was found on clothes recovered from appellant Tirath Lal, but it was not proved whether it was human blood. So far as the motive is concerned, it could not be proved and only on the basis of CDR, the present appellant has been convicted. As such, the appeal deserves to be allowed and the impugned judgment deserves to be set aside. He relies upon the judgment passed by this Court in **Lavkush Shukla v. State of Chhattisgarh** (Criminal Appeal No.1153 of 2022) on 28.02.2024.

12. Mr.Prahalad Panda, learned counsel appearing for the appellants in CRA No.596/2023 would submit that the impugned judgment is perverse on the ground that the same is outcome of the incorrect interpretation of the circumstantial evidence. There is no eye witness in the present case and whole case is based on circumstantial evidence and there is no material on record to connect the present appellants in crime in question. The relationship of appellant Kamta with her husband Durgesh was

cordial and there is no any dispute between them. He would also submit that blood was found on jack rod (Article C) and t-shirt (Article D) seized from appellant Pawan Singh Marco, but it was ascertained whether the said blood is human blood. As such, the appeal deserves to be allowed and the impugned judgment deserves to be set aside.

13. Mr. Dheerendra Pandey, learned counsel appearing for the appellant in CRA No.753/2023 would submit that the finding of the trial Court is not based on material available on record and the same is on the basis of conjecture and surmises. He would further submit that the trial Court ought to have seen that the prosecution has examined various witnesses but not a single witness has given statement against the present appellant. He would also submit that the finding of the learned trial Court is against the rule of prudence and without establishing the offence against the particular accused person, conviction of the present appellant cannot be sustained. As such, the appeal deserves to be allowed and the impugned judgment deserves to be set aside.

14. On the other hand, Mr. R.S. Marhas, learned Additional Advocate General appearing for the respondent/State would support the impugned judgment and submit that the prosecution has proved its case beyond reasonable doubt and the learned trial Court after considering all incriminating materials and circumstances available against the accused persons rightly convicted them for the aforesaid offences. Hence, the instant criminal appeals being

bereft of merits are liable to be dismissed looking to the commission of offence done by the accused persons.

15. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
16. The first question for consideration would be, whether death of deceased Durgesh Panika was homicidal in nature ?
17. On behalf of the prosecution, Dr.B.S.Paikra who conducted postmortem on the body of the deceased vide Ex.P-5 has been examined as PW-9 and opined that cause of death was due to head injury and death was homicidal in nature. After hearing learned counsel for the parties and after considering the submissions, we are of the considered opinion that the finding recorded by the trial Court that death of deceased Durgesh Paikra was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.
18. It is the case of no direct evidence, rather conviction is based on circumstantial evidence. Five golden principles which constitute *Panchseel* of proof of case based on circumstantial evidence have been laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, which state as under :-

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

The circumstances concerned “must” or “should” and not “may be” established;

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

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

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

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

19. The Supreme Court in the matter of **Suresh and Another v State of Haryana, (2018) 18 SCC 654** has observed that cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. The court at paras 41 and 42 has observed thus :

“41. The aforesaid tests are aptly referred as Panchsheel of proof in Circumstantial Cases (refer to Prakash v. State of Rajasthan). The expectation is that the prosecution case should reflect careful portrayal of the factual circumstances and inferences thereof and their compatibility with a singular hypothesis wherein all the intermediate facts and the case itself are proved beyond reasonable doubt.

42. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of "chain link theory" and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the "chain link theory" since Hanumant case, which of course needs to be followed herein also."

20. The learned trial Court after appreciating oral and documentary evidence available on record has convicted appellants Tirath Lal, Dilip Sariwan @ Sunny, Pawan Marco, Jai Prakash Yadav @ Monu and Ritesh Verma @ Kaleji for offence under Sections 302/34 and 201/34 of the IPC and appellants Tirath Lal, Dilip Sariwan @ Sunny, Pawan Marco, Jai Prakash Yadav @ Monu, Ritesh Verma @ Kaleji, Mahendra @ Girdhari and Kamta Panika for offence under Section 120B of the IPC. It is the case of the prosecution that all the appellants conspired together, formed a common intention to kill Durgesh Panika and killed him by hitting him on the head with a jack rod and after committing murder, they

loaded the body in Mazda vehicle and threw it in Harratola Main Road.

21. In the present case, the prosecution has proved the following circumstantial evidence against the appellants:-

(i) Death of deceased Durgesh Panika was “homicidal” in nature.

(ii) Accused Kamta Panika (wife of deceased Durgesh Panika) was having love affair with accused Tirath before marriage.

(iii) The relationship between deceased Durgesh Panika and his wife accused Kamta Panika were not cordial and there was dispute between them.

(iv) Accused Mahendra @ Girdhari (brother-in-law of deceased Durgesh) called the deceased on the date of incident on the pretext of giving money.

(v) Accused Tirath called deceased Durgesh Panika at Gaurela to consume liquor.

(vi) Accused Kamta Panika was having “motive” to commit murder of Durgesh Panika.

(vii) Call details, tower location of the accused and the deceased.

(viii) On the basis of the memorandum statement of the accused, seizure of jack rod used in the crime and the clothes worn at the time of the incident.



(ix) As per FSL report, human blood was found in jack rod used in the incident and t-shirt of accused Pawan.

(x) Blood found in the soil near the spot and in t-shirt of accused Jaiprakash @ Monu, shirt of Tirathlal and half pant and vest of accused Dilip Sariwan @ Sunny.

(xi) Accused Ritesh @ Kaleji absconded after the incident.

22. The next question for consideration would be, whether the trial Court has rightly held that the appellants are author of the crime by relying upon the following circumstances:-

(i) Homicidal death was proved by the prosecution as per postmortem report (Ex.P-5) of Dr.B.S.Paikra (PW-9) who conducted autopsy.

(ii) As per the case of the prosecution, the fact of death of deceased Durgesh Panika was within the knowledge of the appellants, however, there was no any explanation given by the appellants in their statements under Section 313 of the CrPC. Thus, burden of proof was on the appellants to explain such circumstance, which they failed to explain.

23. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a

primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

24. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.
25. In the light of these guiding principles, we will have to examine the present case.
26. On a perusal of the judgment of the Trial Judge, it would reveal that the main circumstance on which the Trial Judge found the appellants guilty of the crime is the recovery of various articles at their instances. The Trial Judge has further found that on the basis of memorandum statement of accused-Tirath Lal, one

Maruti Suzuki Eeco car, black colour jeans and blue shirt stains with blood and one mobile were seized vide Ex.P-20, on the basis of memorandum statement of appellant Dilip Sariwan, one ITEL mobile, while black colour half pant stains with blood, black vest stains with blood and one mobile of Samsung company were seized from him vide Exs.P-16 and P-22, on the basis of memorandum statement appellant Pawan Singh Marco, Swaraj Mazda and jack rod stains with blood, one t-shirt stains with blood and Vivo company mobile were seized from him vide Exs.P-19 and P-21, on the basis of memorandum statement of appellant Jaiprakash Yadav, one blue colour t-shirt and one mobile were seized from him vide Ex.P-18 and one mobile was seized from appellant Mahendra Kumar @ Girdhari Panika vide Ex.P-17 and as per FSL report (Ex.P-55), blood was found on jack rod (Article C) and t-shirt (Article D) seized from appellant Pawan Singh Marco, t-shirt (Article E) seized from appellant Jaiprakash @ Sonu, jeans (Article F1) and shirt (Article F2) seized from appellant Tirath Lal Kashipuri and half pant (Article G1) and vest (Article G2) seized from appellant Dilip Sariwan and shirt (Article H) of deceased Durgesh Panika. Call Detail Records (CDRs) and tower location reports of the mobile numbers used by the deceased Durgesh (7049761371, 7694004492), accused Tirath Kashipuri (8224838100), accused Jaiprakash @ Monu (8839121680), accused Giridhari @ Mahendra (6265463826), accused Dilip Sariwan @ Sunny (9165141337) and accused

Pawan Marco (8770798733) for the period from 01.08.2020 to 20.08.2020 were also obtained.

27. Investigating Officer Raghunandan Prasad Sharma (PW-14) has stated in his Court statement that at the instance of accused Dilip @ Sunny Sariwan, key-paid mobile of Itel company was seized without any seam as per seizure Ex.P-16 from Barganda Plot of village Anjani. A Redmi company mobile phone with Jio company SIM 6265463826 was seized from accused Mahendra @ Girdhari as per seizure Ex.P-17. A blue coloured t-shirt from accused Jaiprakash @ Monu in which blood stains were found and a Redmi company mobile with Airtel SIM No.9179207554 and Jio SIM No.8839121680 were seized vide Ex.P-18. Swaraj Mazda vehicle bearing No.CG-10/R-0622 and iron jack rod used in the crime in which blood stains were found were seized from accused Pawan Singh Marco vide Ex.P-19. A Maruti Suzuki Eeco vehicle bearing No.CG 10/AD-2999, black colour jeans and blue shirt worn at the time of the incident stains with blood, Redmi company's mobile with Jio and idea company's SIM 8224838100 was seized from accused Tirath Kashipuri vide Ex.P-20. A white blue t-shirt worn by accused Pawan Marco at the time of incident on which blood stains were found on the front and a Vivo company mobile which had Jio company's SIM were seized vide Ex.P-21 and black colour half pant and black vest worn by accused Dilip Sariwan @ Sunny at the time of the incident in which blood stains were found and Samsung mobile in which the

SIM number of idea is 9165141337 were seized as per seizure memo Ex.P-22.

28. So far as authenticity of the call detail reports and issuance of certificate under Section 65-B of the Evidence Act is concerned, Prabhakar Tiwari (PW-13) has stated in his court statement that he works as the in-charge of the Cyber Cell. In connection with Crime No. 143/2020 under Section 302 of the IPC at Gourela Police Station, an application was submitted to his office to provide the CDR and call detail records of mobile numbers 8224838100, 8839121680, 6265463826, 9165141337, 8770798733, 7694004492, and 7049761371 for the period from 01/08/20 to 20/08/20, as well as to obtain a certificate under Section 65-B of the Evidence Act from the nodal officer. He then emailed the nodal officers of the respective companies (Jio, Idea, and Airtel) through the authorized email ID of the Cyber Cell to obtain the CDR/call details. The hard copy of the printout was then made available to Gourela Police Station. Mobile No.6265463826 Mahendra @ Girdhari S/o Puranlal, Village Korja, Mobile No.8839121680 accused Jaiprakash S/o Amritlal Village Sarbahra, Mobile No.8770798733 Sunil Thakur S/o Vishprasad Thakur Bhopal, Mobile No.9165141337 Dilip Sariwan S/o Ashok Sariwan Patertola Pendra Road, Mobile No.7694004492 Chhabilal Panika S/o Daduram Panika Kadamsara Venketnagar Jaithari, Mobile No-Manoj Panika S/o Santram Aamadand Pendra Road, Mobile No.8224838100 Tirathlal Kashipuri S/o Chhedilal Aamanand were registered. The

CDR/Call Detail Records of these numbers are contained in 62 pages. A certificate under Section 65-B of the Evidence Act has been provided in this regard, which is Exhibit P-43.

29. The CDR and call detail records presented in the case have been examined. On examining the call detail reports, it is revealed that on the day of the incident i.e., 15/08/2020, there were conversations between the mobile number 7694004492 used by deceased Durgesh and the mobile number 6265463826 of accused Mahendra @ Girdhari at 12:39 P.M., 12:47 P.M., 17:10 P.M., 17:11 P.M., 17:28 P.M., 17:45 P.M. and 18:25 P.M. Similarly, on the same day i.e. 15/08/2020, there were conversations between the mobile number 7049761371 of deceased Durgesh Panika and the mobile number 9340946963 of accused Tirathlal at 17:14 P.M. 18:34 P.M. and 18:51 P.M. Furthermore, there was contact between the mobile number 7694004492 of deceased Durgesh and the mobile number 9340946963 of accused Tirathlal on the day of the incident i.e. 15/08/2020 at 12:12 P.M.
30. It is noteworthy that in the mobile Redmi Note-8 seized from the possession of accused Tirathlal, Jio company's SIM number 9340946963 and Idea company's SIM number 8224838100 were being used. Thus, on the date of incident, it is established that accused Tirathlal Kashipuri and accused Mahendra @ Girdhari had several contracts with deceased Durgesh Panika due to which this statement of prosecution witnesses Supet Panika, Rajkumari, Daduram and Mahesh Kumar Panika gets strength

that accused Mahendra @ Girdhari had called the deceased on the pretext of giving money and in conspiracy, Tirathlal had called the deceased on the pretext of liquor.

31. On examining the call details of accused Mahendra @ Girdhari presented by the prosecution, it is also revealed that on the day of the incident, i.e. 15/08/2020, there were conversations between Mahendra @ Girdhari's mobile number 6265463826 and accused Tirathlal's mobile number 9340946963 at 12:08 P.M., 12:43 P.M., 12:50 P.M., 16:58 P.M., 17:13 P.M., 18:01 P.M., 18:38 P.M., 18:51 P.M., 18:58 P.M., and 21:49 P.M. Additionally, there were approximately 07 SMS exchanges between the two mobile numbers between 18:51 P.M. and 18:58 P.M.. The call details also reveal that accused Mahendra @ Girdhari was in constant contact with deceased Durgesh and also with accused Tirathlal. The call details further reveal that accused Mahendra @ Girdhari would first talk to the deceased, then to accused Tirathlal, followed by another conversation with the deceased, and then again with accused Tirathlal. This sequence continued from around 12:00 noon to night on the day of the incident, supporting the prosecution's claim that accused Girdhari @ Mahendra and Tirathlal hatched a conspiracy to kill deceased Durgesh and to carry out the said murder, on the date of murder of deceased Durgesh, they called him repeatedly on the phone in order to carry out their conspiracy and committed his murder.

32. Similarly, upon examining the above call details, it is also revealed that accused Jaiprakash @ Monu was in constant contact with accused Dilip Sariwan @ Sunny's mobile number 9165141337 through his mobile number 8839121680 on the day of the incident. Similarly, accused Dilip Sariwan @ Sunny was in constant contact with accused Tirathlal's mobile number 9340946963 and accused Jaiprakash @ Monu's mobile number 8839121680 through his mobile number 9165141337, and had continuous conversations. Thus, the call details also reveal that the accused persons committed the crime.

33. Thus, from the above analysis of evidence, the fact is established beyond doubt that deceased Durgesh was aware about illicit relationship between accused Kamta and accused Tirath, and due to Kamta secretly talking to Tirath on mobile phone, there was a dispute between them, and their relationship was not good. As a result, at the behest of accused Kamta, accused Tirath hatched a criminal conspiracy with co-accused to kill Durgesh and make it look like an accident, and formed a common intention to commit the crime. In pursuance of this intention, the accused persons, including Tirath, Dilip @ Sunny, Pawan, Jaiprakash @ Motu, and Ritesh @ Kaleji called Durgesh to Gourela on the pretext of consuming liquor and killed him and then thrown his body on Harrantola road to make it look like an accident. The evidence presented by the prosecution also proves the motive for murder and the fact that accused Ritesh @ Kaleji absconded after the incident creates a presumption against him.



34. The documentary evidence of an electronic record under the Evidence Act, in view of Section 65-A can be proved only in accordance with the provisions of Section 65-B. An electronic record shall not be admitted in evidence unless requirement under Section 65-B is satisfied as discussed by the Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantrayal & Ors, (2020) 7 SCC 1.**

35. The Supreme Court in the matter of **Kiriti Pal v. State of West Bengal, (2015) 11 SCC 178** while considering with the issue of admissibility and relevancy of telephonic conversation made between the persons, as evidence, in paragraph 30 to 33 has observed as under:

“30. Apart from telephonic conversation, no other evidence was adduced by the prosecution to bring home that first accused hatched a conspiracy. There is no evidence to prove as to how the appellants 2 and 3 ( Siddique Mia and Mustaque Mia) had gone to the place of occurrence and what was their subsequent conduct. Their presence near the scene of occurrence could have been established by the prosecution either by examining some witnesses near and around the place of occurrence or by proving the location of the calls so as to establish the proximity of the accused with the scene of occurrence. Apart from the extract of the call records, no other evidence was adduced by the prosecution to establish the conspiracy.

31. Apart from telephonic conversation, prosecution also relied upon recoveries made pursuant to the

confessional statement of the appellants 2 and 3 (Siddique Mia and Mustaque Mia). Pursuant to the statement of Siddique Mia one TVS Fiero red colour motor cycle bearing No. WB-54B/8245 with its key and nokia mobile handset (phone No.9932345230) were seized under Ext.17/3. Pursuant to the statement of Mustaque Mia nokia mobile handset having connection No. 9932705533, one gold finger ring in the shape of a flower with inscription of letter 'Anjali', and silver made chain with one Amethyst and red coral fitted with it were seized under Ext. 18/3. Recoveries made and seizure list were sought to be proved by examination of PW17-Uttam Mondal. PW17 had deposed that he knew deceased Anjali. PW17 was then employed in the hotel run by Bhagyadhar Dhibar which was owned by Anjali. In his evidence PW17 stated that in January 2009, two or three gentlemen came to his hotel and took his signature and that he did not know why his signatures were being taken. Though PW17 identified his signatures in the seizure list, evidence of PW17 no way establishes recoveries being made at the instance of the accused 2 and 3. Evidence of PW17 is far from convincing and is not of much assistance to the prosecution as he has not clearly spoken about the recoveries and the seizure list. The gold ring and silver made chain recovered were also not shown to the other witnesses for being identified as that of Anjali. No other evidence was adduced by the prosecution to substantiate the recovery of objects and the seizure list.

32. So far as the complicity of fourth accused-Durga Sutradhar, the prosecution mainly relied upon the call

record and judicial confession of Durga recorded by Judicial Magistrate, 2nd Court, Suri, Birbhum (Ext.26). Prosecution relied upon the recovery a notebook seized from the possession of appellant Durga Sutradhar where she has written Kiriti's phone number clandestinely coded as 'Dadu'. Ext. 30 call records of Kiriti Pal phone also revealed that there were number of calls from Kiriti Pal to fourth appellant. Like in the case of appellants No. 2 and 3 (Siddique Mia and Mustaque Mia) apart from telephone calls, no other evidence was adduced by the prosecution to bring home the guilt of fourth accused-Durga Sutradhar. Insofar as the judicial confessional statement recorded under Section 164 Cr.P.C., it is not an inculpatory statement; but it is only to the effect of showing the subsequent conduct of A-1 Kiriti Pal in threatening Durga Sutradhar-fourth appellant not to disclose anything to the police. In our view, neither the telephone calls between the first appellant-Kiriti Pal and Durga Sutradhar-fourth appellant nor her confessional statement by themselves would be sufficient to establish the guilt of fourth appellant.

33. In a case based on circumstantial evidence, the court must adopt a very conscious approach and should record conviction only if all the links in the chain are complete pointing to the guilt of the accused. All the links forming complete chain must be firmly established by the prosecution. Each link taken separately may just suggest suspicion but such suspicion itself may not take the place of proof and not sufficient to convict the accused. All the circumstances must be firmly established and must

be consistent only with the hypothesis of the guilt. But that is not to say that the prosecution must meet each and every hypothesis put forward by the accused however farfetched it may be. As discussed earlier, the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion itself cannot take the place of proof. In our view, evidence adduced by the prosecution against appellants 2 and 3 (Siddique Mia and Mustaque Mia) do not form a complete chain connecting the accused with the crime and the conviction of the appellants under Section 302 IPC read with Section 120B IPC cannot be sustained and deserves to be set aside. Likewise, conviction of fourth appellant-Durga Sutradhar under Section 120B cannot be sustained and is liable to be set aside.”

36. The prosecution is required to prove each and every circumstance beyond reasonable doubt to complete the chain of circumstance to bring home the guilt of the accused persons. In a case of circumstantial evidence, it is for the prosecution to establish that all the links in the chain of circumstances are complete leading inescapably to the only hypothesis of the guilt of the accused leaving out any possibility of innocence, which the prosecution has proved in the present case.
37. In the present case, memorandum statement of appellant-Tirath Lal was recorded vide Ex.P-11 and on the basis of memorandum statement, one Maruti Suzuki Eeco car, black colour jeans and blue shirt stains with blood and one mobile were seized vide Ex.P-20. Memorandum statement of appellant Dilip Sariwan was

recorded vide Ex.P-12 and on the basis of his memorandum statement, one mobile was seized from him vide Ex.P-16. Memorandum statement of appellant Pawan Singh Mamro was recorded vide Ex.P-13 and on the basis of memorandum statement, Swaraj Mazda and jack rod stains with blood were seized vide Ex.P-19. Memorandum statement of appellant Jaiprakash Yadav @ Monu was recorded vide Ex.P-14 and on the basis of his memorandum statement, one blue colour T-shirt and one mobile were seized from him vide Ex.P-18. Memorandum statement of appellant Smt.Kamta Panika was recorded vide Ex.P-15. One mobile was seized from appellant Mahendra Kumar @ Girdhari Panika vide Ex.P-17. One T-shirt stains with blood and one VIVO company mobile were seized from appellant Pawan Singh Marco vide Ex.P-21. Half pant stains with blood, one black colour baniyan stains with blood and one Samsung mobile were recovered from appellant Dilip Sariwan. Full shirt of the deceased was seized vide Ex.P.23. Bloodstained and plain soil were recovered from the spot vide Ex.P-24. Appellants were arrested on 19.8.2020 vide arrest memos Exs.P-25 to Ex.P-30. Seized articles were sent to FSL for examination and as per FSL report (Ex.P-55), blood was found on jackrod (Article C) and T-shirt (Article D) seized from appellant Pawan Singh Marco, T-shirt (Article E) seized from appellant Jaiprakash @ Sonu, jeans (Article F1) and shirt (Article F2) seized from appellant Tirath Lal Kashipuri and half pant (Article G1) and vest (Article G2) seized from appellant Dilip Sariwan.

38. The Supreme Court in the matter of **Sandeep Vs. State of Uttar Pradesh, (2012) 6 SCC 107** had occasion to deal with such nature of evidence wherein it held that it is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered. That part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount to mere admissions which can be relied upon for ascertaining the other facts which are intrinsically connected with the occurrence, while at the same time, the same would not in any way result in implicating the accused in the offence directly.

39. The Supreme Court in the matter of **Mehboob Ali & Anr. v. State of Rajasthan, (2016) 14 SCC 640** has observed that the discovery of facts under Section 27 information regarding other accused persons, to establish charge of conspiracy, in furtherance of common intention would be admissible. The Supreme Court in such case at para 16, 17 & 18 has held as under:-

“16. This Court in State (NCT of Delhi) v. Navjot Sandhu (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 Kottayha v. King Emperor AIR 1947 PC 67 and held thus : (Navjot Sandhu (2005) 11 SCC 600, SCC p. 704, paras 125-27)

“125. We are of the view that Kottaya case [AIR 1947 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 supra 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 (2000) 6 SCC 269. Thomas J. observed that: (SCC p. 283, para 35)

'35 ...The decision of the Privy Council in Pulukuri Kottaya v. King Emperor AIR 1947 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.'

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, AIR 1947 PC 67. The learned Judge, speaking for the Bench observed thus: (SCC p. 832, para 13)

'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. King Emperor AIR 1947 PC 67; Udai Bhan v. State of U.P. [1962 Supp (2) SCR 830])."

17. In State of Maharashtra v. Damu AIR 2000 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 : (SCC pp. 282-83, paras 35-38)

"35. 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* AIR 1947 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.

36. 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.

37. 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.

38. In view of the said discovery of the fact, we are inclined to hold that the information supplied by A-2 Guruji Section 27 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 abovementioned extent.”

18. In *Ismail v. Emperor* AIR 1946 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.”

40. The Supreme Court in the matter of **Perumal Raja alias Perumal v. State, Rep. By Inspector of Police, 2024 SCC OnLine SC 12** has defined the ‘custody’. It held that the expression “custody” under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.
41. The Supreme Court in the matter of **Boby v State of Kerala, 2023 SCC OnLine SC 50** held that 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. Section 27 puts a bar to use the confessional statement, but the fact that discovery and information which proved to reliable would be a circumstantial evidence.

42. From the evidence available in the case, it is also established that accused Mahendra @ Girdhari was not present at the time of the murder. The only evidence against him is that he facilitated conversations between his sister accused Kamta and accused Tirath through mobile phone, and after the incident, Tirath informed Kamta through Girdhari that the work was done. Thus, the offence of accused Mahendra @ Girdhari being involved in the criminal conspiracy of murder is proved. Similarly, accused Kamta was also not present at the time of murder, but she had asked Tirath to remove deceased Durgesh from her path and a conspiracy was hatched to kill Durgesh, and the offence was committed. Thus, the offence of accused Kamta being involved in the criminal conspiracy of murder is also proved. Thus, the prosecution has proved a total of 11 circumstances mentioned above against the accused.

43. Thus, the prosecution has successfully proven its case by linking the circumstances and establishing that the facts proved are consistent only with the guilt of the accused persons and there is no reasonable basis for the conclusion that the accused persons are innocent. Therefore, based on the complete chain of events and the circumstances proved against the accused persons, it is established beyond reasonable doubt that the accused persons namely Tirathlal, Pawan Marko, Dilip Sariwan @ Sunny, Jaiprakash @ Monu and Ritesh @ Kaleji had formed a common intention to commit the murder of deceased Durgesh Panika between the night of 15.08.2020 and 16.08.2020, and in pursuance of that intention, they killed Durgesh Panika by hitting him with a jack road and caused his death, and then tried to destroy the evidence of Durgesh Panika's murder by placing his body in a Swaraj Mazda vehicle bearing No.CG 10 AX 4299 and throwing it on Harratola main road/street to make it look like an accident. Similarly, it is also established beyond reasonable doubt against all the accused persons that they had committed the murder of Durgesh Panika.

44. Considering the arguments advanced by the learned counsel for the parties, the law laid down by the Supreme Court in the above-stated judgments (supra), evidence of investigating officer Raghunandan Prasad Sharma (PW-14), postmortem report (Ex.P-5), evidence of Dr.B.S.Paikra (PW-9) and as per FSL report (Ex.P-55), blood was found on jack rod (Article C) and t-shirt (Article D) seized from appellant Pawan Singh Marco, t-shirt

(Article E) seized from appellant Jaiprakash @ Sonu, jeans (Article F1) and shirt (Article F2) seized from appellant Tirath Lal Kashipuri and half pant (Article G1) and vest (Article G2) seized from appellant Dilip Sariwan, considering the memorandum statements of the accused / appellants and the finding recorded by the trial Court, we are of the considered opinion that the trial Court has not committed any illegality or infirmity in the impugned judgment warranting interference of this Court.

45. In the result, the criminal appeals being devoid of merit are liable to be and are hereby **dismissed**.
46. It is stated at the Bar that the the appellants are in jail, they shall serve out the sentence as ordered by the learned trial Court.
47. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

**(Ravindra Kumar Agrawal)**  
Judge

Sd/-

**(Ramesh Sinha)**  
Chief Justice