2024:CGHC:35292-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 207 of 2018

Nazir Khan S/o Mushtak Khan Aged About 29 Years, Occupation Driver, R/o. Village Tokopara, Police Station Sitapur, District Surajpur (C.G.)

---- **Appellant**

versus

State Of Chhattisgarh Through Out Post Tara, Police Station Premnagar, District Surajpur, Chhattisgarh

---- **Respondent**

CRA No. 164 of 2018

Om Prakash Jaat @ Prakash Jaat S/o Aged About 50 Years R/o Village Chimini, P.S. Veri, Tahsil P.S. - Jhajhar, District Rohtak (Haryana)

----**Appellant**

Versus

The State Of Chhattisgarh Through Police Out Post Tara, Police Station Premnagar, District Surajpur Chhattisgarh

---- **Respondent**

CRA No. 210 of 2018

Patul @ Abdul Majid S/o Late Sahahul Hamid Aged About 30 Years R/o Kansabel Tahsil Sitapur District Surguja Chhattisgarh

----**Appellant**

Versus

The State Of Chhattisgarh Through Police Out Post Tara Police Station

Premnagar, District Surajpur Chhattisgarh

---- **Respondent**

CRA No. 273 of 2018

1 - Deepak Lohar S/o Balveer Lohar Aged About 32 Years

2 - Surendra Lohar S/o Balveer Lohar Aged About 40 Years

Both Resident of J. P. Colony, Rohtak P. S. Rohtak Haryana

----**Appellants**

Versus

State Of Chhattisgarh Through District Magistrate Surajpur, Chhattisgarh

---- **Respondent**

CRA No. 1047 of 2018

Vijay Kumar Jatt S/o Karta Singh Jatt Aged About 27 Years R/o Village Silani, P. S. Jhajjar, Distt. Jhajjar (Haryana)

----**Appellant**

Versus

The State Of Chhattisgarh Through District Magistrate, Surajpur District Surajpur Chhattisgarh

---- **Respondent**

For Appellant-Nazir Khan:
Mr.Samrath Singh Marhas, Advocate in CRA No.207/2018
For Appellants-Om Prakash Jaat and Patul @ Abdul Majid
Mr.Rishikant Mahobia, Advocate in CRA Nos.164/2018 & 210/2018
For Appellants-Deepak Lohar, Surendra Lohar and Vijay Kumar Jatt:
Mr.Maneesh Sharma, Advocate in CRA Nos.273/2018 and 1047/2018
For Respondent/State:
Mr.Shashank Thakur, Deputy Advocate General

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per **Ramesh Sinha, Chief Justice**

10/09/2024

1. Since the aforesaid five criminal appeals have been filed against the impugned judgment dated 4.1.2018 passed by the Second Additional Sessions Judge, Surajpur in Sessions Trial No.24/2017, they were clubbed & heard together and being disposed of by this common judgment.

2. Appellants-Nazir Khan (A1), Om Prakash Jaat @ Prakash Jaat (A2), Patul @ Abdul Majid (A3), Deepak Lohar (A4), Surendra Lohar (A5) and Vijay Kumar Jatt (A6) have preferred these five criminal appeals under Section 374(2) of the CrPC questioning the impugned judgment dated 4.1.2018 passed by the Second Additional Sessions Judge, Surajpur in Sessions Trial No.24/2017, by which the trial Court has convicted appellants Nazir Khan and Patul @ Abdul Majid for offence under Sections 302 (two times) read with section 120B, 201 and 394 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.50/-, in default of payment of fine to further undergo RI for three months on each counts, RI for seven years and fine of Rs.50/-, in default of payment of fine to further undergo RI for three months and RI for seven years and fine of Rs.50/-, in default of payment of fine to further undergo RI for three months. The trial Court has further convicted appellants Om Prakash Jatt and Vijay Kumar Jatt for offence under Section 412 read with Section 120B and 414 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 three months and RI for three years and fine of Rs.1000/-, in default of payment of fine to further undergo RI for three months. The trial Court has also convicted appellants Deepak Lohar and Surendra Lohar for offence under Section 414 read with Section 120B of the IPC and sentenced to undergo RI for three years and fine of Rs.1000/-, in default of payment of fine to further undergo RI for three months.

3. Case of the prosecution, in nutshell, is that in the intervening night of 26-27.09.2015, trailer vehicle CG-12-S-4823, driven by Bodhan Prasad and accompanied by helper Nilesh Kumar, was returning from Ramanuj Nagar railway siding after unloading coal and was headed towards the coal mine in Parsaket. The driver and helper had stopped the vehicle on the way and were sleeping in Kantaroli jungle near Harrapara. Accused Anil Yadav @ Harinana, Najir Khan and Patul @ Majid, with a common intention of looting the trailer, attacked the driver and helper while they were sleeping on the road, took them to Kantaroli jungle, and after brutally assaulted them strangulated them to death. They then abandoned the bodies in the jungle and sold the looted trailer in Jhajjar, District Rohtak (Haryana).

4. On 30.09.2015, the Police Outpost Tara registered a dehati merg intimation vide Ex.P-25 and on the basis of dehati merg intimation merg intimation was registered vide Exs.P-46, P-47, P-52 and P-53. Written report was lodged by Safiq Mohammad vide Ex.P-1 and on the basis of written report, FIR (Ex.P-2) was registered

against unknown person for offence under Section 302, 394 and 201/34 of the IPC. Further FIR (Ex.P-54) was also registered. Inquest over the bodies of the deceased were prepared vide Exs.P-28 and P-29. Spot map was prepared by the patwari vide Ex.P-57. Dead body of the deceased was sent for postmortem to Community Health Center, Premnagar where Dr.B.M.Kamre (PW-26) conducted postmortem over the body vide Ex.P-58 and found following symptoms:-

External Examination:-

1. At the time of postmortem examination, the deceased was wearing a pink T-shirt, green lower and orange underwear. A pink gamcha was present around the neck, and a black thread was present on the left wrist.

2. The entire body of the deceased had a smell of decay, and small maggots were coming out of both ears, mouth and nose. The stomach was swollen.

3. The deceased's eyes were closed, and the mouth was partially open. No external injuries were visible on the body. Rigor mortis was present.

Internal Examination:

1. Decay had started in the internal organs of the deceased.

2. The pleura, ribs and diaphragm were healthy. The lungs, throat, and trachea had decay.

3 The right and left lungs were congested and had decay.

4. The pericardium and pericardial sac were congested.

5. The right and left chambers of the heart were empty, and the large vessels were congested.

6. The intestinal lining, mouth esophagus and pharynx were congested, resulting in decay.

7. The stomach and its contents had a small amount of water. The small intestine had digestive material.

8. The large intestine had feces.

9. The liver, spleen, and kidneys were congested.

10. The internal and external genitalia had decay.

The doctor has opined that cause of death can only be determined after receiving the chemical examination report.

Dead body of another deceased was sent for postmortem to Community Health Center, Premnagar where Dr.B.M.Kamre (PW-26) conducted postmortem over the body vide Ex.P-59 and found following symptoms:-

1. At the time of postmortem examination, the deceased's body had a brown pant, lining T-shirt, blue underwear and a Sonata company watch on the left wrist.

2. The entire body of the deceased had a smell of decay, and small maggots were coming out of both ears, mouth, and nose. The stomach was swollen.

3. The deceased's eyes were closed, and the mouth was partially open. No external injuries were visible on the body. Rigor mortis was present.

4. Feces were present at the anus of the deceased.

5. Postmortem stiffness was present.

6. There was feces in anus of the deceased.

Internal Examination:

1. The internal organs of the deceased had started to decay.

2. The pleura, ribs, and diaphragm were healthy, but the lungs, throat, and trachea were congested and had decay.

3. The right and left lungs were congested and had decay.

4. The pericardium and pericardial sac were congested.

5. The right and left chambers of the heart had black blood. The large vessels were congested.

6. The intestinal membrane, mouth, and esophagus were congested and had decay.

7. The stomach and its contents had a small amount of water. The small intestine had digestive material.

8. The large intestine had feces.

9. The liver, spleen, and kidneys were congested.

10. The internal and external genitalia had decay.

The doctor has opined that the cause of death can only be determined after receiving the chemical examination report.

5. Memorandum statement of appellant Nazir Khan was recorded vide Ex.P-19 and on the basis of his memorandum statement, permit of vehicle, fitness certificate and vehicle registration were seized from him vide Ex.P-21. Memorandum statement of appellant Patul @ Majid was recorded vide Ex.P-21 and on the basis of his memorandum statement, one mobile was seized from him vide Ex.P-25. Vehicle registration papers and insurance papers were seized from Shafiq Mohd. Vide Ex.P-4. One mobile was seized from appellant Vijay Kumar Jatt vide Ex.P-5. Trailer CG 12 S 4823, forged papers with sign of Vijay Kumar having fake chassis number were seized from appellant Vijay Kumar Jaat vide Ex.P-6. Grinder and Fevikwik glue were seized from appellant Surendra Lohar. Iron punch 9 Nos. and Iron punch A-Z except O and P and hammer were seized from appellant Deepak Lohar. In this case, the seized bloodstained clothes of the deceased were sent to the State Forensic Science Laboratory, Raipur, for chemical examination and the statements of the witnesses were recorded. Appellant Omprakash Jatt was arrested on 09.11.2015 vide arrest memo Ex.P-85. Appellant Nazir Khan was arrested on 17.12.2015 vide arrest memo Ex.P-86. Appellant Abdul Majid was arrested on 17.12.2015 vide arrest memo Ex.P-87.

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 33 witnesses and exhibited 91 documents Exs.P-1 to P-91. None was examined on behalf of the defence nor any documents have been exhibited.

8. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 4.1.2018, 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.Samrath Singh Marhas, learned counsel for the appellant-Nazir Khan in CRA No.207/2018 would submit that seizure witnesses Gorelal Gujar (PW-5) and Krushna Prasad (PW-8) have turned hostile and they have not supported the case of the prosecution. The learned trial Court failed to appreciate that Dr.B.M.Kamre (PW-26) who has conducted postmortem of the deceased persons has not given any opinion about the cause of death and he only opined that after obtaining the FSL report the cause of death may be disclosed. He would further submit that the trial Court has further failed to appreciate that the doctor has

clearly written in his report that no external injury found on the dead body of the deceased. He would also submit that the prosecution has failed to bring home the offence beyond reasonable doubt and no conviction can be recorded unless the chain of circumstances is complete to reach to a conclusion that it is only and only the accused / appellant who has caused the murder of the deceased. Therefore, the judgment of conviction recorded and sentence awarded deserves to be set aside.

10. Mr.Rishikant Mahobia, learned counsel for appellants-Om Prakash Jaat and Patul @ Abdul Majid in CRA Nos.164/2018 & 210/2018 would submit that the learned trial Court has failed to consider that there are hardly any reliable evidence to warrant the conviction of the appellants beyond all reasonable doubt. The learned trial Court ought to have considered that the prosecution has failed to prove the guilt of the appellants beyond all reasonable doubt. He would further submit that the learned trial Court ought to have considered this fact that seizure witnesses namely Nisaar Ahmed Ahmed (PW-2) and Nousaad Ahmed (PW-3) have not supported the memorandum and seizure and they have categorically stated that the seizure made from appellant Patul @ Abdul Majid is missing from their police statement. Learned trial Court further failed to consider this fact that memorandum is a weak type of evidence and unless there is other corroborative evidence supporting memorandum, one can not be convicted. In the present case, based on memorandum of

appellant-Patul @ Abdul Majid, nothing incriminating has been seized, as such, this memorandum is of no use. He would also submit that learned trial Court ought to have considered this fact that the investigating officer Tejnath Singh (PW-32) could not give any clinching evidence against the appellants in order to convict them. The learned trial Court should have considered this fact that the case is based upon circumstantial evidence and the chain of circumstances are not complete in this case, as such, conviction can not be sustained. He contended that learned trial Court ought to have considered this fact that the seizure truck was having registration No. HR 66-3762, the documents were also in relation to said number which has not been connected property with the looted trailer truck. Therefore, the judgment of conviction recorded and sentence awarded deserves to be set aside.

11. Mr.Maneesh Sharma, learned counsel for the appellants-Deepak Lohar, Surendra Lohar and Vijay Kumar Jatt in CRA Nos.273/2018 and 1047/2018 would submit that the impugned judgment is erroneous, incorrect and delivered on the basis of completely flawed appreciation of evidence tendered by the prosecution. The learned trial Court has failed to appreciate that the prosecution has failed to establish the circumstances beyond doubt as to come to the conclusion that the appellants have committed the said crime. He would further submit that the prosecution has failed to produce any evidence against the

appellants so as to prove their involvement in the aforesaid crime. The evidence adduced by the prosecution is insufficient to sustain the conviction of the appellants. He would also submit that the learned trial Court has failed to realize that there is absolutely no evidence no record against the appellants and merely on presumption and surmises the appellants have been convicted, whereas as per the criminal jurisprudence the appellants cannot be convicted on the basis of the same. Therefore, the judgment of conviction recorded and sentence awarded deserves to be set aside.

12. On the other hand, Mr.Shashank Thakur, learned Government Advocate 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.

13. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

14. It has been consistently laid down by the Supreme Court that where a case rests squarely on circumstantial evidence, the

inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See **Hukam Singh v. State of Rajasthan, AIR 1977 SC 1063**; **Eradu and Ors. v. State of Hyderabad**, **AIR 1956 SC 316**; **Earabhadrappa v. State of Karnataka, AIR 1983 SC 446; State of U.P. v. Sukhbasi and Ors., AIR 1985 SC 1224; Balwinder Singh v. State of Punjab, AIR 1987 SC 350; Ashok Kumar Chatterjee v. State of M.P., AIR 1989 SC 1890**. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In **Bhagat Ram v. State of Punjab, AIR 1954 SC 621**, it was laid down by the Surpeme Court that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

15. We may also make a reference to a decision of the Hon'ble Supreme Court in **C. Chenga Reddy and Ors. v. State of A.P., (1996) 10 SCC 193**, wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved

> and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

16. In **Padala Veera Reddy v. State of A.P. and Ors., AIR 1990 SC 79**, it was laid down by the Supreme Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
>
> (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

17. In **State of U.P. v. Ashok Kumar Srivastava, 1992 Crl.LJ 1104**, it was pointed out by the Supreme Court that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

18. Sir Alfred Wills in his admirable book “Wills’ Circumstantial Evidence” (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted”.

19. 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."

20. In the matter of **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 1 SCC 681**, the Supreme Court has held as under:-

> "12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly

established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence."

21. The principles of circumstantial evidence is reiterated in **Nizam and another vs. State of Rajasthan, (2016) 1 SCC 550**, wherein the Supreme Court has held that:-

> "8. Case of the prosecution is entirely based on the circumstantial evidence. In a case based on circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, forming a chain and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally inconsistent with his innocence."

22. Memorandum statement of appellant Nazir Khan was recorded vide Ex.P-19 and on the basis of his memorandum statement, permit of vehicle, fitness certificate and vehicle registration were seized from him vide Ex.P-21. Memorandum statement of appellant Patul @ Majid was recorded vide Ex.P-21 and on the

basis of his memorandum statement, one mobile was seized from him vide Ex.P-25

23. At this stage, it would be appropriate to notice Section 27 of the Indian Evidence Act, 1872, which states as under: -

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

24. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 1872, a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 279 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information

which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events – a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person accused of the offence can be relied.

25. The Supreme Court in **Asar Mohammad and others v. State of U.P., AIR 2018 SC 5264** with reference to the word "fact" employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". It has been further held 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 and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of **Pulukuri Kotayya v. King Emperor, AIR 1947 PC 67** observed as under: -

> "13. It is a settled legal position that the facts need not be self-probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". 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. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of *Vasanta Sampat Dupare v. State of Maharashtra*, (2015) 1 SCC 253, in particular, paragraphs 23 to 29 thereof. The same read thus:

> "23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in *Pulukuri Kotayya v. King Emperor* (supra) has held thus: (IA p. 77)
>
> > "… it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.
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> xxx xxx xxx
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> xxx xxx xxx
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> xxx xxx xxx"

26. In **State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru**, (2005) 11 SCC 600, the Supreme Court affirmed that the fact discovered within the meaning of Section 27 of the Evidence Act must be some concrete fact to which the information directly relates. Further, the fact discovered should refer to a material/physical object and not to a pure mental fact relating to a physical object disassociated from the recovery of the physical object.

27. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto.

28. In **Mohmed Inayatullah v. State of Maharashtra, (1976) 1 SCC 828**, elucidating on Section 27 of the Evidence Act, it has been held by the Supreme Court that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of

information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word ‘distinctly’ is used to limit and define the scope of the information and means ‘directly’, ‘indubitably’, ‘strictly’ or ‘unmistakably’. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

29. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

30. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse.

However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

31. The Supreme Court in the matter of **Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119** has clearly held that confession to police whether in course of investigation or otherwise and confession made while in police custody would be hit by Section 25 of the Evidence Act and observed as under:-

> “9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides : "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any

person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate

presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them."

Their Lordships further held as under:-

"18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S.27."

32. Reverting to the facts of the case in light of the principles of law laid down by their Lordships of the Supreme Court in the above stated judgments (supra), only discovery of an object, the place from which it is produced and knowledge of the accused as to this extent would be admissible and incriminating part of the accused statement that they have inflicted injuries on the deceased and thereafter they have strangulated them would not be admissible under Section 27 of the Evidence Act, but the fact remains that no incriminating article has been seized pursuant to their memorandum statements (Exs.P-19 and P21). As such, that part of evidence would not be admissible.

33. In the case in hand, confessional statements (Exs.P-19 and P-21) made by appellants Nazir Khan and Patul @ Abdul Majid before the police officer is hit by Section 25 of the Evidence Act and no part of it is admissible under Section 27 of the Evidence Act. As such, we are of the considered opinion that alleged confessional statements (Exs.P-19 and P-21) is hit by Section 25 of the Evidence Act and no part of it is admissible under Section 27 of the Evidence Act in view of decisions rendered by Privy Council in **Pulukuri Kotayya** (supra) followed by the the Supreme Court in **Asar Mohammad** (supra). Even otherwise, no other incriminating piece of evidence is available on record to convict the appellants Nazir Khan and Patul @ Abdul Majid for offence under Sections 302 (two times) read with Section 120B, 201 and 394 of the IPC.

34. The trial Court in para 17 of its judgment has held that investigating officer Tejnath Singh has accepted in para 51 of his cross-examination that during the investigation, there was swelling and blistering on the necks of both the deceased. Additionally, Dr. B.M. Kamare, medical witness, has stated in para 10 of his evidence that according to the query report of Ex.P-50 and Ex.P-51, he had given his opinion that the death of both the deceased could be due to strangulation. Therefore, in such a situation, the argument of the defense counsel is not acceptable. Hence, based on the above evidence, it can be

concluded that death of Bodhan Kumar and Nilesh Gurjar was a result of homicide by strangulation.

35. In the present case, Bedwati, wife of deceased Bodhan, was examined as PW-4. In para 2 of her statement, she has stated that the incident occurred last year in September. On the day of the incident, she was at home. Her husband Bodhan used to drive a trailer vehicle for Shafiq Ahmed, a resident of Katghora, and her nephew Nilesh used to work as a helper in the trailer with her husband. They used to load coal from Parsa Kete Colliery in the trailer and unload it at Srinagar Railway Siding. In para 3 of her statement, she has stated that about 5-6 days before her husband's death, he came home around 2 P.M. and left for Parsa Kete in the evening. After that, she tried calling her husband's phone number, but it was not reachable. When the trailer vehicle went missing, the owner of the vehicle started searching for it. During that time, Dinesh Kumar, driver of Shafiq Ahmed's another vehicle, came to her house and told her that the police at Tara Chauki were calling her. She came to Tara Chauki with her children and family members, including Gore Lal, Krishna etc. Shafiq Ahmed was also present at Tara Chauki. The police told her that two bodies were found in Kantaroli jungle and they had kept the clothes of the deceased. They also showed her the photos of the deceased, which they had taken. The police said that since the bodies could not be identified, they had performed inquest and buried the bodies. The police showed her the clothes

taken from the bodies, including a red shirt, a white shirt with a black stripe, a red and black gamcha, a brown lower, a black pant and a watch. She identified the photos and clothes as those of her husband and nephew Nilesh. Her son Abhishek also identified the watch as belonging to her husband Bodhan Prasad. In para 4, she has stated that when they reached Chauki Tara, the police along with the Tehsildar took her, her husband's brother Bharat Lal, Ghore Lal, and Krishna Kumar to the spot where her husband and nephew's bodies were buried. The police excavated the bodies in the presence of the Tehsildar and she identified them as her husband Bodhan Prasad and her nephew Nilesh Kumar. At that time, their entire body, including their face, was clearly visible, which helped her identify them. She later learned that her husband and nephew were beaten and thrown into the Kanta Roli jungle by unknown persons, and their trailer was looted and taken to Haryana. During the excavation, the Tehsildar prepared the excavation and identification panchnama (documents) at the same spot. The excavation and identification panchnama of Nilesh Kumar's body are Exs.P-12 and P13, respectively, which bear her signature. The excavation and identification panchnama of Bodhan Ram's body are Exs.P-14 and P-15, respectively, which also bear her signature. After the police identified the clothes, an identification panchnama was prepared, which is Ex.P-16, bearing her signature. After the excavation and identification process, the bodies of her husband

and nephew were handed over to her for cremation and she received a receipt for the same, which is Exs.P-17 and P-18, bearing her signature.

36. Investigating Officer Tejnath Singh (PW-32) in para-37 of his cross-examination has admitted that when the family members of the deceased came to the police station to identify the bodies, they did not mention that they had filed a missing person's report in any police station regarding the deceased. In para 38, he has denied that he had conducted postmortem of the bodies after they were recovered. The witness himself stated that the postmortem of both bodies was conducted during the inquest proceedings and then the bodies were buried. In para 39, he has admitted that on 30.09.2015, postmortem of two unidentified persons was conducted. He also admitted that after postmortem, the doctor was unable to determine the cause of death in his opinion. He has admitted that the doctor opined that the cause of death could only be determined after receiving the viscera examination report. He has also admitted in para 40 of his cross-examination that the doctor did not inform about postmortem of both bodies that the death of both unidentified persons was homicidal or accidental or suicidal.

37. Investigating Officer Tejnath Singh (PW-32) has admitted in para 51 of his cross-examination that during the inquest proceedings, it was suspected that one of the bodies, which appeared to be 40-45 years old, was poisoned and thrown in the jungle, and the

other body, which appeared to be 30-35 years old, was given some substance and thrown in the jungle. This witness stated that the panchayat members also opined that there were signs of physical assault on both bodies. The panchayat members opinion is recorded in the inquest proceedings. He has admitted that after the inquest proceedings, he conducted postmortem of the bodies at the scene itself. Specific question was asked to this witness on what basis he written that the death of both deceased was due to strangulation? He has given answer that during the inquest proceedings and investigation, there was swelling and blistering on the necks of both deceased and maggots were found, which led him to mention that the deceased were strangulated to death.

38. Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure to prove a single circumstance cogently can cause a snap in the chain of circumstances. There cannot be a gap in the chain of circumstances. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt.

39. Appellants-Vijay Kumar Jaat and Omprakash Jatt have been convicted for offence under Section 412 read with Section 120B

and 414 of the IPC and appellants-Deepak Lohar and Surerndra Lohar have been convicted under Section 414 read with Section 120B of the IPC.

40. Section 412 is the offence of dishonestly receiving the property stolen in the commission of a dacoity. However, Section 410 of the IPC defines stolen property. For sake of convenience, Sections 410 and 412 are reproduced herein for ready reference:-

> “**410. Stolen Property**.- Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.
>
> 412. **Dishonestly receiving property stolen in the commission of a dacoity**.—Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.
>
> **414. Assisting in concealment of stolen property.**- Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, which shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

41. For the applicability of Section 412 of the IPC, the prosecution has to show something more than mere possession of the stolen goods. It must also be shown that (i) the receiver knew or had reason to believe that the property had been transferred to him on account of commission of a dacoity; (ii) that the accused did receive or retain the same; (iii) that he received or retained the same with the intention of causing wrongful gain to one person or wrongful loss to another person and (iv) that he knew or had a reason to believe that possession of the property was transferred by commission of dacoity.

42. In the present case, the prosecution has failed to prove that the accused knew or had reason to believe that the property had been transferred to them on account of commission of a dacoity and the accused did receive or retain the same and they received or retained the same with the intention of causing wrongful gain to one person or wrongful loss to another person and that they knew or had a reason to believe that possession of the property was transferred by commission of dacoity.

43. Considering the evidence of Dr.B.M.Kamre (PW-26), evidence of investigating officer Tejnath Singh (PW-32), evidence of Bedwati, postmortem reports and other circumstances, we are of the considered opinion that the prosecution has failed to prove its case beyond reasonable doubt and the trial Court has committed grave legal error in convicting appellants-**Nazir Khan and Patul**

@ Abdul Majid for offence under Sections 302 (two times) read with Section 120B, 201 and 394 of the IPC, appellants-**Om Prakash Jatt and Vijay Kumar Jatt** for offence under Sections 412 read with Section 120B and 414 of the IPC and appellants-**Deepak Lohar and Surendra Lohar** for offence under Section 414 read with Section 120B of the IPC as benefit of doubt ought to have been given to them.

44. For the foregoing reasons, **Criminal Appeal No.207/2018** filed on behalf of appellant-**Nazir Khan**, **Criminal Appeal Nos.164/2018 & 210/2018** filed on behalf of appellants-**Om Prakash Jaat @ Prakash Jaat and Patul @ Abdul Majid** and **Criminal Appeal Nos.273/2018 & 1047/2018** filed on behalf of appellants-**Deepak Lohar, Surendra Lohar and Vijay Kumar Jatt** are **allowed** and their conviction & sentences are hereby set aside. Appellants-Om Prakash Jaat @ Prakash Jaat, Patul @ Abdul Majid, Deepak Lohar, Surendra Lohar and Vijay Kumar Jatt are on bail. They are not required to surrender. Their bail bonds are cancelled and sureties stands discharged. Appellant-Nazir Khan is in jail. He be released forthwith, if not required in any other case. The fine amount, if any deposited, be refunded to the appellants.

45. Keeping in view the provisions of Section 437-A CrPC, the accused-appellants are directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- each with two reliable sureties in the like amount before the Court concerned which shall be

effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon’ble Supreme Court.

46. 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 forthwith.

Sd/-

(**Bidhu Datta Guru**)
Judge

Sd/-

(**Ramesh Sinha**)
Chief Justice

Bablu