IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.49 of 1998(R)

(Against the judgement of conviction dated 07.02.1998 and the order of sentence dated 10.02.1998 passed by the learned Sessions Judge, Dhanbad in Sessions Trial No. 364 of 1995)

Jabbar Ansari, son of Manjoor Ansari, resident of Mouza Simlabahal, Police Station-Jharia, District-Dhanbad **..... … Appellant**

Versus

The State of Bihar **…… Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. M.B. Lal, Advocate
For the Resp.-State : Mr. Abhay Kumar Tiwary, APP

Order No.08/Dated: 25th April, 2025

Per Sujit Narayan Prasad, J.

1. The instant appeal under section 374(2) of the Code of Criminal Procedure is directed against the judgment of conviction dated 07.02.1998 and the order of sentence dated 10.02.1998 passed by the learned Sessions Judge, Dhanbad in Sessions Trial No. 364 of 1995 whereby and whereunder the appellant has been convicted under sections 364, 302 and 201 of the Indian Penal Code and sentenced to undergo RI for life under section 302 of the Indian Penal Code, RI for 10 years under section 364 of the Indian Penal Code and RI for 3 years under section 201 of the Indian Penal Code and all the sentences shall run concurrently.

2. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence, deems it fit and proper to refer the background of institution of prosecution case.

The prosecution story in brief as per the allegation made in the First Information Report reads hereunder as :-

(i) The informant Ashna Khatoon's daughter Sahjahan Khatoon was married to the accused Jabbar Ansari 7-8 months prior to commission of murder of the deceased. Sahajahan Khatoon went to her matrimonial house after her marriage and for some time there had been quite sweet and cordial relation between her and her husband, the accused Jabbar Ansari. However, after some time the accused Jabbar Ansari, started subjecting his wife Sahajanhan Khatoon to cruelty and harassment and to pressurise her to fetch a T.V. and fan as part of dowry from her parents. As his illegal demand for more and more dowry was not fulfilled and supplied, he as well as his brother, the accused Hisar Ansari always threatened the informant that they would ruin her family.

(ii) It so happened that a few days prior to the incident the accused Jabbar Ansari went to the house of the informant and informed her that his daughter Sahajahan Khatoon was indisposed of and he asked her to go to look after and serve her daughter. Thereafter the informant along with her son, went to the house of the accused persons and she started serving her daughter Sahajahan Khatoon. In the presence of the informant also there used to be quarrel and altercation between the accused Jabbar Ansari and his wife Sahajahan Khatoon and on protest and request being made by the informant the accused threatened her that they would destroy her house and ruin her family.

(iii) On 21.10.94 on account of quarrel no food was prepared in the house of the accused persons and at about 3 P.M. the accused Jabbar Ansari took the deceased Parwez Alam with him on a bicycle saying that he was taking the deceased to hotel for meal. The deceased could not return home and the accused Jabbar Ansari alone returned to his house at about 6-7 P.M. and on being asked by the informant about her son, he got infuriated and enraged and he said that he did not know where her son, the deceased had gone.

(iv) The informant started searching for the boy but she could not get any trace. In the next morning at about 4-5 A.M. the accused asked for a sum of Rs.50/- to enable him to search out the deceased boy. The informant was given the money and thereafter, he set out to search for the deceased but he did not return nor did he give her any clue about the boy.

(v) Thereafter the informant lodged the F.I.R. alleging therein that she had reasonable suspicion that her son-in-law, the accused Jabbar Ansari and his brother, namely, Nisar Ansari who used to hurl threat that they would ruin her entire family and house must have abducted her son and concealed him somewhere. It was also averred in the *fardbayan* of the informant that her suspicion found support and force also from the fact that both the accused persons had left their house.

3. On the basis of the *fardbayan* (Ext.3) of the informant the formal F.I.R. (Ext.4) was drawn up and the case was registered U/S 365 of the Indian Penal Code and the investigation was taken up. In course of

investigation the dead body of the deceased was recovered in pursuance of extra judicial confession made by the accused Jabbar Ansari, from the pit of a mine and, thereafter, sections 302 and 201 read with section 34 of the Indian Penal Code were added.

4. After completion of investigation chargesheet was submitted and finally the trial commenced after commitment.

5. In order to prove its case, the prosecution has examined altogether 8 witnesses out of whom P.W.2 Ashma Khatoon is the mother of the deceased and informant herself, P.W.3 Tabarak Hussain, (informant's husband) the father of the deceased. P.W.4 Md. Akhtar Ansari, P.W.5 Abdul Kadir, P.W.6 Md. Idrish, P.W.7 Shamim Akhtar and P.W.8 Manoj Kumar, the Investigating Officer and P.W.1, Dr. Binod Kumar who held autopsy over the dead body of the deceased.

6. The appellant was charged for offence punishable under Sections 364/302/201/34 of the Indian Penal Code to which the he pleaded not guilty and claimed to be tried. The statement of the appellant was recorded under Section 313 of Cr.P.C.

7. Accordingly, the trial proceeded and the appellant was found guilty by the learned trial Court for the offence under Section 364, 302 and 201 of the Indian Penal Code and sentenced to undergo RI for life under section 302 of the Indian Penal Code, RI for 10 years under section 364 of the Indian Penal Code and RI for 3 years under section 201 of the Indian Penal Code and all the sentences shall run concurrently.

8. The aforesaid order of conviction and sentence is under challenge herein.

Submission of the learned counsel for the appellant:

9. Learned counsel for the appellant has taken the following grounds for interfering with the finding recorded by the learned trial Court in the

impugned judgment:

(i) There is no evidence said to establish the case of the appellant of committing crime of either under section 302 or 364 or under section 201 of the Indian Penal Code.

(ii) Such submission has been made on the ground that it is only on the basis of the extra judicial confession which was said to be uttered by the appellant before the villagers basis upon which the dead body has been said to be recovered by having an impression that it is on disclosure made by the appellant the dead body was recovered.

(iii) It has been contended that none of the villagers has been examined to prove the aforesaid fact as such it is nothing but a case of no evidence.

(iv) Even no ingredient of section 364 of the Indian Penal Code is there, since, if the prosecution version will be taken in to consideration, then it would be evident that the deceased was taken by the appellant with the consent of the lawful guardian.

10. The learned counsel for the appellant, based upon the aforesaid grounds, has submitted that the learned trial Court has not taken into consideration of the aforesaid facts, as such, the impugned judgment requires interference, hence, not sustainable in the eyes of law.

Submission of learned Addl. Public Prosecutor for the State:

11. While defending the judgment of conviction and sentence, the learned Addl. Public Prosecutor appearing for the State has advanced the following arguments in response to the grounds raised by the learned counsel for the appellant that:

(i) It is incorrect on the part of the appellant to take the ground that it is the case of no evidence reason being that if the testimony of entire witnesses will be taken into consideration together it would be evident that the dead body was recovered on the disclosure made by the appellant, hence, there is cogent evidence against the appellant.

(ii) It has been contended that the witnesses have supported the prosecution version of accompanying the deceased by the appellant and immediately thereafter the death took place. Hence, there is no doubt about culpability said to be committed by the appellant in commission of crime of murder of the deceased.

12. The learned Addl Public Prosecutor, appearing for the State, based upon the aforesaid premise, has submitted that the impugned judgment does not suffer from any error, hence the instant appeal is fit to be dismissed.

Analysis

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

14. We have also gone through the testimonies of the witnesses as available in the Trial Court Records as also the exhibits appended therewith.

15. The learned trial Court, based upon the testimonies of witnesses, and has taken in to consideration the alleged extra judicial confession has passed the judgment of conviction against the appellant and has convicted the appellant for the offence under Section 364, 302 and 201 of the Indian Penal Code and sentenced him accordingly to undergo RI for life under section 302 of the Indian Penal Code, RI for 10 years under section 364 of the Indian Penal Code and RI for 3 years under section 201 of the Indian Penal Code and all the sentences shall run concurrently.

16. This Court before considering the argument advanced on behalf of the parties is now proceeding to consider the testimonies of witnesses which have been recorded by the learned trial Court.

17. The learned trial court during the trial has altogether examined 08 witnesses on behalf of the prosecution and testimony of the same is required to referred herein.

18. P.W1 is Dr. Binod Kumar who claimed to have conducted the post-mortem of the dead body of the deceased on 24.10.1994 at 11 AM and found face, neck, abdomen swollen and distended with gasses of decomposition. Both eyes were protruding out of their sockets. ½" was protruding out of swollen everted discoloured lips. Fecal matter was present at the anus. skin of hands, feet were corrugated. Cuticle of skin was peeling off all over the body. Scalp hairs loosen and easily wiped out. No external injury was visible on face, neck or other part of the body. Blood tinged froth was seen at nostrils and mouth.

19. On dissection no injury in the soft tissues of the neck was visible. Hyoid bone thyroid cartilages were intact. Mucosa of trachea

was decomposing. Heart was flabby and chambers were dilated and empty and lungs decomposing. Stomach contained about 20 C.C. of pasty food materials. Liver, spleen, kidneys and other organs were decomposing. Urinary bladder was empty. Internal organs were pale and due to decomposition blood had disappeared from the organs. Skull was intact and brain partly liquefied. No internal injury was found on scull.

20. In the opinion of the doctor the death was caused between 48-72 hours prior to postmortem examination. Due to decomposition no definite opinion about the cause of death could be given by the doctor. Viscera was preserved and sent for examination. However, no report was received from forensic science laboratory.

21. P.W.2- Ashna Khatoon is the informant. She has deposed about the entire incident and stated that the appellant is her son-in-law who due to non-fulfillment of demand of dowry in the shape of one T.V and Fan, started torturing her daughter. On being informed about illness of her daughter, she along with her son (deceased) went to the matrimonial home of her daughter to look after her. The appellant-Jabbar Ansari threatened her by saying that he will ruin her entire family if his demand will not be fulfilled. On the fateful day, some altercation took place thereafter meal was not cooked in the house of her daughter.

22. The appellant on the plea to take lunch in the hotel took the son of the informant with him by saying that after taking meal there he would take back the boy to the house, however, the appellant alone returned to his house at 6-7 PM and enquired about the deceased. When the informant asked the appellant that you had taken the child, where have you kept him, then he ignored the same. Thereafter, the informant

along with the neighbourers started searching out the boy but could not succeed. In the next morning at about 4 AM, the appellant said that I will bring him the boy in the morning.

23. The mother of the appellant gave some money to trace out the boy but the appellant could not trace the boy and fled away from there. Thereafter the informant along with her brother went to police station and lodged a F.I.R against the appellant and his brother whereupon on search the dead body of the boy was recovered from a pit.

24. In her cross-examination at paragraph-3 she had stated that she had not informed the neighbourers of the in-laws of her daughter to search out her son. She further stated that she did not meet with any person living nearby the in-laws house of her daughter nor she told any person about the factum of missing of her son.

25. PW3 Tabarak Hussain is the husband of the informant and father of the deceased who corroborated the statement of the informant. He deposed that the appellant has accepted his involvement in the said crime and confessed the guilt before him and villagers. The appellant took him to the place of occurrence where dead body of his son was lying in a pit. On information, the police came there and took out the dead body from the pit.

26. During cross-examination, he did not recall that who was the person who informed about the incident to him. She stated that he did not go to the police station with the villagers nor he recalled the name of the villagers from whom he enquired about the incident.

27. PW7 is the brother of the informant who also corroborated the statement of the informant. He narrated the entire story of prosecution

and stated that he along with her sister went to police station for lodging a First Information Report and he put his signature over there which has been exhibited as Exhibit-2.

28. During his cross-examination, he stated that he had not seen the appellant committing murder of his sister's son. He further stated that he had not seen that the appellant carrying the deceased on his bicycle rather he stated that his sister (the informant) told him about this fact. He further stated that he could not remember the name of the person who informed him about the occurrence.

29. PW8 is the Investigating Officer who has stated about the occurrence as per the First Information Report. He has deposed that the informant had come to the police station along with Shamim Akhtar and Tabarak Hussain to lodge a First Information Report. He further stated that he has investigated the matter and took the statement of witnesses, namely, Shamim Akhtar and Mubarak Hussain. He stated that on the disclosure made by the appellant he went to the place of occurrence and recovered the dead body of the deceased from a pit thereafter he prepared an inquest report and sent the dead body for postmortem.

30. P.W. 4, P.W.5 and P.W.6 had not supported the case of the prosecution rather in the cross examination they had stated that they know nothing about the alleged occurrence.

31. The learned trial Court, on consideration of the testimony of the witnesses and the extra judicial confession alleged to be given by the appellant and based upon that the recovery of dead body was made has come to conclusive finding that the said charges have been proved beyond reasonable doubt against the present appellant.

32. The learned trial Court, on the basis of the aforesaid consideration, has convicted the appellant under section 302, 364 and 201 of the Indian Penal Code, which is under challenge in the instant appeal.

33. This Court has found from the material available on the record that it is case of no eye witness, rather the case is based upon the last seen theory and as per the prosecution version, the dead body of the deceased was said to be recovered on the disclosure made by the appellant.

34. The learned counsel for the appellant contended that only on the basis of the extra judicial confession which was said to be uttered by the appellant before the villagers basis upon which the dead body has been alleged to be recovered by having an impression that it was on disclosure made by the present appellant the dead body was recovered, the learned trial has convicted the present appellant therefore, impugned order of conviction may be set aside. It has further been contended that none of the villagers has been examined to prove the aforesaid fact as such it is nothing but a case of no evidence.

35. Per contra the learned counsel for State has contended that it is incorrect on the part of the appellant to take the ground that it is the case of no evidence reason being that if the testimony of entire witnesses will be taken into consideration together it would be evident that the dead body was recovered on the disclosure made by the appellant, hence, there is cogent evidence against the appellant.

36. This Court, on the basis of aforesaid factual aspect vis-à-vis argument advanced on behalf of parties, is now proceeding to examine

the legality and propriety of impugned judgment of conviction and order of sentence by formulating following questions to be answered by this Court:

(I).Whether the prosecution has been able to prove the charge beyond all shadow of doubt?

(II).Whether the prosecution has been able to prove the charges leveled against the appellant as the fact of the given case is?

(III).Whether the conviction of the present appellant based upon extrajudicial confession which has not been proved by the independent witness is correct.

(IV) Whether on the basis of the testimony of the witnesses can it be said to be a case based on circumstantial evidence or it is based upon the theory of last seen together or if the entire case is based upon the theory of last seen but the chain is being completed or not?

37. Since all the issues are inter-linked with each other and as such they are being taken together by taking into consideration the facts of the given case including the testimony of witnesses.

38. Admittedly, the instant case is based upon the circumstantial evidence since there is no any direct evidence in the regard of the alleged occurrence and further the present appellant has been convicted upon the basis of extrajudicial confession leading to recovery of dead body. Further there is no dispute that the alleged extrajudicial confession has not been substantiated by the any villagers rather the local residents who has been examined as prosecution witness (P.W.4,5 and 6) had not supported the case of prosecution.

39. As is evincible, the entire case rests on circumstantial evidence. Before we analyze and appreciate the circumstances that have weighed with the trial court, we think it apposite to refer to certain authorities pertaining to delineation of cases that hinge on circumstantial evidence. There is no quarrel with the settled position of law that in the case of circumstantial evidence the chain is to be complete then only there will be conviction of the concerned accused person, as has been laid down by the Hon'ble Apex Court in the case of **Hanumant son of Govind Nargundlar vs. State of Madhya Pradesh, AIR 1952 SC 343** wherein it has been held that "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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

circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

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

> *"9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of*

the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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

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

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

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

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

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

43. The Hon'ble Apex Court has reiterated the said principle again in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116*** holding all the above five principles to be the golden principles which constitute the panchsheel of the proof of a case based on circumstantial evidence. The Hon'ble Apex Court in the said case as under paragraph-155, 156, 157, 158 and 159 has been pleased to hold that if these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance

to the court and not otherwise. Paragraphs-155, 156, 157, 158 and 159 of the said judgment read as under:

> *"155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus: "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."*
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> *156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".*
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> *157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500] Lagu case [AIR 1960 SC 500] as also the principles enunciated by this Court in Hanumant case [(1952) 2 SCC 71] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — Tufail case [(1969) 3 SCC 198] , Ramgopal case [(1972) 4 SCC 625] , Chandrakant Nyalchand Seth v. State of Bombay [Criminal Appeal No 120 of 1957,], Dharambir Singh v. State of Punjab [Criminal Appeal No 98 of 1958,]. There are a number of other cases where although Hanumant case [(1952) 2 SCC] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration [(1974) 3 SCC 668, 670] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607,] , Shankarlal Gyarasilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405,] — a five-Judge Bench decision.*
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> *158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801] to supplement his argument that if the defence case is false it*

would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: "But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. such absence of explanation or false explanation would itself be an additional link which completes the chain."

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

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

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

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

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

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

47. In ***Ram Singh v. Sonia (2007) 3 SCC 1,*** while referring to the settled proof pertaining to circumstantial evidence, the Hon'ble Apex

Court reiterated the principles about the caution to be kept in mind by court. It has been stated therein as follows:

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

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

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

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

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

> *39. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as*

circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.

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

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

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

43. While appreciating circumstantial evidence, we must remember the principle laid down in Ashraf Ali v. King Emperor [21 CWN 1152 : 43 IC 241] (IC at para 14) that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

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

45. When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role. In Nibaran Chandra Roy v. King Emperor [11 CWN 1085] it was held that the fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be

strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence.

The same principles have been followed by the Constitution Bench of this Court in Govinda Reddy v. State of Mysore [AIR 1960 SC 29 : 1960 Cri LJ 137] where the learned Judges quoted the principles laid down in Hanumant Govind Nargundkar v. State of M.P. [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] The ratio in Govind [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] quoted in AIR para 5, p. 30 of the Report in Govinda Reddy [AIR 1960 SC 29 : 1960 Cri LJ 137] are: "5. ... „10. ... in cases where the evidence is of a circumstantial nature, the circumstances [which lead to the conclusion of guilt should be in the first instance] fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be [shown] that within all human probability the act must have been [committed] by the accused." [As observed in Hanumant Govind Nargundkar v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343 at pp. 345-46, para 10.]

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

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

> missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with."

52. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

53. Keeping in view the aforesaid settled connotation of law, we shall presently proceed to scrutinize and evaluate the circumstances, whether the said circumstances coupled with the alleged "last seen theory" establish the guilt of the accused/appellant beyond reasonable doubt.

54. First, we shall advert to the reliability and credibility of the "last seen/company" theory as propounded by the prosecution. The testimonies of PW. 2 is relevant to be seen for the purpose of arriving at the conclusion whether the circumstance of "last seen/company" has been established.

55. A theory of "accused last seen in the company of the deceased" is a strong circumstance against the accused while appreciating the circumstantial evidence.

56. From perusal of testimonies of the witnesses it is evident that the theory of last seen of the deceased persons in the company with accused/appellant, has come into picture in the testimony of PW2.

57. It is alleged by the prosecution that the recovery of the dead bodies of deceased and other incriminating articles were made on the basis of extra judicial confessional statement of the accused/appellant, thus at this juncture this court would like to discuss the implication of extra judicial confessional statement of the Evidence Act .

58. There is no dispute about the position of law as mandated that extrajudicial confession is a weak piece of evidence and where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extrajudicial confession. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of **Nikhil Chandra Mondal vrs. State of West Bengal 2023 Live Law (S.C.) page 171** wherein it has been held as under:

> 15. It is a settled principle of law that extra judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence. Reliance in this respect could be placed on the judgment of this Court in the case of Sahadevan and Another v. State of Tamil Nadu2. This Court, in the said case, after referring to various earlier judgments on the point, observed thus: "16. Upon a proper analysis of

the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extrajudicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra 13 judicial confession alleged to have been made by the accused: (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution. (ii) It should be made voluntarily and should be truthful. (iii) It should inspire confidence. (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. (vi) Such statement essentially has to be proved like any other fact and in accordance with law."

59. The Hon'ble Apex Court in **Kulvinder Singh & Anr. vrs. State of Haryana A.I.R. 2011 S.C. 1777** has held as under**:**

"19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the 14 confession was made and the credibility of the witnesses who speak of such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an

untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

60. Herein the appellant/convict is alleged to have confessed before P.W.3 and other villagers. This extra judicial confession is oral. But except P.W.3 who is father of deceased , no villagers had come forward to testified on the point of extra judicial confession leading to recovery of dead body of deceased.

61. Further, it is not in dispute that that in a case of no eye witness and if the prosecution version is based upon the last seen theory, merely on the basis of last seen theory, there cannot be any conviction, however, conviction can be made depending upon the other connected circumstances .

62. The motive of the occurrence is shown that the appellant/convict was having strained relation with his wife (deceased's sister) therefore, he committed murder of his brother-in-law. This motive has not been fully proved on behalf of prosecution and the case being based on circumstantial evidence, the evidence of the motive became more significant.

63. The Hon'ble Apex Court held in ***Smt. Omwati vrs. Mahendra Singh A.C.C. (1) 1997 at 38:*** "The motive though not necessary for conviction but when a specific case has been put the evidence regarding to that effect should be adduced.

64. It needs to refer herein that it is evident from the impugned order that the appellant's wife had instituted a case against her husband/

appellant under Section 498A, as well as under Sections ¾ of the Dowry Prohibition Act and in the said case the appellant/accused had been acquitted by the court concerned. Thus, herein the motive behind the alleged crime as stated by the prosecution is appears to be doubtful.

65. The learned trial court has also taken recourse of Section 27 of the Evidence Act but the underlined parameter which is to be adjudged by the learned trial Court is on the basis of applicability of section 27 of the Evidence Act wherein it has been provided that the conviction can be there establishing the culpability committed by the accused if recovery of any incriminating materials or the dead body is there on the disclosure made by such accused person.

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

67. Thus, the recovery pursuant to the disclosure statement made by the accused under Section 27 of the Evidence Act is admissible in evidence. It is also settled that the Court must disregard the inadmissible part of the statement and take note only that part of his evidence, which distinctly relates to the discovery of the articles pursuant to the

disclosure statement made by the accused. It is further settled proposition of law that discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to his existence.

68. Reference with respect to the aforesaid settled proposition may be made to the judgment of the Hon'ble Apex Court in the case of ***Earabhadrappa v. State of Karnataka, AIR 1983 SC 446***. Paragraph-7 of the said judgment reads as under:

> *"7. There is no controversy that the statement made by the appellant Ex. P-35 is admissible under Section 27 of the Evidence Act. Under Section 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word "fact" means some concrete or material fact to which the information directly relates. As explained by Sir John Beaumont in Pulukuri Kotayya v. King-Emperor [(1947) 74 IA 65 : AIR 1947 PC 67 : 230 IC 135] : "... it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.""*

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

> "6. Regarding the second contention that the recovery of arms has not been proved by the prosecution has also no substance. It is evidence on record that the accused were arrested on 17-12-1999 and pursuant to a disclosure statement made by them, the arms were recovered from the bank of Gaula river where these had been hidden under the sand and covered by the stones. All the arms were recovered as pointed out by each accused hidden under the stones. The High Court fell in error in holding that the recovery has not been proved as these were recovered from a place which is frequented by the public. This finding of the High Court is contrary to the evidence on record. It is now well-settled principle of law that the recovery pursuant to the disclosure statement made by the accused under Section 27 of the Evidence Act

is admissible in evidence. In Dhananjoy Chatterjee v. State of W.B. [(1994) 2 SCC 220 : 1994 SCC (Cri) 358] it is held that the entire statement made by an accused person before the police is inadmissible in evidence being hit by Sections 25 and 26 but that part of his statement which led to the discovery of the articles is clearly admissible under Section 27 of the Act. It is also held that the Court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. It is further held that the discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence. 7. In Golakonda Venkateswara Rao v. State of A.P. [(2003) 9 SCC 277 : 2003 SCC (Cri) 1904] this Court reiterated the view and held that the discovery statement of an accused leading to recovery of crime articles from concealed place, even though the discovery statement and the recovery memo did not bear the accused's signature, the fact of recovery from the well and dug out was from a place which was pointed out by the appellant and, therefore, such discovery was voluntary. That the recovery was in consequence to the information given was fortified and confirmed by the discovery of the apparel worn and skeletal remains of the deceased and, therefore, the information and statement cannot be held to be false. In the present case on the recovery memo the signatures of all the accused have been obtained. In Praveen Kumar v. State of Karnataka [(2003) 12 SCC 199 : 2004 SCC (Cri) Supp 357] the same view has been reiterated. 8. As already noted, in the instant case the discovery of the arms was pursuant to the disclosure statement made by the accused immediately after the arrest and the offending arms were recovered at the place pointed out by each of the accused which were concealed under the sand and covered by the stones. The High Court in this regard fell in grave error by disbelieving the recovery memo solely on the ground that the place is a common place which is frequented by the public. The High Court failed to take notice that the recovery has been made from underneath the sand covered by the stones pursuant to the disclosure statement pointed out by each of the accused."

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

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

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

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

> *"133.----- However, Section 27 of the Evidence Act incorporates the "theory of confirmation by subsequent facts" i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which "furnish a link in the chain of evidence" needed for a successful prosecution. This provision reads as follows: '27. How much of information received from accused may be proved.— Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.'*
>
> *134. This provision permits the derivative use of custodial statements in the ordinary course of events. In Indian law, there is no automatic presumption that the custodial statements have been extracted through compulsion. In short, there is no requirement of additional diligence akin to the administration of Miranda [Miranda v. Arizona, 1966 SCC OnLine US SC 112 : 16 L Ed 2d 694 : 384 US 436 (1966)] warnings. However, in circumstances where it is shown that a person was indeed compelled to make statements while in custody, relying on such testimony as well as its derivative use will offend Article 20(3)."*

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

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

74. Herein the body of deceased was discovered on the basis of extra judicial confession which has been alleged to be made before the villagers and thereafter, police on information of the villagers came there and recovered the body of deceased, as such the learned trial court has overlooked the settled legal position while taking recourse of Section 27 of the Evidence Act in order to convict the present appellant.

75. It has been held by the Hon'ble Apex Court that not at all recovery of incriminating material rather a caution is to be given that in order to complete the chain by getting the fact corroborated so that there may not be any iota of doubt has been proved in view of the same. This principle is based upon the fairness and transparency and if any doubt is

there, there cannot be any conviction of the accused person otherwise the same will be said to be based upon the conjuncture and surmises.

76. As discussed hereinabove, there is no dispute with regard to the legal proposition that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence as laid down by this Court. In such a case, all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.

77. This Court, after adverting the aforesaid settled position of law and coming to the testimony of the prosecution witnesses, has found that it is admitted case of the prosecution that there is no eye witness, rather, dead body was said to be recovered from the disclosure made by the appellant before the villagers.

78. We have considered the testimony of all the witnesses including the testimony of the Investigating Officer.

79. The Investigating Officer who has been examined as P.W 8 has also deposed before the learned trial Court that on the disclosure made by the appellant before the villagers the dead body was found from the place when the said occurrence took place. The learned trial Court has agreed with the said version of the prosecution and the same has also been argued by the learned Addl. Public Prosecutor by taking the ground that if the appellant was not involved in commission of crime, then how he came to know that the dead body was lying at the place from where the dead body was recovered.

80. It needs to refer herein that there cannot be any conviction on any conjuncture, surmises and presumption rather the accusation is said

to be proved beyond all reasonable doubts. If the argument of the learned Addl. Public Prosecutor will be accepted, then the question would be that what will happen to the principle of proving the charge said to be proved beyond all reasonable doubts.

81. The Hon'ble Apex Court in catena of decision has propounded the proposition that in the criminal trial, there cannot be any conviction if the charge is not being proved beyond all reasonable doubts, as has been held in the case of **Rang Bahadur Singh & Ors. Vrs. State of U.P.,** reported in ***(2000) 3 SCC 454***, wherein, at paragraph-22, it has been held as under:-

> *"22. The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime."*

82. Likewise, the Hon'ble Apex Court in the case of ***Krishnegowda & Ors. Vrs. State of Karnataka***, reported in ***(2017) 13 SCC 98, has*** held at paragraph-26 as under:-

> *"26. Having gone through the evidence of the prosecution witnesses and the findings recorded by the High Court we feel that the High Court has failed to understand the fact that the guilt of the accused has to be proved beyond reasonable doubt and this is a classic case where at each and every stage of the trial, there were lapses on the part of the investigating agency and the evidence of the witnesses is not trustworthy which can never be a basis for conviction. The basic*

principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt."

83. Further, it is the settled proposition of law that if the result of cross-examination of prosecution witnesses, accused could establish the probability of his defence and if probability was established by accused, it would really entitle him to the benefit of doubt, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Bhikam Saran Vrs. State of U.P.,*** reported in ***(1953) 2 SCC 560,*** wherein, at paragraph-16, it has been held as under:

"16. It is significant to observe that the appellant led no evidence in defence but merely relied upon the evidence of the prosecution witnesses in order to establish his defence. He had not to affirmatively establish his defence in the manner in which the prosecution had to establish its case. If as the result of his cross- examination of the prosecution witnesses he could establish the probability of his defence it was enough for his purposes, because if such a probability was established by him it would really entitle him to the benefit of the doubt insofar as such probability would prevent the prosecution case being established beyond reasonable doubt."

84. Further, the principle of 'benefit of doubt' belongs exclusively to criminal jurisprudence. The pristine doctrine of 'benefit of doubt' can be invoked when there is reasonable doubt regarding the guilt of the accused, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of **State of Haryana Vrs. Bhagirath & Ors.,** reported in ***(1999) 5 SCC 96***, wherein, it has been held at paragraph-7 as under: -

"7. The High Court had failed to consider the implication of the evidence of the two eyewitnesses on the complicity of Bhagirath particularly when the High Court found their evidence reliable. The benefit of doubt was given to Bhagirath "as a matter of abundant caution". Unfortunately, the High Court did not point out the area

where there is such a doubt. Any restraint by way of abundant caution need not be entangled with the concept of the benefit of doubt. Abundant caution is always desirable in all spheres of human activity. But the principle of benefit of doubt belongs exclusively to criminal jurisprudence. The pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords the benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused."

85. Likewise, the Hon'ble Apex Court in the case ***of Krishnegowda v. State of Karnataka*** (Supra) at paragraph- 32 and 33 has held as under:-

"32. --- --- The minor variations and contradictions in the evidence of the eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of the prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets the benefit of doubt.

33. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Bentham, "witnesses are the eyes and ears of justice.--- -'

86. It also requires to refer herein that the statement which has been made before the villagers, none of such villagers has come forward before the learned trial Court to corroborate the same.

87. There can be conviction if the accused person has made a disclosure before the villagers but the requirement to prove the charge and come to the conclusion on the theory of the charge to be proved beyond all reasonable doubts requires the corroboration of that aspect of the matter which could have been only said to be possible if the villagers

before whom the disclosure said to be made by the accused would have been examined.

88. It is admitted case of the prosecution as per the material available on record that none of the villagers had testified to corroborate the said fact based upon that the accusation has been made.

89. Further, as has been argued on behalf of the appellant that even no ingredient of section 364 of the Indian Penal Code is being made, since, as per the prosecution version itself the deceased was taken out of the house in presence of lawful guardian and as such it is not a case where without any consent or without any knowledge the deceased was taken or carried by the appellant.

90. This Court after having discussed the aforesaid fact and adverting to the discussion so made based upon that the learned trial Court has come to the finding of conviction under section 302, 364 and 201 of the Indian Penal Code, this Court has found that the learned trial Court only on the basis of extra judicial confession has convicted the appellant.

91. Further, it is considered view of this Court that in case where direct evidence is not available and case is solely based upon the loose end of extra judicial confession which has not been corroborated fully and where two views are possible the one which is favouring the accused should be adopted.

92. It needs to refer herein that The Hon'ble Apex Court, in the case of ***Allarakha K. Mansuri v. State of Gujarat*** reported in ***(2002) 3 SCC 57*** has laid down the principle that the golden thread which runs through the web of administration of justice in criminal case is that if two views

are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted, for reference, paragraph 6 thereof requires to be referred herein which reads hereunder as :-

> "6. ------The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. --"

93. It needs to refer herein before laying down the aforesaid view, the Hon'ble Apex Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra*** reported in ***(1984) 4 SCC 116*** has already laid down the same view at paragraph 163 which is required to be referred which read hereunder as

> *"163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.---"*

94. This Court, therefore, is of the view based upon the discussions made hereinabove, that the impugned judgment needs interference, accordingly, the judgment of conviction dated 07.02.1998 and the order of sentence dated 10.02.1998 passed by the learned Sessions Judge, Dhanbad in Sessions Trial No. 364 of 1995 is hereby quashed and set aside.

95. The appellant is on bail vide order dated 21.6.1999 passed by this Court in the present proceeding and, as such, he is discharged from the liabilities of bail bonds.

96. Accordingly, the instant criminal appeal stands allowed.

97. Pending I.As, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

Sudhir
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