

(1)

**IN THE HIGH COURT OF MADHYA PRADESH,
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

CRIMINAL APPEAL NO. 244 of 2001.

BETWEEN :-

- 1. SONERAM S/O JAGNU SHAKYA, AGED 20 YEARS,**
 - 2. JASWANT S/O RAMDAYAL SHAKYA, AGED 24 YEARS,**
- BOTH ARE R/O VILLAGE SALAMPUR, P.S. RAMPURKALA, DISTT. MORENA.**

.....APPELLANTS

(BY SHRI RAJKUMAR SINGH KUSHWAH - ADVOCATE)

AND

**STATE OF MADHYA PRADESH THROUGH
POLICE STATION VIJAYPUR, DISTRICT
SHEOPURKALA (MADHYA PRADESH)**

.....RESPONDENT

(BY MS. ANJALI GYANANI – PUBLIC PROSECUTOR)

Reserved on	:	14.06.2023
Pronounced on	:	16.08.2023
Whether approved for reporting	:	Yes.

This appeal having been heard and reserved for judgment, coming on for pronouncement this day, Justice Sanjeev S Kalgaonkar pronounced the following:

JUDGEMENT

1. This criminal appeal, under Section 374 of Code of Criminal Procedure, 1973 is directed against the judgment dated 26.03.2001 passed by the Court of Additional Sessions Judge, Sabalgarh, District Morena in Sessions Trial No.192/1999, whereby the appellants Soneram and Jaswant have been convicted and sentenced as under:-

S.No.	Name of accused	Section	Sentence	Fine	In default stipulation
1	Soneram and Jaswant	302 of IPC	life Imprisonment	Rs.1000/-	six months R.I.
2	Soneram and Jaswant	201 of IPC	seven years of R.I.	Rs.1000/-	six months R.I.
3	Soneram	420 of IPC	seven years of R.I.	Rs.1000/-	six months R.I.

2. The Prosecution story, in nutshell, may be stated as under-

Around September to October, 1998, accused Soneram deceived the complainant Prabhu that he will secure a job of Hostel Superintendent at Bhopal for Harvilas, son of Prabhu but they will have to pay Rs.60,000/- for securing the job. The complainant Prabhu paid Rs.55,000/- to Soneram in the month of January, 1999. In order to arrange the payment, Prabhu had taken loan from other persons. Harvilas went along-with Soneram to Bhopal for getting the job as promised but Soneram escaped from Railway Station, Bhopal. So, Harvilas returned to his village Barakala, District Morena. After a few days, on 26.01.1999 Soneram and Jaswant again visited residence of Prabhu and stated that job for Harvilas has been arranged, therefore, Harvilas may be sent with them. Harvilas went to village Salampur on bicycle with Soneram. Three days thereafter, accused Jaswant returned bicycle of Harvilas with an

inland letter to complainant Prabhu and Urmila Bai. In the said letter, it was mentioned that Harvilas has reached Bhopal comfortably and Rs.6,000/- be paid to Soneram.

3. Naresh, a relative of Prabhu informed that Harvilas did not reach village Salampur, therefore, Prabhu went to village Salampur and enquired about Harvilas from Soneram. Soneram informed that Harvilas is serving at Bhopal. Prabhu asked Soneram to accompany him to Bhopal so that he may meet Harvilas. Soneram and Prabhu proceeded for Bhopal by bus, but as the bus reached to Kailaras, Soneram fled away. On suspicion, Prabhu lodged a report at Police Station Vijaypur, District Sheopur on 01/02/1999 against the accused Soneram and Jaswant for abduction of his son Harvilas. The inland letter of Harvilas delivered by Jaswant to complainant Prabhu was seized.

4. T. I. Suresh Chandra Dohare arrested Jaswant and Mithlesh (since acquitted). Jaswant and Mithlesh on interrogation informed that dead body of Harvilas is lying in a well of village Tailari. Pursuant to such information given by Jaswant and Mithlesh in police custody, dead body of Harvilas was recovered from a dry well at village Tailari, concealed beneath dry leaves of sugarcane. Panchnama of dead body of Harvilas (Exhibit P/2) was prepared and dead body was sent for autopsy. The Medical Officer, on Post-mortem examination, opined that Harvilas had died 5-10 days before the examination due to anti-mortem injury on his skull.

5. The full pant of deceased and a tomahawk (*farsa*) were recovered at the instance of Jaswant. A pair of shoes and wooden stick were recovered at the instance of Mithlesh. Soneram was arrested on 05.03.1999 and a blood-stained stone was recovered on his information .

6. Sample of handwriting of accused Soneram and Jaswant was taken and natural handwritings of accused Soneram, Jaswant and deceased Harvilas were seized. The handwriting expert opined that the inland letter

was in the handwriting of Jaswant. After recording the statement of witnesses and completing the investigation, police station Vijaypur submitted charge-sheet against accused Soneram, Jaswant and Mithlesh.

7. The Trial Court framed charges against Soneram under Section 420, 302, 201 of IPC and charges under Section 302, 201 of IPC were framed against Jaswant and Mithlesh. Learned Sessions Judge, after Trial, passed the impugned judgment concluding that the prosecution has been able to prove beyond reasonable doubt that :-

1. Soneram deceived Prabhu, father of the Harvilas to deliver Rs. 60,000/- for securing job of Hostel Superintendent at Bhopal for Harvilas (para-29 of the Judgment)
2. Prabhu paid Rs.55,000/- to Soneram in three instalments (para- 29 of the Judgment)
3. Harvilas left for village Salampur with Soneram and Jaswant on 26th of January, 1999. Thereafter, Harvilas went missing (para- 29 of the Judgment)
4. Soneram cheated Prabhu by dishonestly inducing him to deliver Rs. 55,000/- to secure job of Hostel Superintendent for Harvilas and received the said amount. (Paras -30 and 36 of the Judgment)
5. Jaswant returned the bicycle of Harvilas and delivered an inland letter to Urmila Bai stating that the letter is written by Harvilas (Para-31 of the Judgment).
6. The inland letter Ex P/4-A was found to be in the handwriting of Jaswant (Para-34 of the Judgment).
7. Deadbody of Harvilas was recovered from a dry well of village Tailari concealed beneath dry leaves of sugarcane at the instance of accused Jaswant and Mithlesh on 3rd of February, 1999 (para-35 of the Judgment).
8. A blood stained full pant and tomahawk (*pharsa*) was

recovered at the instance of accused Jaswant (paras- 34 and 35 of the Judgment).

9. Blood stained stone was recovered at the instance of accused Soneram. (para 29 of the Judgment).

10. Soneram and Jaswant had motive to murder Harvilas so that their act of cheating would not be revealed (Paras-35 and 36 of the Judgment).

11. Accused Soneram and Jaswant killed Harvilas on 26th of January, 1999 by inflicting multiple injuries on his head and to suppress evidence of murder concealed his dead body in the dry well. (Paras- 36 of the Judgment).

8. On consideration of aforementioned proved circumstances, learned Trial Court convicted accused Soneram for the offence punishable under Sections 420, 302 and 201 of IPC and the accused Jaswant for offence punishable under Sections 302 and 201 of IPC and, accordingly, sentenced them as mentioned in para-1 of the judgment. Further, learned Trial Court acquitted accused Mithlesh of charges under Sections 302 and 201 of IPC extending him benefit of doubt.

9. The conviction and sentence of appellant Soneram and Jaswant is assailed mainly on following grounds:-

1. The judgment and sentence given by the Trial Court is against the facts of the case and the principles for appreciation of circumstantial evidence.
2. The learned Trial Court committed error in holding that the amount of Rs.55,000/- taken by accused Soneram from father of Harvilas was motive of the offence.
3. No such amount was recovered from Soneram and there is no document on record to show that Soneram ever received the said amount.
4. Recovery of mark sheet and certificates of Harvilas from

Soneram was unbelievable as Urmila Bai (PW/9) wife of deceased has admitted in her cross- examination (para-12) that police has taken away documents of deceased from her, therefore, recovery of mark sheet of the deceased from Soneram was a concocted story.

5. The handwriting expert's report regarding inland letter (Ex. P/4) is not an authentic evidence as admitted handwriting of the deceased was not sent for examination and letter (EX. P-4) does not bear postal stamp or signature of the deceased.
6. The dead body of Harvilas was alleged to be recovered on joint disclosure of appellant Jaswant and co-accused Mithlesh (since acquitted). Therefore, recovery cannot be attributed to the exclusive knowledge of the appellant.
7. The dead body of Harvilas was recovered from well which is open and accessible to all by-passers. Therefore, no inference can be drawn against appellant Jaswant.
8. The fullpant and tomahawk (*pharsa*) alleged to be recovered at the instance of appellant Jaswant was not identified and the Serologist did not report presence of human blood on these articles.
9. The prosecution failed to ascertain the spot of incident where the murder was committed. Therefore, it cannot be concluded that who, when and where committed the murder. Learned Trial Court has given hypothetical finding that murder might have taken place nearby the well.
10. Learned Counsel for the appellant in his argument further assailed the judgment on following grounds:-
 1. The evidence with regard to “last seen together” of

deceased with appellants is doubtful and there is large time gap between death of Harvilas and his last seen with accused, as alleged.

2. The prosecution has failed to prove the circumstances against the appellants, therefore, they were not obliged to explain the disappearance of deceased Harvilas after 26.01.1999.

11. *Per contra*, learned counsel for the State submitted that the chain of circumstances is fully established in the case. Learned Trial Court has given reasoned finding on each of the circumstance on the basis of evidence on record. The evidence on record clearly established motive and involvement of both the accused in alleged offence, therefore, the appeal deserves to be dismissed.

Circumstantial Evidence-

12. It is trite law that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (1) the circumstance 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;
- (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
- (5) such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The evidence on record is being examined in light of

aforementioned guiding principles.

Events leading to the alleged offence-

13. The doctrine of *res gestae* is incorporated in Section 6 of the Indian Evidence Act which states that facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Thus, under the Indian Evidence Act, doctrine of *res gestae* is applied in wider connotation to include all their statements, acts and incidents which are connected with the facts in issue. These statements, acts or events need not be coincident or contemporaneous with the occurrence of principal events. However, it must be made at such time and under such circumstances as will exclude the presumption that it is a result of deliberation.

14. Prabhu (PW-1) stated that Soneram and Jaswant took Harvilas along with them on 26th January informing that job has been arranged. Soneram and Jaswant told that they are taking Harvilas to village Salampur and therefrom, they will go to Bhopal. Urmila, PW-9 also stated that on same line. She further stated that Harvilas left for Salampur along with Soneram and Jaswant on his bicycle, next day Jaswant returned the bicycle and delivered a letter addressed to her father-in-law Prabhu.

15. Learned counsel for the appellant drawn attention of this Court towards inconsistency in evidence of Prabhu, PW-1 and Urmila PW-9 with regard to delivery of letter by Jaswant. On perusal of the testimony of Prabhu and Urmila, there seems to be no inconsistency with regard to the fact that Jaswant delivered an inland letter to Urmila which she had given to Prabhu, on the same day in presence of Jaswant. Jaswant informed Prabhu and Urmila that Harvilas is comfortable with his job at Bhopal.

16. Prabhu (PW-1) in Para 10 of his deposition stated that next day

after Harvilas left for Bhopal along with Soneram and Jaswant, Naresh informed him that Harvilas did not reach village Salampur, so he started search for Harvilas. His brother Gorelal was with him. They met Soneram at Salampur and confronted him about Harvilas. Soneram told that Harvilas is working at Bhopal so they were going to Bhopal with Soneram, but as the bus reached Kailaras, Soneram deboarded the bus and fled away. Thereafter, they returned to Salampur and enquired from Jaswant with regard to whereabouts of Harvilas. Jaswant told them that Harvilas had left for Morena. They could not find Harvilas, therefore, he lodged a report Ext.P-1 at Police Station, Vijaypur. No inconsistency, contradiction or improbabilities are available in evidence of Prabhu PW-1 with regard to aforementioned sequences of events. Gorelal, PW-5 corroborated the events narrated by Prabhu PW-1. These events are precursor to recovery of deadbody of Harvilas.

Last seen together-

17. There is no contradiction or inconsistency in evidence of Prabhu (PW-1) and Urmila (PW-9) that on 26/01/1999, Harvilas left for Salampur with Jaswant and Soneram. Thereafter, Harvilas went missing. Dr. G.S. Verma (PW-11) conducted Post-Mortem examination of dead body of Harvilas on 03/02/1999 and opined that Harvilas had died 5 to 10 days prior to the examination. The time of death opined by medical expert relates to incident of Harvilas leaving his home in company of Jaswant and Soneram. In such circumstance, the onus shifts on the appellants to explain how, where and in what manner, they parted company with Harvilas but both the accused failed to give any explanation much less of plausible explanation.

18. The theory of "last seen" as it roots in the doctrine of inductive logic as provided in Section 7 of the Evidence Act, which provides that facts which are the occasions, cause or effect, immediate or otherwise of the relevant fact for which constitute the state of things under which they

happened or which afforded an opportunity for their occurrence are relevant. Thus, where the doing of any act by a particular person is material or relevant to the proof, the person's opportunity to do it is relevant. The term "opportunity" includes all point of time place and personal conduct which make it corporeally possible for a given person to have been present and doing the act and also all facts which make it less corporeally possible for some other person to have been present and doing it. Once it is proved that accused was last seen with the subject and had opportunity to commit the alleged offence it does not follow that he is necessarily guilty. But, it certainly raises a presumption against the accused and shift the onus of proof from prosecution to the accused because the events and circumstances are within the special knowledge of the accused after he was last seen with the victim. In case of *Digamber Vaishnav & Ors. Vs. State of Chhattisgarh; AIR 2019 SC 1367*, it was held that accused cannot be found guilty solely on the fact that he was last seen together with the victim to convict the accused based on the doctrine of last seen. The theory of last seen along-with other circumstances refuting innocence of accused must be proved. Now, we are examining the circumstances associated with the "last seen together."

Motive-

19. Motive is the emotion which is supposed to have led to the act. Generally, motive is not capable of tangible proof. It can only be ascertained by inferences drawn from facts.

20. Motive is a thing which is primarily known to the accused only and it is very difficult for the prosecution to put forth what actually prompted or excited the accused to commit the offence. It is even more difficult to establish with full vigour sufficiency or adequacy of the motive. It is sufficient for the prosecution to establish existence of some motive, then sufficiency or adequacy of such motive which impelled the accused to

commit the crime, may be inferred from the attending circumstances.

21. In the case of **Ranganayaki Vs State by Inspector of Police (2004) 12 SCC 521**, it is observed that ---

10. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murder has been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Campbell struck a note of caution in *Red v. Palmer* [Shorthand Report at p. 308, May 1856] thus:

“But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.”

Though, it is a sound presumption that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailants. In *Aitley v. State of U.P.* [AIR 1955 SC 807 : 1955 Cri LJ 1653] it was held : (AIR p. 810, para 6)

“That is true, and where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty, but absence of clear proof of motive does not necessarily lead to the contrary conclusion.”

In some cases it may be difficult to establish motive through direct Evidence, while in some other cases inferences from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes it may appear that the motive established is a weak one. That by itself is insufficient to lead to an inference adverse to the prosecution. Absence of motive, even if it is accepted, does not come to the aid of the accused. These principles have to be tested on the background of factual scenario.

22. In the case of **State of H.P Vs Jeet Singh, (1990) 4 SCC 370**, it was held that when the prosecution succeeded in showing the possibility

of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of offender to such a degree, as to impel him to commit the offence can not be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.

23. Prabhu PW-1 stated that Soneram had asked for Rs.60,000/- to secure a job for Harvilas at Bhopal. He paid Rs.55,000/- to Soneram in three instalments. Soneram has taken Rs.19,000/- and thereafter he paid Rs.16,000/- to Soneram, in third instalment he has paid Rs.20,000/-. Prabhu PW-1 stated that he has paid this amount in presence of Gorelal. Gorelal PW-5 duly supported the evidence of Prabhu in this regard. Janved PW-6 and Chigga PW-7 stated that they had given loan of Rs.5,000/- to Prabhu for payment to Soneram. Prabhu was in need of money. Prabhu had told them that Soneram would be arranging job for Harvilas and for that purpose, he had to pay Rs.60,000/- to Soneram. No inconsistency or contradiction is reflected in evidence of these witnesses. The evidence of Prabhu is further fortified by suggestions of accused in his cross-examination (Paras 8 and 10 of the judgment) wherein he has stated that father of Soneram returned amount of Rs.55,000/- with interest. Prabhu PW-1 stated that after receiving of Rs.55,000/- Soneram and Harvilas left for Bhopal, but after three days Harvilas returned home and informed that Soneram fled away leaving him alone at Bhopal railway station. Urmila PW-9, wife of deceased Harvilas, also narrated the same incident. Her testimony remained intact in cross-examination.

24. In view of the overwhelming reliable oral evidence, absence of documentary evidence with regard to transaction of money does not affect credibility of the prosecution. Such transactions are generally not recorded in the documents. The objection of appellants in this regard is merit-less.

25. Learned counsel for the appellant has drawn attention of the Court towards para No.12 in cross-examination of Prabhu (P.W.1) wherein he has stated that father of Soneram has returned him amount of Rs. 55,000/- alongwith the interest. Learned counsel contended that since the disputed amount was returned with interest, no reason survives for killing of Harvilas by accused Jaswant and Soneram.

26. Firstly, it is not clear from the evidence of Prabhu (P.W.1) as to when aforementioned amount was returned to him. Secondly, return of amount would not negate existence of motive, rather, fortifies the existence of grudge against Harvilas and Prabhu that they compelled father of Soneram to return the money secured by cheating. Thus, existence of motive is established beyond doubt. Thus, the learned trial Court committed no error in holding that the amount of Rs.55,000/- taken by Soneram by deceiving father of Harvilas constitutes motive for the offence. The objection of appellants in this regard is merit-less.

The Investigation, Discovery and Recovery-

27. The Investigation Officer, Suresh Chandra Bhole (PW-18) stated that on 01.02.1999, Prabhu Shakya reported at Police station Vijaypur that accused Soneram and Jaswant had taken Harvilas on pretext of securing him job. Thereafter, Harvilas went missing. On such information, he registered First Information Report (Ex.P/1). He arrested accused Jawant on 03.02.1999 *vide* arrest memo (Ex.P/18). Jaswant informed that dead body of Harvilas is lying in dry well of Chatresh at Village Tailari. The dead body is covered with dried sugarcane leaves. He recorded memoranda Ex.P/13 of this information at 12:00 noon at Government school near bus stand Rampurkala.

28. Mithlesh also informed that dead body of Harvilas is lying in a dried well of village Tailari. He recorded this information *vide* memo. Ex.P/8.

29. Suresh Chandra Bohare (PW/18) further stated that he proceeded

from Rampurkala to Village Tailari by government vehicle with accused Mithlesh and Jaswant alongwith witnesses and the photographer. Mithlesh and Jaswant indicated the well wherein the dead body was lying. The photographer took photographs of the dead body inside the well and thereafter, the dead body was taken out of the well. Again, photographs were taken. He prepared Panchnama (Ex.P-7) of recovery of dead body from the well. Witness Jagdeesh and Shripath identified the dead body to be of Harvilas. He prepared panchnama of dead body (Ex.P/2) in presence of the witness.

30. Suresh Chandra Bohare (P.W.18) specifically mentioned that when they reached near the dry well at village Tailari, accused Jaswant informed that dead body of Harvilas is concealed beneath the sugarcane leaves in the well. They found that dead body was covered with sugarcane leaves and after removing the leaves, dead body was recovered and photograph Ex.P-29 was taken.

31. Suresh Chandra Bohare (PW-18) stated that he has recovered one blood-stained tomahawk (*farsa*) Article C at the instance of accused Jaswant *vide* memorandum (Exhibit P/15) and seizure memo (Exhibit P/17) from the field of Saganlal Rao in village Tailari concealed in wheat grain crop. He further stated that the dead body of the deceased was without full-pant. Accused Jaswant informed that he had thrown one blood-stained full-pant in dry well of Shivdayal Shakya. He recovered one blood stained full-pant at the instance of accused Jaswant *vide* memoranda (Exhibit P/16) and seizure memo (Exhibit P/14). Mangilal (PW-2) and Gangaram (PW-4) did not support the prosecution, but they failed to *provide* any plausible explanation regarding their signature on memorandum and seizure Memos. (Exhibits P/13-16).

32. Learned counsel for the appellants took exception to the evidence regarding recovery on following counts:-

- (1) The witness of recording of memorandum (Ex.P/13) and

(Ex.P/9) Mangilal (PW/2) and Gangaram (PW/4) did not support the prosecution on the point of recording of information at the instance of accused Jaswant and the recovery of dead body made pursuant thereto.

(2) Accused Mithlesh (since acquitted) has already informed the Investigation Officer about concealment of dead body of Harvilas in dried well of Chatresh at village Tailari, therefore, information given by Jaswant *vide* memorandum (Ex.P/13) is inadmissible as Investigation Officer was already aware of the factum of dead body in the well at Village Tailari.

Exception-1-

33. Mangilal (PW/2) although did not support the investigation on point of recording of memoranda (Ex. P/13) and (Ex. P/14) and recovery made pursuant thereto but in cross-examination, he has stated that he had gone to the well along with witnesses and Photographer and where from the dead body was recovered.

34. Gangaram (PW/4) did not wholeheartedly support recording of information *vide* memoranda (Ex. P/13) but stated that he, alongwith police and accused Jaswant, went to a well near village Tailari wherefrom dead body of Harvilas was recovered and panchnama (Ex.P/2) was prepared in his presence. In para-7 of statement, he specifically stated that the dead body was recovered from well at the instance of accused Jaswant.

35. Other witnesses present on spot, Gorelal (PW/5), Zalim (PW/8) and Shripath (PW/10) have stated that dead body of Harvilas was recovered from a dry well near village Tailari in presence of accused Jaswant. The testimony of Investigation Officer stands corroborated by the testimony of aforementioned witnesses of panchnama (Ex.P/7). Therefore, even in absence of corroboration by *panch* witness Gangaram and Mangilal, the factum of recovery of dead body of Harvilas at the instance of Jaswant is

found to be proved beyond doubt.

36. Section 114 of the Indian Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The illustration (e) provides for presumption that judicial and official acts have been regularly performed. There is nothing on record to suggest previous animosity or bias of investigation officer against accused Jaswant, who was present along with witnesses at the place of recovery of the dead body which was recovered on the information given by him and from the place, he pointed out. In the factual scenario of the case, the presumption stands fortified that investigation officer has duly performed his duties of investigation. Therefore, even in absence of specific corroboration by the *panch* witness, the testimony of investigation officer cannot be discarded. In case of ***Pradeep Narayan Madgaonkar v. State of Maharashtra*** AIR 1995 SC1930², the Supreme Court held:

“The testimony of a witness cannot be jettisoned merely because he is a Police Officer. Where a police witness bore no grudge, nor had any rancor against the accused, his testimony if otherwise reliable, can be believed. The independent witness turning hostile is not sufficient to destroy prosecution case”

(Mallikarjun Vs. State of Karnataka (2019) 8 SCC 359 also relied)

Exception. 2 - (Joint disclosure)

37. Suresh Chandra Bohare (PW/18) stated that he recorded information given by accused Mithlesh *vide* memo (Ex. P/8) on 03.02.1999 at 12:10 noon. Jaswant gave him information with regard to dead body of Harvilas at Government School near Bus-stand Rampurkala *vide* memorandum (Ex. P/13). Although, the sequence of recording of information as narrated by the Investigation officer gives an impression that first accused Mithlesh informed him about dead body of Harvilas,

thereafter, accused Jaswant also gave same information. But, mere perusal of memorandum (Ex. P/13) and (Ex. P/8) would reveal that firstly, the information given by accused Jaswant was recorded on 3.2.1999 at 12:00 noon *vide* memorandum Ex. P/13. Thereafter, information given by accused Mithlesh was recorded on same day at 12:10 noon *vide* memoranda (Ex.P/8).

38. In *State Government, Madhya Pradesh V. Chhotelal Mohanlal 1955 CR.L.J 586*, it has been held that plurality of information received from a number of accused before discovery will not necessarily take any of these informations out of the section and the words “a person” will take in more than one person and that information will be admissible against all the informants. This dictum of law still holds the ground.

39. In case of *Kishore Bhadke v. State of Maharashtra, (2017) 3 SCC 760*, it was held that-

33. It was contended by the counsel for Accused 3 that the evidence regarding discovery of the dead body of Raman cannot be used against Accused 3. Inasmuch as, when Accused 3 gave his statement and recorded in the form of memorandum under Section 27 of the Evidence Act, the police already knew about the spot where the dead body was thrown as it was disclosed by Accused 2. It was contended that the statement made by Accused 2 can be used only against Accused 2. This argument has been negatived by the Trial court after analysing the decisions which were brought to its notice, as can be discerned from para 46 to para 53 of the judgment. The Trial court found that in the present case Accused 2 and 3 made disclosure (about the spot where dead body of Raman was thrown by them) one after another in quick succession and that their statement came to be recorded separately. The only thing that had happened was a joint discovery made at the instance of both Accused 2 and 3, on proceeding to the spot along with the police. Section 27 of the Evidence Act is an exception to Section 25 of the Act. Section 25 mandates that no confession to a police officer while in police custody shall be proved as against a person accused of any offence. Section 27, however, *provides* that any fact deposed to and 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.

34. The fact where the dead body of deceased Raman was disposed off, was disclosed by both Accused 2 and 3 to the investigating officer in the presence of S.K. Idris (PW 2) one after another on 12-

5-2003 at 0305 hours and 0325 hours respectively. The discovery was made only after Accused 2 and 3 were taken together by the police to the spot in the neighbouring State (Madhya Pradesh), where the recovery panchnama was recorded bearing Ext. 76-A. In other words, the disclosure of the relevant fact by Accused 3 to the investigating officer preceded the discovery of dead body from the disclosed spot at the instance of both Accused 2 and 3. It was not a case of recording of statement of Accused 3 after discovery nor a joint statement of Accused 2 and 3, but disclosure made by them separately in quick succession to the investigating officer, preceding the discovery of the fact so stated. The fact disclosed by them, therefore, and the discovery made at their instance, was admissible against both the accused in terms of Section 27 of the Evidence Act.

35. In *State (NCT of Delhi) v. Navjot Sandhu* [*State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] (SCC pp. 711-12, para 145), this Court has held that a joint disclosure or simultaneous disclosures, per se, are not inadmissible under Section 27 of the Evidence Act. A person accused need not necessarily be a single person, but it could be a plurality of the accused. The Court held that a joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in chorus. When two persons in custody are interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact which was reduced into writing, such disclosure by two or more persons in police custody do not go out of the purview of Section 27 altogether. What is relevant is that information given by one after the other without any break, almost simultaneously, as in the present case and such information is followed up by pointing out the material things by both of them then there is no good reason to eschew such evidence from the regime of Section 27. Whether that information is credible is a matter of evaluation of evidence. The courts below have accepted the prosecution version in this behalf, being credible. Suffice it to say that the disclosure made by Accused 3 about the relevant fact, per se, is not inadmissible”.

40. Learned counsel for the appellant argued that a full pant recovered at the instance of accused Jaswant was not identified by any prosecution witnesses as full pant of deceased Harvilas. Therefore, the recovery of such full pant cannot be used to connect accused Jaswant with alleged offence.

41. Investigation Officer Suresh Chandra Bohare (PW-18), photographer Krishan Pal Jadoun (PW-14), Gorelal (PW-5), Zalim (PW-8) and Jagdish (PW-15) have stated that full-pant was missing from the dead body of Harvilas at the time of recovery of dead body from the well. The

Investigation Officer had, immediately thereafter, inquired from Jaswant and on the information of accused Jaswant, one blood stained full pant was recovered from a dry well. Report of Scientific Officer, Regional Forensic Science Laboratory, Gwalior (Exhibit P/45) shows presence of blood on Full pant Article F, which was seized at the instance of accused Jaswant. Although, the blood group could not be matched due to disintegration of blood stains, still, it was expected from accused Jaswant to explain his knowledge about blood-stained full pant immediately after the recovery of dead body where-from full pant was missing. In case of *Aftaf Ahmad Ansari Vs. State of Uttaranchal*, (2010) 2 SCC 583, the Supreme Court, in the context of seizure of clothes of deceased which were concealed by the accused, opined as under:-

40. Thus, the part of the disclosure statement, namely, that the appellant was ready to show the place where he had concealed the clothes of the deceased is clearly admissible under Section 27 of the Evidence Act because the same relates distinctly to the discovery of the clothes of the deceased from that very place. The contention that even if it is assumed for the sake of argument that the clothes of the deceased were recovered from the house of the sister of the appellant pursuant to the voluntary disclosure statement made by the appellant, the prosecution has failed to prove that the clothes so recovered belonged to the deceased and therefore, the recovery of the clothes should not be treated as an incriminating circumstance, is devoid of merits.

42. Thus, in attending circumstance of the case, seizure of blood stained Fullpant also forms an incriminating circumstance against Jaswant.

43. Accused Jaswant took the Investigation Officer and other witnesses to dry well of Chatresh in village Tailari and dead body of Harvilas was recovered on his pointing out to the well. Further blood-stained tomahawk (farsa) and blood stained full pant were also recovered on the same day on his pointing out the place in nearby fields, the act and conduct of pointing out leading to recovery of dead body of Harvilas, blood stained tomahawk (farsa) and Fullpant is relevant under Section 8

of Evidence Act. (*A. N. Vankatesh Vs. State of Karnataka 2005 (7) SCC 714, relied on*).

44. The Investigation Officer Suresh Chandra Bohare (PW-18) deposed that he arrested accused Soneram on 05/03/1999 *vide* arrest memo (Exhibit P/22). Soneram informed that he has concealed a stone in wheat crop field near the well in village Tailari. He recovered and seized one blood stained stone (Article A) on production of accused Soneram from wheat crop in a field near village Tailari *vide* seizure memo (P/24). Zalim (PW-8) and Janved (PW-6) fully corroborated the recovery of blood stained stone at the instance of accused Soneram. Although, the blood group on the stone could not be matched as blood stains were disintegrated, still, report of Scientific Officer, Regional Forensic Science Laboratory, Gwalior (Exhibit P/45) shows presence of blood stains on Stone (Article-A). No explanation is given by accused Soneram with regard to the recovery of such blood stained stone at his instance from a place near the well wherefrom dead body of Harvilas was recovered.

45. Learned counsel for Appellant contended that all the objects were recovered from places which were open and accessible to all by-passers. Therefore, no inference can be drawn against the appellants on the basis of such recoveries.

46. Section 27 of the Evidence Act refers to a fact being discovered and Section 3 defines “fact” as meaning and including “any thing, state of things, or relation of things capable of being perceived by the senses”. The expression “fact” as defined by Section 3 of the Statute includes, not only the physical fact which can be perceived by the senses, but also the psychological fact or mental condition of which any person is conscious. The ‘fact discovered’ envisaged in the section embraces the place from which the object was produced and the knowledge of the accused as to it, but the information given must relate distinctly to that effect. 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 accused as to its existence at a particular place. Thus, knowledge of dead body of Harvilas lying in the well concealed beneath sugarcane leaves is relevant. Similarly, knowledge of bloodstained fullpant concealed in dry well and *farsa* concealed in wheat crop is also relevant. In this regard, three inferences can be drawn- either the accused had himself concealed it, or the accused had seen someone else concealing it, or someone had told the accused that it is concealed there. Failure on part of accused Jaswant to explain knowledge of such concealment raises inference that he had concealed the dead body, *farsa* and Full-pant.

(Pulukuri Kottaya v. King Emperor, AIR 1947 PC 67; Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600; State of Maharashtra v. Damu, AIR 2000 SC 1691; State of Maharashtra v. Suresh (2000) 1 SCC 471; Mehboob Ali v. State of Rajasthan, (2016) 14 SCC 640 Relied)

47. Further, in the case of ***Yakub Abdul Razak Memon Vs. State of Maharashtra*** reported in **(2013) 13 SCC 1**, it has been held as under :

“The submission made by Mr Mushtaq Ahmad, learned counsel appearing on behalf of the appellant that the recovery was made from a public place and, therefore, could not be relied upon and cannot be accepted, as it is the accused alone on whose disclosure statement the recovery was made and it is he alone, who is aware of the place he has hidden the same. It cannot be presumed that the other persons having access to the place would be aware that some accused after the commission of an offence has concealed the contraband material beneath the earth or in the garbage. In *State of H.P. v. Jeet Singh* (1999) 4 SCC 370 this Court held in para 26 as under :

“26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is ‘open or accessible to others’. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others.”

48. Suresh Chandra Bohare (PW-18) further stated that he has

recovered and seized mark sheet, caste certificate and domicile certificate of the deceased Harvilas at the instance of Soneram in the presence of witnesses Janved and Zalim *vide* memorandum Ex.P-23 and seizure memo Ex.P-25. Janved (P.W.6) and Zalim (P.W.8) duly corroborated this recovery at the instance of accused Soneram from a locked room which was opened by accused Soneram. No explanation with regard to possession of mark sheet, caste certificate and domicile certificate of Harvilas is given by the accused.

49. Learned counsel for the appellant contended that wife of the deceased Harvilas, Urmila (P.W.9) in her cross-examination in para 12 stated that police has taken mark sheet etc. from her home, on the date of registration of FIR but immediately she explained that she is illiterate. Such strange statement by an illiterate villager on the suggestion of defence is not sufficient to discard seizure memo Ex.P.25 which was duly proved. The learned Trial Court in para no. 32 has properly dealt with this objection. No interference in the findings is required.

50. Suresh Chandra Bohare (P.W.18) stated that at the time of lodging of an FIR, complainant Prabhu has produced one inland letter stating that it was delivered by accused Jaswant which was seized *vide* seizure memo Ex.P.4A. Suresh Chandra Bohare (P.W.18) further stated that on 06/02/1999, he has seized one copy containing natural handwriting of Jaswant *vide* seizure memo Ex.P-31. Further, he has seized one copy containing natural handwriting of Soneram (article-G) *vide* seizure memo Ex.P-41 and he has seized one copy containing natural handwriting of Harvilas on production of Prabhu (Article-H) *vide* seizure memo EX.P.5. R.B. Sirdoskar (P.W.19) has taken sample of natural handwriting of accused Jaswant and Soneram. His evidence stands corroborated by testimony of Lakhpati (P.W.16). It goes to show that notebook containing natural handwriting of Harvilas, samples of natural handwriting of the appellants Jaswant and Soneram were forwarded along-with the

questioned document of inland letter (Ex.P-4A). Thus, exception taken by the appellants in this regard *sans* merit.

51. All these handwriting samples were forwarded to handwriting expert *vide* memorandum Ex.P.42. The handwriting expert Prakash Chand Trivedi (P.W.21) gave finding that handwriting in the inland letter Ex.P.4A matches with handwriting samples of accused Jaswant. No inconsistency or improbability is found in the testimony of handwriting expert. Therefore, it is proved beyond doubt that accused Jaswant had written the inland letter Ex.P.4A and delivered to Urmila, wife of deceased Harvilas, mentioning therein that Harvilas is happy with new job. This letter was delivered on the next day, when Harvilas was last seen in the company of accused. Thereafter, Harvilas went missing and his dead body was recovered at the instance of accused Jaswant.

52. The objection of appellants with regard to authenticity of inland letter Ex.P.4A is merit-less. The letter was not posted therefore, absence of postal stamp or signature of deceased thereupon, is immaterial.

53. Learned counsel for the appellant contents that the blood-stained full pant was not identified by any of the prosecution witness as belonging to deceased Harvilas. No test identification was conducted in this regard. Further, Tomahawk (*farsa*) and piece of stone seized at the instance of accused Jaswant and Soneram respectively, were not sent to the Medical Officer for opinion. No concrete evidence is available to substantiate the place of incident. Therefore, the chain of circumstances was not fully established.

54. Dr. G.S. Verma (P.W.11) had found one incised wound on right parietal region of the scalp, one lacerated wound on right forehead and one lacerated wound on mandible of decomposed body of Harvilas. Although, the seized weapon tomahawk (*farsa*) and stone were not sent for further medical opinion, the incised wound and lacerated wound can be attributed to these weapons respectively.

55. The blood-stained earth found near the dry well where-from dead body of Harvilas was recovered, substantiates the place of incident. Therefore, the objection of appellants in this regard is merit-less.

56. It is trite law that mistake or gap in investigation is not always fatal for the prosecution. Investigation Officer should have forwarded the weapons for medical opinion and conducted test identification of the full pant recovered at the instance of accused Jaswant. But, in view of overwhelming evidence available against the appellants, such mistakes of Investigation Officer cannot be given much importance so as to discard the prosecution *in toto*. Perfect proof in this imperfect world would be seldom available. In case of *Veerendra v. State of M.P., (2022) 8 SCC 668*, it was held that-

“46. There can be no doubt with respect to the position that a fair investigation is necessary for a fair Trial. Hence, it is the duty of the investigating agency to protect the rights of both the accused and the victim by adhering to the prescribed procedures in the matter of investigation and thereby to ensure a fair, competent and effective investigation. Even while holding so, we cannot be oblivious of the well-nigh settled position that solely on account of defects or shortcomings in investigation an accused is not entitled to get acquitted. In other words, it also cannot be the sole reason for interference with a judgment of conviction if rest of the evidence is cogent enough to sustain the same.

47. In the decision in *Mir Mohammad Omar case [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516]* this Court held : (SCC p. 394, para 41)

“41. ... In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation.”

(emphasis supplied)

57. Thus, on critical evaluation of the evidence on record following circumstances stand proved beyond any doubt:-

1. Accused Soneram offered to secure job of Hostel Superintendent at Bhopal for Harvilas and fraudulently

induced Harvilas and his father Prabhu to deliver Rs.60,000/- for the same.

2. Prabhu falling prey to deception of accused Soneram delivered the sum of Rs.55,000/- to Soneram in three installments.

3. Soneram took Harvilas on the pretext of joining the job at Bhopal but fled away from Bhopal railway station. So, Harvilas returned to his village Salampur. A few days thereafter, Soneram and Jaswant again approached Prabhu and Harvilas and made a false promise that job has been arranged for Harvilas.

4. Harvilas left for village Salampur on bicycle with accused Soneram and Jaswant on 26/01/1999. Thereafter, Harvilas went missing and nobody has seen him alive. The probable time of death of Harvilas distinctly relates to time of his last seen in company of accused Jaswant and Soneram.

5. Two days thereafter, Jaswant visited residence of Prabhu and returned bicycle of Harvilas. He also delivered an inland letter (Ex.P-4A) to Urmila Bai, wife of Harvilas, stating that it is written by Harvilas. After comparison of natural handwriting of Harvilas, Jaswant and Soneram, the inland letter (Ex.P-4A) was found to be in the handwriting of accused Jaswant.

6. Thus, by delivering inland letter (EX.P-4A) Jaswant attempted to create false impression that Harvilas is happy with his new job at Bhopal and also tried to extract Rs.2,000/- from family of Harvilas.

7. Dead body of Harvilas was recovered from a dry well concealed beneath dried leaves of sugarcane at the

instance of accused Jaswant that too, on his pointing out.

8. The full pant was missing from dead body of Harvilas. A blood-stained full pant was recovered at the instance of Jaswant from nearby dry well shortly after recovery of dead body.

9. Accused Jaswant failed to give any plausible explanation regarding his knowledge of the dead body lying covered with dried sugarcane leaves in a well.

10. A blood-stained Tomhawk (*farsa*) was recovered at the instance of accused Jaswant and the blood-stained stone was recovered at the instance of accused Soneram. Both the accused have failed to offer any explanation with regard to their knowledge of these blood-stained weapons found concealed nearby the place where-from dead body of Harvilas was recovered.

11. Soneram and Jaswant had motive to murder Harvilas.

12. Soneram was found in possession of mark-sheet, domicile certificate and caste certificate of Harvilas for which no plausible explanation is offered by him.

58. Taking into consideration aforementioned circumstance in entirety and the events preceding and following the point of last seen of Harvilas with appellants, in our view, non-explanation on last seen together, is a strong incriminating circumstance in the chain of circumstances that unerringly points to the guilt of the appellants with certainty.

59. The aforementioned incriminating circumstances, taken cumulatively, establish the guilt of accused beyond all doubts. The circumstances rule out possibility of any other hypothesis except the guilt of the accused. Therefore, the learned trial Court committed no error in holding that Soneram deceived Prabhu and dishonestly induced him to

deliver Rs.55,000/- for securing the job for Harvilas. Learned trial Court further committed no mistake in holding that accused Soneram and Jaswant committed murder of Harvilas by intentionally causing his death and in order to screen themselves, concealed the dead body in a dry well.

60. Thus, the Trial Court has committed no error in convicting appellant Jaswant for offence punishable under Sections 302 of IPC and Section 201 of the Indian Penal Code and appellant Soneram for offence punishable under Sections 420, 302 and 201 of the Indian Penal Code. The sentences imposed are appropriate and proportionate. Hence, there is no ground for interfering with the impugned judgment.

61. Consequently, this criminal appeal against conviction fails. The Judgment of conviction and sentence imposed upon appellants by the Trial Court for aforesaid offences is affirmed.

(ROHIT ARYA)
JUDGE

(SANJEEV S KALGAONKAR)
JUDGE