**HIGH COURT OF MADHYA PRADESH**

**BENCH GWALIOR**

**DIVISION BENCH:**

**HON. SHRI JUSTICE VIVEK AGARWAL**

**&**

**HON. SHRI JUSTICE G.S. AHLUWALIA**

**Criminal Appeal No.770/2005**

.........Appellant: Munshilal

**Versus**

.........Respondent: State of M.P.

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Shri D.S. Kushwaha, Advocate for the appellant.

Shri Yogesh Chaturvedi, Public Prosecutor for the respondent/State.

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Date of hearing : 19/05/2018

Date of Judgment : .../05/2018

Whether approved for reporting : Yes

Law laid down:

Significant paragraphs:

**J U D G M E N T**
**(23/05/2018)**

**Per Justice G.S. Ahluwalia,**

This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment dated 22/9/2005 passed by Fifth Additional Sessions Judge (Fast Track Court), Morena in S.T. No.272/1998, by which the appellant has been convicted under Section 302 of IPC and has been sentenced to undergo life

imprisonment and a fine of Rs.500/-.

**2.** The necessary facts for disposal of the present appeal in short are that according to the prosecution case, on 23/5/1997 the complainant-Hargovind (PW-1) lodged a report that on 22/5/1997 he had gone to attend the marriage ceremony of daughter of son-in-law of his elder brother, where the appellant had caused nuisance after consuming liquor and had slapped Bhura; the son of his daughter, and, therefore, he had tried to pacify the appellant, but he was also pushed by the appellant and also extended the threat. On persuasion by other relatives, the appellant went back to his house at Jaderua. After the entire marriage ceremonies were over, the complainant came back to his house, then his neighbors inquired about their health. When the complainant informed that nothing has happened to him, then the neighbors informed the complainant that at about 3 in the night, the appellant alongwith one more boy had come on a motorcycle and took away the son of the complainant, namely Mahesh with them, on the pretext that the wife of the complainant is seriously ill and is not speaking. Thereafter, the complainant came to Ghosipura, Jaderua alongwith his wife and searched for his son and the appellant, but could not get any information. Accordingly, a report was lodged expressing suspicion that because of hot talk in the marriage ceremony, the appellant might have abducted his son with evil intention. The police registered the FIR (Ex.P/1) on

the basis of aforesaid complaint and recorded the statements of the witnesses. The appellant was searched and on 25/5/1997 he was arrested. The appellant made a confessional statement (Ex.P/11) and on the basis of disclosure statement made by the appellant, the dead body of the deceased-Mahesh was recovered and recovery Panchnama (Ex.P/7) was prepared. Dead body Panchnama (Ex.P/8) and spot map (Ex.P/9) were also prepared. The dead body of the deceased was sent for postmortem and after completing the investigation, the police filed the charge-sheet for offence under Sections 347, 364-A, 302, 34 of IPC against the appellant and one Gangaram and co-accused Pappu alias Laxminarayan was shown to be absconding.

**3.** The Trial Court by order dated 14/10/1999 framed charge under Section 302 of IPC against the appellant, whereas framed charge under Section 302 or in the alternative 302 read with Section 120-B of IPC against the co-accused Gangaram. The appellant as well as co-accused Gangaram abjured their guilt and pleaded not guilty.

**4.** The prosecution in support of its case examined Hargovind (PW-1), Rajo W/o Bhagri (PW-2), Rajo W/o Hargovind (PW-3), Usha (PW-4), Dataram (PW-5), Gangaram (PW-6), Nandram (PW-7), Mahendra Singh Tomar (PW-8), Mohankumar (PW-9), Nekram (PW-10), Mahesh (PW-11), A.V. Pathak (PW-12), Navab Singh (PW-13), R.K. Tripathi (PW-14), Siyaram (PW-15), Prakash

(PW-16), Bhagirath (PW-17), Dr. J.N. Soni (PW-18), R.K.S. Bhadoriya (PW-19) and S.S. Raghuvanshi (PW-20).

**5.** The appellant and the co-accused Gangaram did not examine any witness in their favor.

**6.** The Trial Court after recording the evidence and hearing both the parties, convicted the appellant for offence under Section 302 of IPC, whereas acquitted the co-accused Gangaram of all the charges.

**7.** The acquittal of the co-accused Gangaram has not been challenged, therefore, any reference to the co-accused Gangaram shall be in respect of the allegations against the present appellant.

**8.** Challenging the judgment and sentence dated 22/9/2005 it is submitted by the counsel for the appellant that the entire case is based on circumstantial evidence and the chain of circumstances is not complete and, therefore, the appellant is entitled to be acquitted. It is further submitted that the appellant is in jail from the date of his arrest, and at the most the offence committed by the appellant would be, an offence under Section 304 Part II of I.P.C.

**9.** Per contra, it is submitted by the counsel for the State that although the case is based on circumstantial evidence, but the prosecution has proved all the circumstances beyond reasonable doubt and the chain of circumstance is complete and it proves the guilt of the appellant without any reasonable doubt.

**10.** Heard learned counsel for the parties.

**11** The present case is based on following circumstances:-

(i) Motive;

(ii) last seen together;

(iii) recovery of dead body on the disclosure statement of appellant-Munshilal; and

(iv) the deceased had died homicidal death.

**11.1** Since the case is based on circumstantial evidence, therefore, first of all it would be necessary to find out whether the death of the deceased- Mahesh was homicidal in nature or not? Dr. J.N. Soni (PW-18), had conducted the postmortem of the dead body of the deceased Mahesh. Dr. J.N. Soni (PW-18) had found following ante-mortem injuries on the body of the deceased-Mahesh:-

> Ligature mark present around the neck above the level of thyroid cartilage 2 cm. below the angle of mandible and 3 cm. below the mastoid all around, 2 cm wide having marks of wearing pattern of cloths, 2.5 cm. wide, ligature mark is hard, parchment like, Neck circumference 28 cm.
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> Postmortem wound was found over right side of the abdomen 10 X 4 cm. vertical, loops of intestine & mesentery protruded out through the wound.

**11.2** The following opinion was given by Dr. J.N. Soni (PW-18):-

> Opinion:- Dead body of a young male is in early to moderate state of decomposition, Evidence of strangulation present. However viscera has been preserved for chemical analysis.
>
> Duration of death is within 03 days to 05 days since p.m. examination."
>
> Postmortem report is (Ex.P/17)

**11.3** This witness was cross-examined and he admitted that he had not mentioned in the postmortem report that death of the deceased-Mahesh was homicidal in nature, however, he has stated that he had mentioned that the cause of death was strangulation. He further stated that the marks of animal bites were postmortem in nature. Thus, it is clear that the deceased-Mahesh was killed by strangulating and some cloth was used for strangulating the deceased.

**11.4** Accordingly, it is held that the deceased died a homicidal death.

**12.** Before considering the circumstances, which have been alleged against the appellant, it would be in the interest of justice, to consider the law governing the cases based on circumstantial evidence.

**12.1** In **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116**, the Supreme Court has laid down

five golden principles which constitute the "panchsheel" in respect of a case based on circumstantial evidence. It has been held as under :

> **"153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra [(1973) 2 SCC 793]* where the observations were made:
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> "Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (*3*) the circumstances should be of a conclusive nature and tendency,
>
> (*4*) they should exclude every possible hypothesis except the one to be proved, and
>
> (*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

**12.2** The Supreme Court in the case of **Padala Veera Reddy Vs. State of A.P.** reported in 1989 Supp (2) SCC 706 has held as under :

> "*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."

**12.3** The Supreme Court in the case of **Ramreddy Rajesh Khanna Reddy v. State of A.P.** reported in (2006) 10 SCC 172 has held as under :

**"26.** It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See *Anil Kumar Singh* v. *State of Bihar* and *Reddy Sampath Kumar* v. *State of A.P.*)."

**12.4** The Supreme Court in the case of **Balwinder Singh v. State of Punjab** reported in **1995 Supp (4) SCC 259 has** held 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."

**12.5** The Supreme Court in the case of **Jagroop Singh v. State of Punjab,** reported in **(2012) 11 SCC 768** has held as under :

> **15.** 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 emphasised 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.
>
> **16.** In *State of U.P.* v. *Ashok Kumar Srivastava [(1992) 2 SCC 86]* emphasis has been laid that it is the duty of the court to take care while evaluating circumstantial evidence. If the evidence adduced by the prosecution is reasonably capable of two inferences, the one in favour of the accused must be accepted. That apart, the circumstances relied upon must be established and the cumulative effect of the established facts must lead to a singular hypothesis that the accused is guilty.
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> **17.** In *Ram Singh* v. *Sonia [(2007) 3 SCC 1]*, while referring to the settled proof pertaining to circumstantial evidence, this Court reiterated the principles about the caution to be kept in mind by court. It has been stated therein that:
>
> "*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."

**18.** 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 Supreme Court has held 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."

* * * * *

**27.** Quite apart from the above, what is argued is that there is a long gap between the last seen and recovery of the dead body of the deceased. As per the material on record, the informant searched for his son in the village in the late evening and next day in the morning he went to the fields and the dead body was found. The post-mortem report indicates that the death had occurred within 24 hours. Thus, the duration is not so long as to defeat or frustrate the version of the prosecution. Therefore, there can be no trace of doubt that the deceased was last seen in the company of the accused persons.

**12.6** The Supreme Court in the case of **Sunil Clifford Daniel Vs. State of Punjab** reported in **(2012) 11 SCC 205** has held as under :

**"29.** In *Sharad Birdhichand Sarda* v. *State of Maharashtra [(1984) 4 SCC 116]* it was held by this Court that the onus is on the prosecution to prove that the chain is complete and that falsity or untenability of the defence set up by the accused cannot be made the basis for ignoring any serious infirmity or lacuna in the case of the prosecution. The Court then proceeded to indicate the conditions which must be fully established before a conviction can be made on the basis of circumstantial evidence. These are: (SCC p. 185, para 153)

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

… the circumstances concerned 'must' or 'should' and not 'may be' established. …

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

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

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

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

Thus, in a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance, by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take utmost precaution whilst finding an accused guilty, solely on the basis of the circumstances proved before it."

**12.7** The Supreme Court in the case of **Pudhu Raju Vs. State** reported in **(2012) 11 SCC 196** has held as under :

"**15.** In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved, must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take utmost precaution whilst finding an accused

guilty solely on the basis of the circumstances proved before it.”

**12.8** The Supreme Court in the case of **Satish Nirankari Vs. State of Rajasthan** reported in **(2017) 8 SCC 497** has held as under :

> **“29.** It is now well established, by a catena of judgments of this Court, that circumstantial evidence of the following character needs to be fully established:
>
> (*i*) Circumstances should be fully proved.
>
> (*ii*) Circumstances should be conclusive in nature.
>
> (*iii*) All the facts established should be consistent only with the hypothesis of guilt.
>
> (*iv*) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused (see *State of U.P.* v. *Ravindra Prakash Mittal*; *Chandrakant Chimanlal Desai* v. *State of Gujarat*). It also needs to be emphasised that what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence, the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person.
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> .**30.** The following tests laid down in *Padala Veera Reddy* v. *State of A.P.* also need to be kept in mind: (SCC pp. 710-11, para 10)
>
> “*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."
>
> **31.** Sir Alfred Wills in his book *Wills' Circumstantial Evidence* (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:
>
> "(*1*) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;
>
> (*2*) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;
>
> (*3*) in all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits;
>
> (*4*) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and
>
> (*5*) if there by any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

**13.** Now, we shall consider the circumstances which have been alleged by the prosecution, against the appellant.

**13.1 Motive**

According to the prosecution case, on 22/5/1997 complainant-Hargovind (PW-1) and Rajo W/o Hargovind (PW-3) had gone to attend the marriage ceremony of daughter of son-in-law of his elder brother, where the appellant was creating nuisance after consuming liquor. When the father of the deceased-Mahesh, namely Hargovind (P.W.1) objected to it, then the appellant had extended a threat for dire consequences. When the parents of the deceased came back to their house on the next morning, their neighbors inquired about the health of the parents of the deceased and when they told their neighbors that nothing

has happened to them, then the neighbors informed the parents of the deceased that at about 3 in the night, the appellant alongwith one more person, had come on a scooter and had taken away the deceased with them on the ground that his mother is seriously ill and is not speaking. Thereafter, the parents of the deceased tried to search for the deceased as well as the appellant, but as they could not locate them, therefore, the FIR (Ex.P/1) was lodged on 23/5/1997 at 18:10 hours.

Hargovind (PW-1) and Rajo W/o Hargovind (PW-3) are the father and mother of the deceased. Both these witnesses have specifically stated about the nuisance which was being created by the appellant in the marriage ceremony of the daughter of the son-in-law of the elder brother of Hargovind (PW-1), and when it was objected by Hargovind (PW-1), then not only there was a scuffle between the appellant and Hargovind (PW-1), but while leaving the marriage ceremony, the appellant had also extended the threat to Hargovind (PW-1). Complainant-Hargovind (PW-1) has further stated that when they came back to their house, in the morning of 23/5/1997, then their neighbors inquired about their health and when he told them that nothing has happened to them, then they were informed by the neighbors that the appellant had come in the night and has taken away the deceased-Mahesh with him on the ground that the mother of the deceased, namely, Rajo w/o Hargovind (PW-3) is seriously ill and is not talking and,

therefore, these witnesses went to the village of the appellant in order to find out the deceased as well as the appellant, but they could not locate them. Accordingly, the FIR (Ex.P/1) was lodged by Hargovind (PW-1) on 23/5/1997 at 18:10 hours. In the FIR the incident which had taken place in the marriage ceremony of the relative of Hargovind (PW-1) on 22/5/1997, as well as the nuisance created by the appellant in the said marriage, and threat extended by the appellant to Hargovind (PW-1) is also specifically mentioned. It is also specifically mentioned in the FIR, that on the next day, when Hargovind (PW-1) and his wife (PW-3) came back to their house, then their neighbors inquired about their health condition and when they informed that they are alright and nothing has happened to them, then their neighbors told Hargovind that at about 3 in the night the appellant alongwith one boy had come on a scooter and has taken away the son of Hargovind with them on the ground that the mother of the deceased, namely, Rajo W/o Hargovind (PW-3) is seriously ill and is not talking, and accordingly, the deceased went alongwith the appellant and another boy. It is also mentioned in the FIR that thereafter Hargovind (PW-1) went to village Ghosipura, Jaderua in order to find out the appellant and the deceased, but could not locate them. It is also mentioned in the FIR that the appellant is already known to Hargovind (PW-1) and a suspicion was also expressed that as some hot talk had taken place between the appellant and

Hargovind, therefore, it appears that the appellant has abducted his son with an evil intention. The promptness with which the FIR (Ex.P/1) was lodged clearly indicates that the appellant had some hot talk and scuffle with Hargovind, as the appellant was creating nuisance after consuming liquor and, therefore, the appellant had extended a threat for dire consequences to Hargovind (PW-1). Hargovind (PW-1) and Rajo W/o Hargovind (PW-3) have been cross-examined in detail, but the counsel for the appellant could not point out anything in the cross-examination which may make their evidence unreliable.

Nandram (PW-7) is the brother of Hargovind (PW-1) and this witness had also gone to attend the marriage ceremony of the daughter of the son-in-law of his elder brother. He has also stated that as the appellant was creating nuisance after consuming liquor, therefore, Hargovind (PW-1) had intervened in the matter and the appellant had extended threat of facing dire consequences. Mohankumar (PW-9) is also one of the witnesses, who was present in the marriage ceremony and he has also stated about the threat extended by the appellant to Hargovind (PW-1). Mahesh (PW-11) is also a witness, who was present in the marriage ceremony and he has also supported the prosecution case about the threat extended by the appellant to Hargovind (PW-1). Whereas, Dataram (PW-5) and Siyaram (PW-15) have turned hostile and they have not supported the

prosecution case.

From the evidence of these witnesses, it is clear that there is nothing to disbelieve the evidence of these witnesses specifically when a detailed FIR was already lodged by Hargovind (PW-1) on the next date of incident, i.e. 23/5/1997, and by that time the whereabouts of the appellant and the deceased were not known. Thus, in the light of the FIR (Ex.P/1), which was lodged by Hargovind (PW-1) as well as the evidence of Hargovind (PW-1) and Rajo W/o Hargovind (PW-3), Nandram (PW-7), Mohan Kumar (PW-9) and Mahesh (PW-11), this Court is of the considered opinion that on 22/5/1997, during the marriage ceremony of the daughter of the son-in-law of the elder brother of Hargovind (PW-1), the appellant-Munshilal was creating nuisance after consuming liquor and when it was objected by Hargovind (PW-1), then he had a scuffle with him and while leaving the place, he had also extended a threat to Hargovind (PW-1). It is submitted by the Counsel for the appellant, that in a case, which is based on circumstantial evidence, the prosecution must prove the motive, beyond reasonable doubt, as motive is an important circumstance and in the present case, the prosecution has not proved the motive, beyond reasonable doubt.

The submission made by the Counsel for the appellant is misconceived and is hereby rejected. It is incorrect to say that in all the cases, which are based on circumstantial evidence, the

prosecution must prove the motive, otherwise, the chain of circumstance would not be complete.

The Supreme Court in the case of **Vivek Kara Vs. State of Rajasthan** reported in **(2014) 12 SCC 439** has held as under :

> **6.** We have considered the submissions of the learned counsel for the parties and we agree with the learned counsel for the appellant that from the evidence of PW 11 one could not hold that the appellant had committed the murder of the deceased to take revenge on his uncle (PW 11), who had not given him Rs 80,000 kept in the fixed deposit. We are, however, of the opinion that where prosecution relies on circumstantial evidence only, motive is a relevant fact and can be taken into consideration under Section 8 of the Evidence Act, 1872 but where the chain of other circumstances establishes beyond reasonable doubt that it is the accused and the accused alone who has committed the offence, and this is one such case, the Court cannot hold that in the absence of motive of the accused being established by the prosecution, the accused cannot be held guilty of the offence. In *Ujjagar Singh* v. *State of Punjab* this Court observed: (SCC p. 99, para 17)
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> > "*17*. … It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy."

The Supreme Court in the case of **Sanaullah Khan Vs. State of Bihar**, reported in **(2013) 3 SCC 52** has held as under :

> 18................Where other circumstances lead to the only hypothesis that the accused has committed the offence, the Court cannot acquit

> the accused of the offence merely because the motive for committing the offence has not been established in the case...

Thus, it is clear that, in a case based on circumstantial evidence, where the other circumstances are strong and clinching, then the guilt of an accused can be established even in absence of proof of the motive. But in the present case, the motive has been proved beyond reasonable doubt specifically when the F.I.R., Ex. P.1 which was lodged with promptness, clearly discloses the motive on the part of the appellant.

The Supreme Court in the case of **Praful Sudhakar Parab Vs. State of Maharashtra** reported in **(2016) 12 SCC 783** has held as under:-

> **"25.** One of the submissions which has been raised by the learned Amicus Curiae is that the prosecution failed to prove any motive. It is contended that the evidence which was led including the recovery of bunch of keys from guardroom was with a view to point out that he wanted to commit theft of the cash lying in the office but no evidence was led by the prosecution to prove that how much cash was there in the pay office.
>
> **26.** Motive for committing a crime is something which is hidden in the mind of the accused and it has been held by this Court that it is an impossible task for the prosecution to prove what precisely have impelled the murderer to kill a particular person. This Court in *Ravinder Kumar* v. *State of Punjab*, has laid down following in para 18: (SCC pp. 697-98)
>
> "*18.* … It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it useful to refer to the observations of this Court in *State of H.P.* v. *Jeet Singh*: (SCC p. 380, para 33)
>
> '*33.* No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. 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 the offender to such a degree as to impel him to commit the offence cannot 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.'"

**27.** Further in *Paramjeet Singh* v. *State of Uttarakhand*, this Court held that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. Following was stated in para 54: (SCC p. 457)

"*54.* So far as the issue of *motive* is concerned, the case is squarely covered by the judgment of this Court in *Suresh Chandra Bahri*. Therefore, it does not require any further elaborate discussion. More so, if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. (Vide: *State of Gujarat* v. *Anirudhsing*)"

(emphasis in original)

**28.** The High Court while considering the motive has made following observations at p. 46: (*Praful Sudhakar case*, SCC OnLine Bom para 70)

"*70.* Although prosecution is not very certain about the motive, upon taking into consideration the evidence of PW 4 and PW 6, a faint probability is created, regarding intentions of the accused to lay hands on the cash which could have been in possession of the victim, as against the initial story that the accused was enraged against the victim, because the victim used to tease him on the point of his marriage with a bar girl Helen Fernandes. Motive is a mental state, which is always locked in the inner compartment of the brain of the accused and inability of the prosecution to establish the motive need not necessarily cause entire failure of prosecution."

We fully endorse the above view taken by the High Court and do not find any substance in the above ground."

The Supreme Court in the case of **Sunil Clifford Daniel Vs. State of Punjab** reported in **(2012) 11 SCC 205** as held as

under:-

> "**33.** In a case of circumstantial evidence, motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinise each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof.
>
> **34.** In *Subedar Tewari* v. *State of U.P.* this Court observed as under: (SCC p. 115, para 20)
>
> > "*20*. … The evidence regarding existence of motive which operates in the mind of an assassin is very often than (sic) not within the reach of others. The motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to the evil thought in the mind of the assassin."
>
> **35.** Similarly, in *Suresh Chandra Bahri* v. *State of Bihar*, this Court held as under:
>
> "In a case of circumstantial evidence, the evidence bearing on the guilt of the accused nevertheless becomes untrustworthy and unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime. Therefore, if the evidence on record suggest sufficient/necessary motive to commit a crime it may be conceived that the accused had committed it."
>
> **36.** Thus, if the issue is examined in the light of the aforesaid settled legal proposition, we may concur with the courts below on the said aspect."

Thus, it is clear that the appellant had not only extended the threat and in order to execute the same, he acted promptly, so that he can take away the son of Hargovind (PW-1) prior to their return to their house. Thus, it is held that the prosecution has proved the motive, beyond reasonable doubt.

**13.2 <u>Last Seen Together</u>**

Before considering the circumstance of "Last Seen Together", it would be appropriate to consider the law, governing the principle of "Last Seen Together".

The Supreme Court in the case of **Dharam Deo Yadav v.**

**State of U.P.**, reported in **(2014) 5 SCC 509** has held as under :

> **19.** It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. The conduct of the accused and the fact of last seen together plus other circumstances have to be looked into. Normally, last seen theory comes into play when the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that the possibility of any person other than the accused being the perpetrator of the crime becomes impossible. It will be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. However, if the prosecution, on the basis of reliable evidence, establishes that the missing person was seen in the company of the accused and was never seen thereafter, it is obligatory on the part of the accused to explain the circumstances in which the missing person and the accused parted company. Reference may be made to the judgment of this Court in *Sahadevan* v. *State [*(2003) 1 SCC 534*]*. In such a situation, the proximity of time between the event of last seen together and the recovery of the dead body or the skeleton, as the case may be, may not be of much consequence. PWs 1, 2, 3, 5, 9 and 10 have all deposed that the accused was last seen with Diana. But, as already indicated, to record a conviction, that itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

The Supreme Court in the case of **Ajit Singh Harnam singh Gujral Vs. State of Maharashtra**, reported in **(2011) 14 SCC 401** has held as under :

> **27.** The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible, vide *Mohd. Azad* v. *State of W.B. [(2008) 15 SCC 449]*, *State* v. *Mahender Singh Dahiya [(2011) 3 SCC 109]* and *Sk. Yusuf* v. *State of W.B. [(2011) 11 SCC 754]*

Thus, it is clear that the sole circumstance of last seen together would not be sufficient to hold that the accused is guilty of committing the offence, provided there should be close proximity between the last seen together and the time of death. Further, there should be some more circumstance to indicate towards the guilt of the accused.

Rajo W/o Bhagri (PW-2) and Usha (PW-4) are the witnesses of last seen together. They have stated that at about 3 AM in the night, they were sleeping outside their house and at that time the appellant came there on a scooter and started knocking at the door of the house of Mahesh. When this witness inquired as to why he is trying to awake deceased-Mahesh, then he disclosed his identity as appellant-Munshilal; brother-in-law of deceased-Mahesh. When this witness inquired that as to why the appellant has come, then he informed that Rajo W/o Hargovind (PW-3) is seriously ill. When Rajo W/o Bhagri (PW-2) told that Rajo W/o Hargovind (PW-3) had gone in the evening only, then the appellant informed that Rajo W/o Hargovind (PW-3) has fallen sick at about 12 in the night and at about 1 AM Hargovind (PW-1) has instructed the appellant to bring the deceased-Mahesh. It is

also submitted that one more boy was standing alongwith the appellant who was introduced as the brother of the appellant. Thereafter, the appellant and the another boy took away the deceased-Mahesh with them on scooter. On the next day at about 10 AM, when the parents of the deceased-Mahesh came back, then she inquired about their health condition. They informed that nothing has happened to them. Thereafter, Rajo W/o Bhagri (PW-2) also inquired as to when Mahesh met with them, then Hargovind (PW-1) and Rajo W/o Hargovind (PW-3) informed that Mahesh had not reached there. Thereafter, Hargovind (PW-1) and his wife (PW-3) went to Gwalior and came back in the evening of the same day and informed that they could not trace out the whereabouts of Mahesh. It was further stated that the dead body of Mahesh was recovered on the third day.

Gangaram (PW-6) has stated that he was informed by two ladies, namely Rajjobai and Ramdei that the appellant had taken away Mahesh with them and had informed that the mother of Mahesh is seriously ill. On 23/5/1997 at about 10 AM when Hargovind (PW-1) and his wife Rajo (PW-3) came back to their house, they inquired about their health condition, then Hargovind (PW-1) and his wife Rajo (PW-3) informed that they are perfectly alright. Hargovind (PW-1) also informed that he had some hot talk with the appellant in the marriage ceremony of the daughter of Dataram and at that time the appellant had extended a threat.

Thereafter, Hargovind (PW-1) and his wife Rajo (PW-3) went to Gwalior in search of their son and on the same day Hargovind (PW-1) and his wife Rajo (PW-3) came back and informed that neither they could found the appellant nor could know about the whereabouts of their son. Thereafter, this witness alongwith Hargovind (PW-1) went to Police Station Kotwali Morena and lodged a report. This witness denied the arrest of the co-accused in his presence although he admitted his signatures on the arrest memo of the appellant Ex.P/4. This witness further denied the recording of any confessional statement made, by the appellant, but he admitted his signatures on the memo of the appellant Ex.P/2. This witness was declared hostile for the limited purpose and was cross-examined. In cross-examination this witness has admitted that the appellant had made a disclosure statement that he has hidden his scooter in the house of Prakash S/o Bhagirath Jatav and thus, memo Ex.P/2 was prepared. He also admitted about the arrest of the co-accused Pappu Jatav and also admitted his signatures on the arrest memo Ex.P/4. Thus, from the evidence of Rajo W/o Bhagri (PW-2), Usha (PW-4) and Gangaram (PW-6), it is clear that in the intervening night of 22-23/5/1997 at about 3 AM, appellant went to the house of the deceased-Mahesh and on the false pretext that the mother of the deceased is seriously ill and is not talking and, accordingly, took away deceased-Mahesh with him. The evidence of Rajo W/o Bhagri

(PW-2) and Usha (PW-4) is corroborated by the evidence of Gangaram (PW-6), who has specifically stated that he was informed by Rajo W/o Bhagri (PW-2) and Usha (PW-4) that appellant has taken away deceased-Mahesh with him at about 3 in the morning on the pretext that the mother of the deceased was seriously ill. The conduct of these witnesses in enquiring about the health condition of Hargovind (PW-1) and Rajo W/o Hargovind (PW-3) on their return from the marriage ceremony also clearly shows that these witnesses are truthful witnesses. As already pointed out, a detailed FIR was lodged on 23/5/1997 at about 18:10 hours in which each and every aspect of the matter has been specifically mentioned, thus, it is clear that the appellant in the intervening night of 22-23/5/1997 had come to the house of the deceased at about 3 in the morning and on the false pretext that the mother of the deceased is seriously ill took away the deceased-Mahesh with him on a scooter.

**13.3 <u>Recovery of Dead body of Mahesh, on the disclosure Statement of the appellant</u>**

Mahesh (PW-11) has stated about the nuisance which was being created by the appellant at the time of marriage ceremony. He has further stated that after two days of the incident the appellant was arrested by the police and arrest memo Ex.P/10 was prepared, which bears his signatures. The appellant had given a confessional statement and had informed that the dead

body of Mahesh is lying near a Nala. Thereafter, they went to village Jarah alongwith the police as well as the appellant. The dead body of the deceased was pointed out by the appellant and at that time one Gamchha was wrapped around the neck of the deceased. The memo of recovery of dead body is Ex.P/7, Safina Form is Ex.P/9 and Dead body Panchayatnama is Ex.P/10. Thus, Mahesh (PW-11) has proved making of confessional statement by the appellant to the police in which he has disclosed the information about the place, where the dead body of the deceased, was lying.

Nekram (PW-10) has also stated that on 25/5/1997, on the disclosure made by the appellant, the dead body of the deceased was recovered and the dead body recovery memo (Ex.P/7) was prepared, which bears his signatures, Safina Form (Ex.P/8) was prepared which bears his signatures and dead body Panchnama (Ex.P/9) was also prepared, which bears his signatures.

S.S. Raghuvanshi (PW-20) is the Investigating Officer and this witness has also proved the recovery of dead body at the instance of the appellant. Thus, it is clear that on the disclosure statement made by the appellant, the dead body of the deceased was recovered from a Nala in the presence of Nekram (PW-10), Mahesh (PW-11) as well as S.S. Raghuvanshi (PW-20). Thus, it is clear that the prosecution has proved the recovery of dead body at the instance of the appellant.

It is submitted by the Counsel for the appellant, that since the dead body of the deceased was recovered from an open place, therefore, it cannot be said that the dead body of the deceased was recovered at the instance of the appellant. The submission made by the Counsel for the appellant is misconceived and is hereby rejected. It is the prosecution case, that the place from where the dead body was recovered was an isolated place. Although the dead body was not hidden, but it was the appellant, who was aware of the fact, about the location of the dead body. It is not the case of the defence, that the dead body of the deceased Mahesh was already recovered, prior to making of disclosure statement, made by the appellant. Thus, it is clear that the dead body of the deceased Mahesh was recovered, only after the disclosure statement was made by the appellant.

The Supreme Court in the case of **Charandas Swami v. State of Gujarat,** reported in **(2017) 7 SCC 177**, has held as under :

> **"57.** The dead body of deceased Gadadharanandji was found on 4-5-1998 in a burnt condition in a ditch behind the house of PW 50 in Barothi Village in Rajasthan. How the dead body of Gadadharanandji reached that spot was revealed by none other than Accused 3. In what circumstances burnt injuries were caused on the dead body of Gadadharanandji, no prosecution witness has spoken about that. Be that as it may, the fact that the dead body recovered from Barothi Village on 4-5-1998 was that of Gadadharanandji could be known only after Accused 3, during the course of investigation, made a disclosure about the location where he had disposed off the dead body of Gadadharanandji. Till the aforesaid disclosure was made, in the records of Rajasthan Police, the dead body was noted as that of an unknown person. If, Accused 3 had not disclosed to the

investigating officer about the location where the dead body was dumped by him — which information was personally known to him and at best Accused 5 and none else, then the investigation would not have made any headway.

**58.** The disclosure made by Accused 3 to the investigating officer was recorded in the panchnama, Ext. 188, when he had led the police party to the spot where the dead body was dumped by him. That location matched with the location from where the dead body of an unknown person was recovered on 4-5-1998 on the information given by PW 50 to the local police at Barothi. The fact that the dead body was already recovered from the same place on 4-5-1998 and so noted in the public records in the State of Rajasthan does not undermine the admissibility of the disclosure made by Accused 3 to the investigating officer about the location where the dead body of Gadadharanandji was dumped by him, which information was exclusively within the personal knowledge of Accused 3. The fact that the dead body recovered on 4-5-1998 was of Gadadharanandji, was unravelled and discovered only after the results of its medical examination became available to the investigating agency. Till then, it was considered to be of an unknown person. The courts below have accepted the case of the prosecution that the disclosure made by Accused 3 about the location where the dead body of Gadadharanandji was dumped by him, was admissible under Section 27 of the Evidence Act. The appellants, however, take exception to that by relying on the reported decisions.

**59.** In our view, the decision in *Navjot Sandhu* has adverted to all the previous decisions and restated the legal position. In para 114, while considering the arguments advanced by the parties regarding the sweep of Section 27 of the Evidence Act, the Court formulated two questions which read thus: (SCC p. 696)

"(*i*) Whether the discovery of fact referred to in Section 27 should be confined only to the discovery of a material object and the knowledge of the accused in relation thereto or the discovery could be in respect of his mental state or knowledge in relation to certain things — concrete or non-concrete.

(*ii*) Whether it is necessary that the discovery of fact should be by the person making the disclosure or directly at his instance. The subsequent event of discovery by the police with the aid of information furnished by the accused — whether can be put against him under Section 27."

In the context of these questions, the argument of the counsel for the State in that case has been adverted to in paras 115 to 118. The Court then after analysing Section 27 of the Evidence Act, in paras 120 to 144 adverted to the relevant decisions on the point. In paras 120 and 121, the Court noted thus: (_Navjot Sandhu case_, SCC pp. 700-02)

"_120._ The history of case-law on the subject of confessions under Section 27 unfolds divergent views and approaches. The divergence was mainly on twin aspects: (_i_) Whether the facts contemplated by Section 27 are physical, material objects or the mental facts of which the accused giving the information could be said to be aware of. Some Judges have gone to the extent of holding that the discovery of concrete facts, that is to say material objects, which can be exhibited in the Court are alone covered by Section 27. (_ii_) The other controversy was on the point regarding the extent of admissibility of a disclosure statement. In some cases, a view was taken that any information, which served to connect the object with the offence charged, was admissible under Section 27. The decision of the Privy Council in _Kotayya case_ which has been described as a locus classicus, had set at rest much of the controversy that centred round the interpretation of Section 27. To a great extent the legal position has got crystallised with the rendering of this decision. The authority of the Privy Council's decision has not been questioned in any of the decisions of the highest court either in the pre-or post-independence era. Right from the 1950s, till the advent of the new century and till date, the passages in this famous decision are being approvingly quoted and reiterated by the Judges of this Apex Court. Yet, there remain certain grey areas as demonstrated by the arguments advanced on behalf of the State.

_121._ The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. _It is only so much of the information as relates *–distinctly to the fact thereby_

*discovered* that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished*. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. *The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused*. As pointed out by the Privy Council in *Kotayya case*: (SCC OnLine PC : AIR p. 70, para 10)

'… clearly the extent of the information admissible must depend on the exact nature of the fact discovered'

and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said: (SCC OnLine PC : AIR p. 70, para 10)

'… *Normally* the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.'

(emphasis supplied)

*We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive*. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words: (SCC OnLine PC: AIR p. 70, para 10)

'… If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably

inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect.'

Then, their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court: (SCC OnLine PC : AIR p. 70, para 10)

'*… In their Lordships' view, it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact*. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. *–It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge–*, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which *I* stabbed *A*", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.'"

(emphasis supplied)

**60.** This Court has restated the legal position that the facts need not be self-probatory and the word "fact" as contemplated by Section 27 is not limited to "actual physical material object". It further noted that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. In para 128, the Court noted the statement of law in *Udai Bhan* that: (*Navjot Sandhu case*, SCC p. 705)

"*128. … '11. … A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence*.' (*Udai Bhan case*, AIR p. 1118, para 11)"

The Court then posed a question as to what would be

the position if the physical object was not recovered at the instance of the accused. That issue has been answered on the basis of precedents, as can be discerned from paras 129 to 132 of the reported judgment.

**61.** In para 139, the Court noticed the decision in *Damu* which had dealt with the case where broken glass piece was recovered from the spot matched with broken tail lamp and in para 37 of that decision, the Court observed thus: (*Navjot Sandhu case*, SCC p. 709)

"*139.* … '*37.* How did the particular information lead to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 *obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the investigating officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot*.' (*Damu case*, SCC p. 283)"

**62.** The Court then noted that the above view taken in *Damu case* does not make it a dent on the observations made and the legal position spelt out in *Om Prakash* which distinguishes *Damu case* because there was discovery of a related physical object at least in part. We may usefully reproduce paras 142 to 144 of the same reported decision, wherein the Court observed thus: (*Navjot Sandhu case*, SCC pp. 710-11)

"*142. There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative*. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the investigating officer may go to the spot in the company of other witnesses and recover the material object. *By doing so, the investigating officer will be discovering a fact viz. the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where*

*the information furnished by the person in custody is verified by the police officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery*. If the police officer chooses not to take the informant accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence.

*143*. How the clause “as relates distinctly to the fact thereby discovered” has to be understood is the next point that deserves consideration. The interpretation of this clause is not in doubt. Apart from *Kotayya case* various decisions of this Court have elucidated and clarified the scope and meaning of the said portion of Section 27. The law has been succinctly stated in *Inayatullah case*. Sarkaria, J. analysed the ingredients of the section and explained the ambit and nuances of this particular clause in the following words: (*Inayatullah case*, SCC p. 832, para 12)

> ‘*12. … The last but the most important condition is that only “so much of the information” as relates distinctly to the fact thereby discovered is admissible*. The rest of the information has to be excluded. The word “distinctly” means “directly”, “indubitably”, “strictly”, “unmistakably”. The word has been advisedly used to limit and define the scope of the provable information. *The phrase “distinctly relates to the fact thereby discovered” is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery*. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.’

In the light of the legal position thus clarified, this Court excluded a part of the disclosure statement to which we have already adverted.

*144*. In *Bodhraj* v. *State of J&K* this Court after referring to the decisions on the subject observed thus: (SCC p. 58, para 18)

'*18*. … The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.'"

(emphasis supplied)

**63.** Reliance was also placed on the recent decision of this Court in *Dupare*. The Court adverted to the relevant precedents and observed thus, in paras 23 to 29: (SCC pp. 267-70)

"*23*. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in *Pulukuri Kotayya* v. *King Emperor* has held thus: (SCC OnLine PC : IA p. 77)

'… it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which *I* stabbed *A*", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.'

*24*. In *Mohd. Inayatullah* v. *State of Maharashtra*, while dealing with the ambit and scope of Section 27 of the Evidence Act, the Court held that: (SCC pp. 831-32, paras 11-13)

'*11*. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The section says:

"**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."

*12*. The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the *first* condition necessary for bringing this section into operation is the *discovery of a fact*, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The *second* is that the discovery of such fact must be deposed to. The *third* is that at the time of the receipt of the information the accused must be in police custody. The *last* but the most important condition is that only "so much of the information" as relates *distinctly* to the fact *thereby* discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the *direct* and *immediate* cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. *-*At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact* (*see Sukhan* v. *Emperor* and *Ganu Chandra Kashid* v. *Emperor). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also*

*the place from which it is produced and the knowledge of the accused as to this*[*] *(see Pulukuri Kotayya* v. *King Emperor* and *Udai Bhan* v. *State of U.P.*).'
(emphasis in original)

*25*. In *Aftab Ahmad Anasari* v. *State of Uttaranchal* after referring to the decision in *Pulukuri Kotayya*, the Court adverted to seizure of clothes of the deceased which were concealed by the accused. In that context, the Court opined that: (*Aftab Ahmad Anasari case*, SCC p. 596, para 40)

'*40*. … 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.'

*26*. In *State of Maharashtra* v. *Damu* it has been held as follows: (SCC p. 283, para 35)

'*35*. … It is now well settled that recovery of an object is not discovery of a fact as envisaged in [Section 27 of the Evidence Act, 1872]. The decision of the Privy Council in *Pulukuri Kotayya* v. *King Emperor* is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.'

The similar principle has been laid down in *State of Maharashtra* v. *Suresh*, *State of Punjab* v. *Gurnam Kaur*, *Aftab Ahmad Anasari* v. *State of Uttaranchal*, *Bhagwan Dass* v. *State (NCT of Delhi)*, *Manu Sharma* v. *State (NCT of Delhi)* and *Rumi Bora Dutta* v. *State of Assam*.

*27*. In the case at hand, as is perceptible, the recovery had taken place when the appellant was accused of an offence, he was in custody of a police officer, the recovery had taken place in consequence of information furnished by him and the panch witnesses have supported the seizure and nothing has been brought on record to discredit their testimony.

*28*. Additionally, another aspect can also be taken note of. *The fact that the appellant had led the police officer to find out the spot where the crime was committed, and the tap where he washed the clothes eloquently speak of his conduct as the same is admissible in evidence to establish his conduct*. In this context we may refer with profit to the authority in *Prakash Chand* v. *State (Delhi Admn.)* wherein the Court after referring to the decision in *H.P. Admn.* v. *Om Prakash* held thus: (*Prakash Chand case*, SCC p. 95, para 8)

'*8*. … There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a police officer in the course of an investigation which is hit by Section 162 of the Code of Criminal Procedure. What is excluded by Section 162 of the Code of Criminal Procedure is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a police officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act.'

*29*. In *A.N. Venkatesh* v. *State of Karnataka* it has been ruled that: (SCC p. 721, para 9)

'*9*. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. *The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand* v. *State (Delhi Admn.)*. Even if we hold that the disclosure statement made by the appellants-accused (Exts. P-15 and P-16) is

not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. *The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused*. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.'"

(emphasis supplied)

**64.** The other decision relied upon is *Pandurang Kalu Patil*.

The Supreme Court in the case of **Shanti Devi Vs. State of Rajasthan** reported in **(2012) 12 SCC 158** has held as under :

> **17.** The subsequent factum of recovery of the body of the deceased at the instance of the appellant was one other strong circumstance against the appellant in roping her involvement in the elimination of the deceased and thereby providing no scope for any other hypothesis other than her guilt in the killing of the deceased.
>
> * * *
>
> **28.** The last submission made was that the body of the deceased was only recovered from an adjacent place not from the house of the appellant herself, we do not find any substance in the said submission in order to interfere with the impugned judgment. The very fact that the recovery of the dead body came to be made at the instance of the appellant and that too from a place adjacent to the residence of the appellant was sufficient enough to rope in the appellant in the murder of the deceased

The Supreme Court in the case of **State of U.P. Vs. Babu Ram** reported in **(2000) 4 SCC 515** has held as under :

> **14.** The Division Bench of the High Court hesitated to place reliance on the circumstance relating to the disinterment of three dead bodies from the verandah for which learned Judges

> advanced the following reasons: first is that in the site plan prepared by the investigating officer he did not give particulars or details of that place. Second is that the investigating officer did not mention about the amount of "mud and *morang*" noticed near the pit. The third is that he did not take into custody the wooden planks or the mud from the said place. The last is he did not indicate in the site plan that blood was found at that place nor did he take the bloodstained earth therefrom. After highlighting the above lapses of the investigating officer the Division Bench concluded thus:
>
> > "These omissions would, therefore, in our opinion clearly negative the theory set up by the prosecution that three dead bodies were buried in the verandah of the house of the accused. By examining the statements of these two witnesses, namely, Tarawati and Shital Prasad, in the light of these circumstances, we would not be able to persuade ourselves to accept the statements of these two witnesses though they are the sister and brother-in-law of the accused."
>
> The above reasons of the Division Bench for dropping down such a sturdy circumstance (disinterment of the three dead bodies at the instance of the respondent) are flimsy and tenuous. It is apparent that the Division Bench had strained to ferret out some fragile grounds for sidelining such a highly incriminating circumstance. The very approach of the High Court in this regard does not merit approval. It is not possible to understand the rationale of the reasoning that if an investigating officer did not instruct the person who drew up the site plan to note down certain details that would render the testimony of material witnesses unreliable.

Thus, it is clear that the dead body of the deceased Mahesh was recovered at the instance of the appellant, and it was the appellant only, who knew the place, where the dead body was lying. Thus, this is one of the strong circumstance against the appellant, which has been proved beyond reasonable doubt.

**13.4 <u>Recovery of scooter</u>**:

Prakash (PW-16) has specifically stated that the appellant Mahesh has parked his scooter in his house on the pretext that it has run out of fuel and, therefore, he may be permitted to park his scooter, but the appellant never came back to take back his scooter and the seizure memo of the scooter is Ex.P/14. Thus, it is clear that Prakash (PW-16) has specifically proved that the appellant-Munshilal had parked his scooter in his house on the pretext that there is no fuel in the scooter and thereafter he never came back to take away his scooter.

**14.** Thus, in the considered opinion of this Court, the prosecution has succeeded in proving the following circumstances against the appellant :

(i) Motive.
(ii) Last Seen Together.
(iii) Recovery of Dead body at the instance of the appellant.
(iv) Recovery of Scooter, which was used for abducting the deceased Mahesh.
(v) The deceased Mahesh had died homicidal death.

**14.1** Thus, it is clear that the prosecution has established all the circumstances beyond reasonable doubt. It is well established principle of law that where a case is based on circumstantial evidence, then the prosecution must prove each and every chain of said circumstance and must prove that the complete chain of

circumstance points towards the guilt of the accused. If all the circumstances, which have been proved by the prosecution are considered, then it is clear that the chain of circumstance is complete. The appellant had a motive, as he had picked up a quarrel with Hargovind (PW-1) in the marriage ceremony and had also extended a threat and in order to fulfill the said threat, it appears that he went to the house of Hargovind (PW-1) in the night hours at about 3 AM and on the false pretext that the mother of the deceased-Mahesh, namely, Rajo W/o Hargovind (PW-3) is seriously ill, took away the deceased with him and when Hargovind (PW-1) and Rajo W/o Hargovind (PW-3) came back to their house on the next morning, then it was inquired by their neighbors about their health and when they informed that they are perfectly alright, then Hargovind (PW-1) and Rajo W/o Hargovind (PW-3) were told by their neighbors that in the night hours at about 3 AM the appellant had come alongwith one boy and had taken away their son; deceased-Mahesh, on the pretext that the mother of the deceased is seriously ill and they are calling the deceased-Mahesh. Thereafter, Hargovind (PW-1) and Rajo W/o Hargovind (PW-3) went to village Ghosipura, Jaderua in search of the appellant as well as their son and when they could not find out the whereabouts of the appellant as well as the deceased-Mahesh, then on 23/5/1997 at 18:10 hours an FIR was lodged by Hargovind (PW-1) in which a detailed description of each and

every aspect was given and a suspicion was specifically expressed that because of the threat extended by the appellant, it appears that the appellant must have abducted their son with an evil intention. Thereafter, the appellant was arrested and on his disclosure statement, the dead body of the deceased was recovered from a place near a Nala. As per the postmortem report, the death of the deceased was because of strangulation, i.e. homicidal death.

**15.** Accordingly, all the above mentioned circumstances indicate towards the guilt of the appellant. Accordingly, this court is of the considered opinion that the prosecution has succeeded in establishing beyond reasonable doubt that the appellant is guilty of committing murder of deceased-Mahesh. The manner in which the incident has taken place, it cannot be said that the act of the appellant, would fall under Section 304 Part I of I.P.C. Thus, appellant-Munshilal is held guilty of committing offence under Section 302 of IPC.

**16.** So far as the question of sentence is concerned, the minimum sentence provided for offence under Section 302 of IPC is life imprisonment. Under such circumstance, the sentence awarded by the trial court does not call for any interference.

**17.** Accordingly, the judgment and sentence dated 22/9/2005 passed by the Fifth Additional Sessions Judge (Fast Track Court), Morena in S.T. No.272/1998 is hereby affirmed.

The appellant is in jail and is undergoing the jail sentence.

The Criminal Appeal fails and is hereby **dismissed.**

**(Vivek Agarwal)**
**Judge**
**23/05/2018**

**(G.S. Ahluwalia)**
**Judge**
**23/05/2018**

**Arun***

**HIGH COURT OF MADHYA PRADESH, JABALPUR,**
**BENCH AT GWALIOR**

**Criminal Appeal No.770/2005**

.........Appellant: Munshilal

**Versus**

.........Respondent: State of M.P.

Judgment for consideration:

**(G.S. Ahluwalia)**
**Judge**
22/05/2018

**Hon. Shri Justice Vivek Agarwal:**

**(Vivek Agarwal)**
**Judge**
22/05/2018

**Judgment** post for 23/05/2018

**(Vivek Agarwal)**
**Judge**
23/05/2018