2026:CGHC:20812-DB

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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1184 of 2018

1. Omprakash @ Onkar Bhaina S/o Chhedi Bhaina Aged About 26 Years R/o- Village-Chhatauna, Outpost- Belgahna, Police Station- Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

2. Neera Bai W/o Onkar Bhaina Aged About 24 Years R/o- Village- Chhatauna, Outpost- Belgahna, Police Station- Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

--- **Appellant(s)**

versus

State of Chhattisgarh Through- Station House Officer, Police Station- Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

--- **Respondent(s)**

CRA No. 1143 of 2018

Sukhu Bhaina S/o Pawan Bhaina Aged About 60 Years R/o- Village Chhatouna, Police Chowki- Belgahana, Police Station- Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---**Appellant(s)**

versus

The State of Chhattisgarh Through- The Station House Officer, Police Station Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

--- **Respondent(s)**

2026:CGHC:20812-DB

CRA No. 1222 of 2018

Vinod Baina S/o Daduram Bhaina Aged About 26 Years R/o Village Chhatouna, Police Chowki Belgahana, Police Station Kota District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---Appellant(s)

versus

The State of Chhattisgarh Through The Station House Officer, Police Station Kota District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---Respondent(s)

(Cause-titles taken from Case Information System)

For Appellant(s)	:	Mr. Anurag Bajpai and Mr. Abhipreet Bajpai, Advocates in CRA No. 1184 of 2018 and Mr. Rajkumar Pali, Advocate in CRA Nos. 1143 of 2018 & 1222 of 2018.
For Respondent/State	:	Mr. Priyank Rathi, Government Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

05.05.2026

1. Since all the criminal appeals arise out of the same crime, they are being clubbed together, heard analogously, and decided by this common judgment.

2. Although the present appeals are listed today in the motion hearing list, and the applications for suspension of sentence and grant of bail were allowed by the Coordinate Bench of this Court in CRA Nos.1184 of 2018 and 1143 of 2018, and by the learned Single Judge in CRA No. 1222 of

2018, it appears that CRA Nos. 1184 of 2018 and 1143 of 2018 were inadvertently not formally admitted by the Coordinate Bench. CRA No. 1222 of 2018, however, has already been admitted.

3. In view of the foregoing, CRA Nos. 1184 of 2018 and 1143 of 2018 are hereby admitted. As the parties are ready for final hearing, the matters are taken up for final disposal.

4. Heard Mr. Anurag Bajpai and Mr. Abhipreet Bajpai, learned counsel for the appellants in CRA No. 1184 of 2018; Mr. Rajkumar Pali, learned counsel for the appellant in CRA Nos. 1143 of 2018 and 1222 of 2018; and Mr. Priyank Rathi, learned Government Advocate, appearing for the State/respondent in all the appeals.

5. These criminal appeals, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), are directed against the impugned judgment of conviction and order of sentence dated 19.04.2018 passed by the learned 5th Additional Sessions Judge, Bilaspur, District Bilaspur (C.G.) (for short, 'learned trial Court'), in Sessions Trial No. 101 of 2017, whereby the appellants have been convicted and sentenced as follows:

Conviction under Section		**Sentence**
Section 302/34 of the Indian Penal Code (*for short, 'IPC'*) (*applicable only to the appellants in CRA Nos. 1184 of 2018 and 1143 of 2018*)	:	Rigorous imprisonment (*for short, 'R.I.'*) for life imprisonment and fine of Rs.300/-, to each default of payment of fine, 01 month S.I. more.

Section 201/34 of the IPC		R.I. for 07 years and fine of Rs.300/- to each, in default of payment of fine, 01 month R.I. more.
All the sentences run concurrently.		

6. Brief facts of the case are that, on 18.11.2016, the complainant, Kalam Singh (PW-2), son of Samay Lal Bhaina, aged about 30 years, resident of Village Chhatauna, presently residing at Khairjhiti, appeared along with his father at Police Outpost Belgahna and lodged an oral report stating that his younger brother, Ved Singh, aged about 28 years, had gone missing. It was reported that prior to his disappearance, on 10.11.2016, a dispute had arisen between the deceased Ved Singh and certain family members, namely Tiharu, Jankaram, Durjan, and Itmar, regarding cultivation of land at Village Chhatauna, during which altercations and exchange of abuses took place. It was further informed by Bachan Singh Bhaina (PW-3) that on the evening of 15.11.2016, the appellant Omprakash had taken Ved Singh from his house.

7. On the basis of the said information, an entry was made in the daily diary (Rojnamcha Sanha No. 390), and a missing person report was registered. Subsequently, on 15.12.2016, the complainant reported that, while searching along with villagers at Matha Pahad, the dead body of Ved Singh was found lying in a ravine on the other side of the hill in a decomposed condition, emitting a foul smell.

8. Upon this information, an unnumbered merg intimation was recorded at Police Outpost Belgahna, and inquest proceedings were

conducted. The dead body was sent for postmortem examination. Thereafter, on 16.12.2016, Merg No. 150/16 under Section 174 of the Cr.P.C. was registered at Police Station Kota.

9. During investigation, the spot map and other necessary proceedings were carried out. On the basis of the medical report and surrounding circumstances indicating homicidal death, an FIR bearing Crime No. 29/2017 (Ex.P/20) was registered on 22.01.2017 against unknown persons under Sections 302 and 201 of the IPC.

10. During the course of investigation, on 25.05.2017, the appellant Omprakash @ Onkar Bhaina was taken into custody and interrogated. In his memorandum statement (Ex.P/12), he disclosed that the deceased Ved Singh, who was his distant relative, used to frequently visit his house and had been casting an evil eye upon his wife, Neera Bai, and had also misbehaved with her. He further stated that in the month of November, during the night, the deceased again attempted to molest his wife, upon which he assaulted Ved Singh with a stick, causing him to fall to the ground. His grandfather, Sukhu Singh, declared him dead. Thereafter, the appellant called his neighbour Vinod Bhaina, and in furtherance of their common intention, the accused persons, namely Omprakash, his wife Neera Bai, his grandfather Sukhu Bhaina, and Vinod Bhaina, disposed of the dead body by throwing it into Matha Pahad. It was also disclosed that kerosene oil was brought by Neera Bai in a jerrycan and the private parts of the deceased were burnt. The sticks used in the commission of the offence were thrown at the spot. On the basis of the memorandum statement, the sticks used in the offence were seized.

11. During investigation, witness Kaleshiya, wife of appellant Vinod Bhaina, corroborated the prosecution case by stating that appellant Omprakash assaulted the deceased on the head with a stick due to the issue relating to misconduct with his wife, resulting in his death, and thereafter, with the assistance of the co-accused persons, disposed of the dead body in Matha Pahad.

12. Upon completion of investigation, sufficient evidence was found against the appellants. Accordingly, they were arrested on 25.05.2017 and produced before the Court of Judicial Magistrate First Class, Takhatpur, District Bilaspur (C.G.), and were remanded to judicial custody.

13. After completion of investigation, a charge-sheet was filed on 22.08.2017 under Sections 302, 201, and 34 of the IPC. The case was then committed to the Court of Sessions for trial, from where it was transferred to the Court of the learned 5th Additional Sessions Judge, Bilaspur, District Bilaspur (C.G.), for trial, hearing, and disposal in accordance with law.

14. The learned trial Court framed charges against the appellants, namely Omprakash @ Onkar Bhaina, Sukhu Bhaina, and Neera Bai, under Sections 302/34 and 201/34 of the IPC, and against appellant Vinod Bhaina under Section 201/34 of the IPC. The charges were read over and explained to the appellants, who denied the same and claimed to be tried.

15. Their statements under Section 313 of the Cr.P.C. were recorded, wherein they pleaded innocence and alleged false implication. The appellants did not adduce any evidence in their defence.

16. In order to prove its case, the prosecution examined 17 witnesses and exhibited 39 documents. However, the defence did not examine any witness.

17. Upon appreciation of the oral and documentary evidence on record, the learned trial Court, by its judgment dated 19.04.2018, convicted the appellants, namely Omprakash @ Onkar Bhaina, Sukhu Bhaina, and Neera Bai, for the offences punishable under Sections 302/34 and 201/34 of the IPC, and appellant Vinod Bhaina under Section 201/34 of the IPC, and sentenced them as mentioned in paragraph 05 of this judgment. The present criminal appeals have been filed challenging the said judgment of conviction and order of sentence.

18. Mr. Anurag Bajpai, learned counsel, assisted by Mr. Abhipreet Bajpai, learned counsel for the appellants in CRA No. 1184 of 2018, submits that the impugned judgment of conviction and order of sentence passed by the learned trial Court are unsustainable both on facts and in law. It is contended that the conviction of the accused/appellants rests primarily upon the memorandum statement (Ex.P/12) of Omprakash @ Onkar Bhaina and the alleged recovery of a jerrycan. It is further submitted that the independent witnesses to the memorandum and seizure proceedings have not supported the prosecution case and have been declared hostile, thereby rendering the recovery proceedings doubtful. It is urged that the prosecution has failed to establish a complete and unbroken chain of circumstantial evidence so as to bring home the guilt of the appellants beyond reasonable doubt. Accordingly, in the absence of cogent, reliable, and trustworthy evidence, the conviction of

the appellants is liable to be set aside.

19. Mr. Rajkumar Pali, learned counsel appearing for the appellants in CRA Nos. 1143 of 2018 and 1222 of 2018, submits that the implication of the appellants is based solely on the memorandum statement (Ex.P/12) of co-accused Omprakash @ Onkar Bhaina, and there is no independent evidence connecting them with the alleged offence. It is contended that nothing incriminating has been seized from the present appellants. He further submits that Dr. D.P. Dhruw (PW-9), in his report (Ex.P/16), has stated that the dead body was found in a highly decomposed condition, infested with maggots, and no definite opinion could be given regarding the cause and nature of death. In such circumstances, the involvement of the appellants becomes highly doubtful.

20. It is also contended that the material prosecution witnesses have not supported the prosecution case, and the prosecution has failed to establish any motive or intention on the part of the appellants. This, according to the learned counsel, clearly indicates that the appellants were not present with the deceased at the relevant time, and a false case has been concocted on the basis of an alleged illicit relationship with the wife of appellant Omprakash. It is further submitted that the dead body of the deceased was recovered from an open place, and the possibility of death having been caused by some other person, or otherwise, cannot be ruled out. Hence, the appellants cannot be held responsible for the alleged offence.

21. *Per contra*, learned State counsel supports the impugned judgment and order of conviction passed by the learned trial Court. It is submitted

that the trial Court has properly appreciated the oral and documentary evidence available on record, and the findings recorded do not suffer from any legal infirmity. It is further submitted that the memorandum statement (Ex.P/12) of Omprakash @ Onkar Bhaina, duly recorded under Section 27 of the Evidence Act, led to the recovery of incriminating articles, which constitute a significant circumstance against the accused persons. The recovery at the instance of the accused is a highly incriminating piece of evidence, which has rightly been relied upon by the learned trial Court.

22. It is further contended by the learned counsel, appearing for the State that Bachan Singh (PW-3) is a crucial and reliable witness in the present case. He has categorically stated that on the date of the incident, the deceased Ved Singh had come to his house for dinner, and after taking his meal, the accused Omprakash @ Onkar called him and took him along. This testimony is duly corroborated by Kalam Singh Bhaina (PW-2), who has also stated that on the evening of 15.11.2016, the deceased had gone to the house of Bachan Singh for dinner. The assertion made by Bachan Singh (PW-3), that on the night of the incident the accused Omprakash called and took the deceased Ved Singh with him, has remained unshaken and uncontroverted in cross-examination, thereby establishing the “last seen” circumstance against the appellant Omprakash @ Onkar Bhaina.

23. It is thus submitted that the prosecution has successfully established a complete chain of circumstances leading to the only irresistible conclusion that it was none other than the accused/appellants who committed the offence in question. Therefore, the conviction recorded

by the learned trial Court is fully justified and does not call for any interference by this Court.

24. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove, and carefully perused the entire record with utmost circumspection.

25. The first question that arises for consideration is whether the death of the deceased Ved Singh was homicidal in nature.

26. In this regard, the learned trial Court has relied upon the testimony of Dr. D.P. Dhruw (PW-9), who conducted the postmortem examination and proved his report (Ex.P/16). He deposed that on 15.12.2016, the dead body of the deceased Ved Singh Bhaina was produced before him in a highly decomposed condition. The body was lying in a supine position, with maggot infestation and extensive decomposition of both external and internal organs.

27. The Doctor further noticed burn-like injuries on the genital organs and right knee, as well as an injury on the muscle of the left arm. However, due to the advanced stage of decomposition, he did not give any definite opinion regarding the cause or nature of death. He opined that the death had occurred approximately 2–3 weeks prior to the postmortem examination. The samples were preserved for forensic examination. The FSL report (Ex.P/35) indicates that kerosene residues could not be detected in the skin samples; however, the same does not negate the presence of burn injuries observed during the postmortem.

28. Though the medical expert could not opine the exact cause of

death, it is well settled that such inability, particularly in cases involving highly decomposed bodies, is not fatal to the prosecution. In the present case, despite decomposition, the presence of burn injuries on sensitive parts of the body and antemortem injury on the arm clearly indicate that the death was not natural.

29. The nature and location of the injuries, coupled with the surrounding circumstances, exclude the possibility of a natural death and firmly establish that the death of the deceased was homicidal in nature.

30. After hearing learned counsel for the parties and considering their rival submissions, we are of the considered opinion that the finding recorded by the learned trial Court regarding the death of the deceased cannot be said to be perverse or contrary to the material available on record. Although the medical evidence does not conclusively establish the exact cause or nature of death, the circumstances brought on record, including the condition of the dead body and the injuries noticed, clearly indicate that the death did not occur under normal circumstances. The said finding, being based on a proper appreciation of the evidence, does not warrant interference and is accordingly affirmed.

31. The next question for consideration is whether the recovery of incriminating articles pursuant to the memorandum statement of appellant Omprakash @ Onkar Bhaina (Ex.P/12) is admissible in evidence and can be relied upon against the appellants.

32. In order to examine the admissibility and evidentiary value of the said memorandum and the consequent recovery, it is necessary to

scrutinize the testimony of the witnesses to the memorandum and seizure, as well as the surrounding circumstances in which such recovery is alleged to have been effected.

33. Chunnilal Bhaina (PW-5), a witness to the memorandum, has deposed in his examination-in-chief that the appellant, Omprakash @ Onkar Bhaina, in his presence, disclosed before the police that he had assaulted Ved Singh with a stick, committed his murder, and thereafter disposed of the dead body in the forest. He further stated that the stick allegedly used in the commission of the offence and a jerrycan were seized at the instance of the appellant, and he affixed his thumb impression on the seizure memo (Ex.P/13). However, it is significant to note that the disclosure attributed to the appellant is in the nature of a confessional statement made before the police. During cross-examination, although the witness reiterated the said version, his testimony does not clearly establish that the recovery was made strictly in consequence of any distinct and specific information leading to discovery, as contemplated under law.

34. Similarly, Chatur Singh Bhaina (PW-8), another memorandum witness, has stated in his examination-in-chief that the appellant disclosed during interrogation that, on account of alleged misconduct with his wife, he had assaulted the deceased and disposed of the body in a hilly area. He further deposed that the appellant indicated that the articles used in the offence could be recovered, pursuant to which the memorandum (Ex.P/12) and seizure memo (Ex.P/13) were prepared. However, in cross-examination, this witness admitted that the police did not interrogate the

appellant in his presence. This admission casts a serious doubt on the authenticity of the alleged disclosure and the manner in which the memorandum was recorded.

35. Thus, even though coercion has not been specifically alleged, the absence of clear and reliable evidence regarding a voluntary and distinct disclosure leading to recovery substantially weakens the prosecution case. The prosecution has also relied upon the FSL report (Ex.P/39), which indicates that human blood was detected on the tendu stick (Ex.'B'). However, as the blood group could not be determined, this circumstance does not conclusively connect the article with the deceased.

36. The learned trial Court has further sought to rely upon the contents of the memorandum statement (Ex.P/12) to establish motive as well as the manner of occurrence. As per the said statement, the deceased allegedly used to visit the house of the appellant, Omprakash @ Onkar Bhaina and had misbehaved with his wife, which led to the assault.

37. However, it is trite law that such a statement, being in the nature of a confession made to the police, is hit by Sections 25 and 26 of the Evidence Act and is inadmissible except to the limited extent permissible under Section 27. The incriminating portions of the statement, including motive and alleged assault, cannot be read in evidence. Even otherwise, no independent and reliable evidence has been adduced by the prosecution to establish such motive.

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

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

39. Section 27 of the Indian Evidence Act is applicable only if the confessional statement relates distinctly to the fact thereby discovered.

40. The Hon'ble Supreme Court in the matter of ***Asar Mohammad and others v. State of U.P.***[1] with reference to the word "fact" employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". It has been further held that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of ***Pulukuri Kotayya v. King Emperor***[2] observed as under: -

> *"13. It is a settled legal position that the facts need not be self-probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to*

1 *AIR 2018 SC 5264*

2 *AIR 1947 PC 67*

"actual physical material object". The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of ***Vasanta Sampat Dupare v. State of Maharashtra*** *reported in* ***(2015) 1 SCC 253****, in particular, paragraph 23 thereof. The same read thus:*

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

> *commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.*
>
> *xxx xxx xxx*
>
> *xxx xxx xxx*
>
> *xxx xxx xxx"*

41. Reverting to the facts of the present case in light of the principles laid down by the Hon'ble Supreme Court in ***Asar Mohammad*** (supra), following the Privy Council decision in ***Pulukuri Kotayya*** (supra), only that part of the information which leads to the discovery of an object, the place from which it is produced, and the knowledge of the accused as to its existence would be admissible. The incriminating portion of the statement, including the allegation that the appellant had assaulted the deceased, does not relate to the fact discovered and is, therefore, clearly inadmissible under Section 27 of the Evidence Act.

42. The Hon'ble Supreme Court in the matter of ***Aghnoo Nagesia v. State of Bihar***[3] has clearly held that confession to police whether in course of investigation or otherwise and confession made while in police custody would be hit by Section 25 of the Evidence Act and observed as under:-

> *"9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found*

3 *AIR 1966 SC 119*

generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides : "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates

distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S.25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them."

Their Lordships further held as under:-

"18. If the first information report is given by the accused to a police officer and amounts to a

> *confessional statement, proof of the confession is prohibited by S. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S.27"*

43. Reverting to the facts of the present case in light of the principles laid down by the Hon'ble Supreme Court in ***Asar Mohammad*** (supra), following the decision of the Privy Council in ***Pulukuri Kotayya*** (supra), it is evident that the prosecution has failed to establish that the alleged recovery was made in consequence of any distinct and specific information supplied by the appellant. The evidence of the memorandum witnesses does not clearly prove the existence of such information leading to discovery, and the disclosure attributed to the appellant is largely confessional in nature. As such, except to the limited extent permissible under Section 27 of the Evidence Act, the alleged recovery cannot be treated as a reliable incriminating circumstance against the appellants.

44. Having considered the entire evidence on record, including the memorandum statement (Ex.P/12) and the recovery effected pursuant thereto, it emerges that although certain circumstances have been brought on record by the prosecution, the same do not form a complete and unbroken chain leading to the only hypothesis of the guilt of the appellants. The circumstances relied upon are not of such a conclusive nature as to exclude every other possible hypothesis consistent with the innocence of the appellants.

45. The recovery of the alleged incriminating articles, even if accepted

to a limited extent, does not inspire full confidence. The same is not supported by any independent witness of the locality, and the testimony of the seizure witnesses suffers from inconsistencies, thereby diminishing its evidentiary value. Moreover, the prosecution has failed to conclusively connect the seized articles with the crime through reliable scientific evidence, inasmuch as the blood detected on the stick has not been matched with that of the deceased. In such circumstances, the recovery cannot be treated as a determinative incriminating circumstance against the appellants.

46. The learned trial Court has also placed reliance on the presence of blood on the seized articles. However, in the absence of serological examination establishing that the blood was of human origin and of the same group as that of the deceased, such evidence remains inconclusive. At best, it raises suspicion, but suspicion, howsoever strong, cannot take the place of proof.

47. The next question that arises for consideration is whether the learned trial Court was justified in convicting the appellants solely on the basis of the “last seen together” theory, as deposed by Bachan Singh (PW-3), and treating the same as duly established.

48. Bachan Singh (PW-3) is undoubtedly an important witness, who has stated that on the date of the incident, the deceased Ved Singh had come to his house for dinner and, after having his meal, the appellant, Omprakash @ Onkar called him and took him along. This version finds some corroboration from Kalam Singh Bhaina (PW-2), who has also stated that the deceased had gone to the house of Bachan Singh on the

evening of 15.11.2016. Thus, it may be accepted that the deceased was last seen in the company of the appellant Omprakash. However, it is well settled that the "last seen together" circumstance, by itself, cannot form the sole basis of conviction unless it is coupled with other incriminating circumstances forming a complete chain. In the present case, there is a considerable time gap between the alleged last seen and the recovery of the dead body, which was found after about one month in a highly decomposed condition. The prosecution has failed to establish the proximity of time between the point when the deceased was last seen with the appellant and the time of death, which is a crucial requirement for applying the "last seen" theory.

49. Further, as discussed hereinabove, the other circumstances relied upon by the prosecution, particularly the memorandum and recovery, do not inspire full confidence and cannot be treated as conclusive. In absence of any reliable and clinching evidence connecting the appellant with the crime, the "last seen" circumstance remains a weak piece of evidence.

50. The Hon'ble Supreme Court in the matter of ***Sharad Birdhichand Sarda v. State of Maharashtra***[4] has clearly laid down the factors to be taken into account in adjudication of cases of circumstantial evidence, which states as under:-

> *"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;*

4 (1984) 4 SCC 116

(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."

51. In the matter of ***Arjun Marik v. State of Bihar***[5], it has been held by their Lordships of the Hon'ble Supreme Court have held that conviction cannot be made solely on the basis of theory of 'last seen together' and observed in paragraph 31 as under:-

"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to though a number of witnesses have been examined be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

5 1994 Supp (2) SCC 372

52. Likewise in the matter of ***State of Goa v. Sanjay Thakran***[6] the Hon'ble Supreme Court has held that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was observed in paragraph 34 as under:-

> *"34. From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration. There can be no fixed or straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the*

6 (2007) 3 SCC 755

accused, being the author the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case."

53. Similarly in the matter of ***Kanhaiya Lal v. State of Rajasthan***[7], their Lordships of the Hon'ble Supreme Court have clearly held that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime and there must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant in our considered opinion, by itself cannot lead to proof of guilt against the appellant. It has been held in paragraphs 15 and 16 as under:-

"15. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be

7 (2014) 4 SCC 715

maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan[8].

16. In view of the aforesaid circumstances, it is not possible to sustain the impugned judgment and sentence. This appeal is allowed and the conviction and sentence imposed on the appellant-accused Kanhaiya Lal are set aside and he is acquitted of the charge by giving benefit of doubt. He is directed to be released from the custody forthwith unless required otherwise."

54. Finally in the matter of ***Anjan Kumar Sarma v. State of Assam***[9] their Lordships of the Hon'ble Supreme Court have clearly held that in a case where other links have been satisfactorily made out and circumstances point to guilt of accused, circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In absence of proof of other circumstances the only circumstance of last seen together and absence of satisfactory explanation, cannot be made basis of conviction.

55. Reverting to the facts of the present case in light of the aforesaid decisions rendered by the Hon'ble Supreme Court, particularly in ***Anjan Kumar Sarma*** (supra), it is quite clear that the circumstance of "last seen together" and absence of explanation can only operate as an additional link in the chain of circumstances, provided other incriminating

8 (2010) 15 SCC 588

9 (2017) 14 SCC 359

circumstances are firmly established. In the present case, except the homicidal nature of death and the alleged last seen evidence of Bachan Singh (PW-3), no other reliable incriminating circumstance has been proved. The prosecution has failed to establish a complete chain of circumstances leading only to the hypothesis of guilt of the appellants.

56. The next circumstance relied upon by the learned trial Court is the recovery of two sticks pursuant to the memorandum statement of the appellant, Omprakash @ Onkar Bhaina. In this regard, the prosecution has placed reliance on the FSL report (Ex.P/39), which indicates that human blood was detected on the tendu stick (Ex.'B'). However, it is significant to note that the blood group of the said blood could not be determined. In the absence of such determination, the prosecution has failed to establish any definite nexus between the seized article and the deceased. As such, this circumstance, at best, raises a suspicion but does not constitute a conclusive incriminating link against the appellants.

57. At this stage, pertinent decision of the Supreme Court on this point in the matter of ***Balwan Singh v. State of Chhattisgarh and another***[10] may be noticed herein, in which the Hon'ble Supreme Court has summarized the law on this point after taking into the decision of the Hon'ble Supreme Court (Constitution Bench) in the matter of ***Raghav Prapanna Tripathi v. State of U.P.***[11]. In ***Raghav Prapanna Tripathi*** (supra), the Constitution Bench of the Hon'ble Supreme Court has held that in case the prosecution needed to prove that the bloodstains found on the earth or the weapons were of a human origin and were of the same

10 (2019) 7 SCC 781

11 AIR 1963 SC 74

blood group as that of the accused.

58. The aforesaid decision of the Hon'ble Supreme Court i.e. ***Raghav Prapanna Tripathi*** (supra) was followed in ***Balwan Singh*** (supra) in which it was observed as under:-

> *"23. From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match."*

59. Thereafter, the Hon'ble Supreme Court in ***Balwan Singh*** (supra) relying upon the fact that the prosecution has failed to prove that the blood was of human origin declined to rely upon the aspect of recovery of the weapons from the accused therein. It was observed as under:-

> *"24. In the instant case, then, we could have placed some reliance on the recovery, had the prosecution at least proved that the blood was of human origin. As observed supra, while discussing the evidence of PWs 9 and 16, the prosecution has tried to concoct the case from stage to stage. Hence, in the absence of positive material indicating that the stained blood was of human origin and of the same blood group as that of the accused, it would be difficult for the Court to rely upon the aspect of*

recovery of the weapons and tabbal, and such recovery does not help the case of the prosecution."

60. Reverting to the facts of the present case, it is evident that the prosecution has failed to establish that the blood found on the seized tendu stick (Ex.'B') was that of the deceased. In the absence of any serological examination or scientific evidence establishing such linkage, the alleged recovery loses its probative value and cannot be treated as a conclusive incriminating circumstance.

61. Even otherwise, the said recovery is referable only to the memorandum statement of appellant Omprakash @ Onkar Bhaina and cannot be extended to the other appellants. There is no independent and reliable evidence on record to connect the co-accused/appellants, namely Sukhu Bhaina, Neera Bai, and Vinod Bhaina, with either the said recovery or the commission of the offence. No overt act, participation, or specific role has been attributed to them by any trustworthy evidence.

62. The alleged motive, namely the improper conduct of the deceased towards the wife of appellant Omprakash, also remains unproved in accordance with law, as it emerges only from the memorandum statement, which has limited admissibility and cannot be treated as substantive evidence. Further, the statement of co-accused Vinod Bhaina recorded under Section 164 Cr.P.C. (Ex.P/31-C), even if taken into consideration, does not constitute substantive evidence against the present appellants and, in absence of independent corroboration, cannot be made the basis of conviction.

63. Thus, the entire case against the other appellants rests on weak,

inadmissible, or uncorroborated material. Even qua appellant Omprakash, the recovery is not of such a nature as to conclusively connect him with the crime.

64. On a cumulative assessment of the entire evidence on record, this Court finds that the prosecution has failed to establish a complete and unbroken chain of circumstances so as to lead only to the hypothesis of guilt of the appellants. The circumstances relied upon, including the memorandum and alleged recovery, the FSL report, the “last seen together” evidence, and the alleged motive, are either not proved in accordance with law or are too weak and inconclusive to form a coherent chain.

65. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof. In the present case, the evidence on record, at best, raises a suspicion against the appellants, but falls short of establishing their guilt beyond reasonable doubt. The appellants are, therefore, entitled to the benefit of doubt.

66. Accordingly, the appeals are **allowed**. The impugned judgment of conviction and order of sentence dated 19.04.2018 passed by the learned trial Court are set aside. The appellants are acquitted of all the charges levelled against them.

67. The appellants are reported to be on bail. In view of their acquittal, they are not required to surrender. However, in compliance with the provisions of Section 437-A of the Cr.P.C. (now Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023), their bail bonds shall remain

in force for a further period of six months from today.

68. The Registry is directed to forthwith transmit the record of the trial Court along with a certified copy of this judgment to the Court concerned for information and necessary compliance.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Brijmohan