



CGHC010248392021

2026:CGHC:34094-DB
NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1063 of 2021**

Kaushal @ Deepak Nirmalkar S/o Biharilal Nirmalkar Aged About 22 Years Resident Of Village Salhetola, Police Station Charama, District North Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

--- Appellant(s)**versus**

State of Chhattisgarh Through The Station House Officer , Police Station Bhanupratappur, District North Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

--- Respondent(s)**CRA No. 1066 of 2021**

Lokesh Shori @ Loku S/o Motiram Shori Aged About 18 Years R/o Village Salhetola, Thana Charama, District Uttar Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---Appellant(s)**Versus**

State of Chhattisgarh Through Police Station Bhanupratappur, District U.B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh

--- Respondent(s)

(Cause-title taken from Case Information System)

For Appellant(s) : Ms. Savita Tiwari, Advocate.

For State : Mr. Jitendra Shrivastava, Govt. Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge
Judgment on Board

Per Ramesh Sinha, Chief Justice.

05/08/2026

1. Ms. Savita Tiwari, learned counsel for the appellants, submits that she has obtained No Objection Certificates from the earlier counsel, Mr. D. N. Prajapati (in CRA No. 1063/2021) and Mr. Parag Kotecha (in CRA No. 1066/2021). Since the NOCs have already been granted to the learned counsel for the appellants, Ms. Savita Tiwari, we proceed to hear the matter, as the appellants are in jail since 29.06.2019.
2. These two criminal appeals arise out of the same crime and same sessions trial and by the common judgment, therefore, they are being heard and decided together.
3. The **Criminal Appeal No. 1063 of 2021** has been filed by the appellant- **Kaushal @ Deepak Nirmalkar** and the **Criminal Appeal No. 1066 of 2021**, has been filed by the appellant- **Lokesh Shori @ Loku**, against the impugned judgment of conviction and sentence dated 07.09.2021 passed by the learned Additional Sessions Judge, Bhanupratappur, District North Baster Kanker, in Sessions Case No. 30/2019, whereby both the

appellants have been convicted and sentenced in the following manner:-

Conviction	Sentence
Under Section 302/34 of Indian Penal Code	For life imprisonment and fine of Rs. 2,000/-, in default of payment of fine 1 year additional R.I.
Under Section 201 of Indian Penal Code	R.I. for 01 year and fine of Rs. 500/-, in default of payment of fine 15 days additional R.I.

4. The prosecution case in brief is that on 26.06.2019, the complainant Pirit Ram PW-1, gave a merg intimation that a dead body of unknown person is lying near Ranwahi Canal Culvert having injury on his head. The police recorded the merg intimation Ex.P/1 and recovered the dead body; an inquest of the dead body of the deceased Ex.P/5 was prepared in the presence of the witnesses. The dead body was identified by the witnesses to be the dead body of Paleshwar Nirmalkar which has been identified by Bihari Lal and an identification and dead body identification panchanama Ex.P/7 was prepared. The dead body was sent for post-mortem to Community Health Centre, Bhanupratappur where PW-10 Dr. S.S. Nag conducted post-mortem of the dead body of the deceased and found various injuries, including fracture of the head bone and opined that the dead of the deceased was due to throttling and the nature of dead is homicidal in nature and gave the post-mortem report Ex.P/19. FIR Ex.P/2 was registered for the offence under Section

302 of IPC against an unknown person. Spot Map Ex.P/3 and Ex.P/32 were prepared by the Police and Ex.P/16 and Ex.P/24 were prepared by the Patwari. Blood-stained and plain soil, one rope and one scarf have been seized from the spot vide seizure memo Ex.P/6. The clothes of the deceased were also seized vide seizure memo Ex.P/8. On suspicion the accused persons were arrested and their memorandum statement Ex.P/9 and Ex.P/10 were recorded and based on their memorandum statement from the accused Kaushal @ Deepak his t-shirt, motorcycle, and the motorcycle of the deceased have been seized vide seizure memo Ex.P/11, blood stained and plain soil was also seized vide seizure memo Ex.P/12, one sharp edged stone has also been seized from the accused Kaushal @ Deepak vide seizure memo Ex.P/13 and one wooden club has been seized from his vide seizure Ex.P/15. From the accused Lokesh Kumar Shori his full shirt has been seized vide seizure memo Ex.P/14. The scarf, wooden club, rope and clothes of the accused persons were sent for its query report to the doctor who gave his query report Ex.P/20, Ex.P/21, Ex.P/22 and Ex.P/23 and referred for its chemical examination for confirmation of presence of blood. The seized articles were sent for its chemical examination to the regional FSL, Jagdalpur, from where FSL report Ex.P/41 was received and except the plain soil articles B and D, blood has been found on all other articles and in the blood-stained soil nylon rope, t-shirt of juvenile in conflict with

law and the clothes of the deceased were found to be stained with human blood.

5. Statements of the witnesses under Section 161 of Cr.P.C. have been recorded, and after completion of the usual investigation, charge-sheet was filed against the accused persons before the learned Judicial Magistrate First Class, Bhanupratappur District North Baster Kanker, for the offences under Sections 302, 34 of IPC. During the investigation the police has also found involvement of another person who was juvenile in conflict with law, and charge-sheet against the juvenile in conflict with law has been filed before the Juvenile Justice Board.
6. The case was committed to the Court of the learned Sessions Judge, Kanker, from where the same has been transferred for its trial to the learned trial Court. The learned trial Court has framed charges against the accused persons for the offences under Sections 302, 34 and 201 of IPC. The accused persons denied the charge and claimed trial.
7. In order to prove the charge against the accused persons, the prosecution has examined as many as 12 witnesses. Statement of the accused persons under Section 313 of Cr.P.C. have been recorded, in which they denied the circumstances appearing against them, pleaded innocence and have submitted that they have been falsely implicated in the offence.

8. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial Court convicted and sentenced the appellants/accused persons as has been mentioned in the earlier part of this judgment. Hence, this appeal.
9. Learned counsel appearing for the appellants submitted that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of the prosecution witnesses, which cannot be made the basis to convict them for the offence in question. There is no eyewitness to the incident, and the chain of circumstances is also not completed and there are various missing links. There is no last seen of the deceased with the company of the accused persons. The dead body of the deceased was found in an open place. The alleged recovery has not been proved by the prosecution by cogent evidence, and the presence of blood in the seized articles is not a clinching piece of evidence, particularly when there is no other connecting evidence. There is no motive proved by the prosecution, and there is absolutely no evidence about involvement of the appellant in the offence in question. The memorandum statement of the accused persons is not admissible in evidence and conviction cannot be based on the memorandum statement. She would also submit that the non-explanation of the incriminating circumstance cannot be considered to be a connecting link to complete the chain of

circumstances, though it may be an additional link. Therefore, in absence of any cogent and clinching evidence the appellants' conviction is bad in law and they are entitled for their acquittal.

10. Per Contra, learned counsel appearing for the State opposed the submissions made by learned counsel for the appellants and submitted that the prosecution has proved its case beyond reasonable doubt. Barring minor omissions or contradictions, the evidence of the prosecution witnesses is reliable and sufficient to hold the appellants guilty of the alleged offences. There is sufficient evidence regarding motive to commit the murder of the deceased, as the deceased was the brother of the accused Kaushal and he was addicted of liquor and Ganja and used to quarrel with the accused Kaushal and his mother, by which the accused Kaushal fled up and to eliminate him he committed his murder. He would also submits that the prosecution has proved the guilt of the accused by a complete chain of circumstances, including the disclosure statement made by the accused persons, discovery of the weapon of offence and the motorcycle of the deceased and in the article seized on the basis of discovery, blood has been found for which there is no explanation from the accused persons. The learned trial Court after appreciating the evidence available on record rightly convicted and sentenced the appellants which needs no interference and both the appeals are liable to be dismissed.

11. We have heard learned counsel for the parties and perused the record of the trial Court.
12. In the present case, there is no eye-witness to the incident, and the case of the prosecution is based on circumstantial evidence.
13. The Supreme Court in case of ***Madhu Vs. State of Kerala, 2012 (2) SCC 399*** has held in paragraph 5 as under:

“5. The care and caution with which circumstantial evidence has to be evaluated stands recognized by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt.”

14. In the matter of ***Nagendra Sah Vs. State of Bihar, 2021 (10) SCC 725*** in paragraphs 17 and 18 replying upon the golden principles enumerated in case *Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 (4) SCC 116*, the Supreme Court has held as under:

“17. As the entire case is based on circumstantial evidence, we may make a useful reference to a leading decision of this Court on the subject. In the case of *Sharad Birdhichand Sarda v. State of Maharashtra*², in paragraph 153, this Court has laid down five golden principles (Panchsheel) which govern a case based only on circumstantial evidence. Paragraph 153 reads thus : -

“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 & Anr. v. State of Maharashtra* where the following observations were made:

19.....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." (emphasis added).

18. Paragraphs 158 to 160 of the said decision are also relevant which read thus :

"158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in *Deonandan Mishra v. State of Bihar*, to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree

with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

9.....But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, . . . such absence of explanation or false explanation would itself be an additional link which completes the chain."

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied :

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus:

30.....Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused." (emphasis added)"

15. In the matter of para ***Surendra Kumar and Another Vs. State of Uttar Pradesh, 2021 (20) SCC 430***, the Hon'ble supreme Court has held in 11 and 12 as under:-

“11. As the case against the appellants is entirely based on circumstantial evidence, it is necessary to determine whether the available evidence lead only to the conclusion of guilt and exclude all contrary hypothesis. The enunciation on the law of circumstantial evidence stood the test of time since Hanumant Vs. State of Madhya Pradesh¹ where Mahajan J., has written as under:-

“10.....It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.....”

12. The nature, character and essential proof required in criminal cases was discussed in detail by Fazal Ali J in Sharad Birdhichand Sarda vs. State of Maharashtra² and the proposition of law culled out on circumstantial evidence was approved in many subsequent judgments and was recently reiterated by Krishna Murari J., writing the opinion for a three Judges Bench in Shailendra 1 AIR 1952 SC 343 2 (1984) 4 SCC 116 Rajdev Pasvan & Ors. Vs. State of Gujarat & Ors. 3 where it was succinctly laid down as under:-

“17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are

complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.”

16. There is no eyewitness in the present case. The case of the prosecution rests on the circumstantial evidence. The Supreme Court in case of ***Ravindra Singh Vs. State of Punjab, 2022 (7)***

SCC 581 has held in para 10 as under:-

10. The conviction of A2 is based only upon circumstantial evidence. Hence, in order to sustain a conviction, it is imperative that the chain of circumstances is complete, cogent and coherent. This court has consistently held in a long line of cases [See *Hukam Singh v. State of Rajasthan* AIR (1977 SC 1063); *Eradu and Ors. v. State of Hyderabad* (AIR 1956 SC 316); *Earabhadrapa @ Krishnappa v. State of Karnataka* (AIR 1983 SC 446); *State of U.P. v. Sukhbasi and Ors.* (AIR 1985 SC 1224); *Balwinder Singh @ Dalbir Singh v. State of Punjab* (AIR 1987 SC 350); *Ashok Kumar Chatterjee v. State of M.P.* (AIR 1989 SC 1890)] 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. 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.

10.1. In *Bhagat Ram v. State of Punjab* (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt.

10.2. We may also make a reference to a decision of this Court in *C. Chenga Reddy and Ors. v. State of A.P.* (1996) 10 SCC 193, wherein it has been observed that:

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

17. In view of the law laid down by the Hon'ble Supreme Court with respect to the consideration of evidence where the case of the prosecution is based on circumstantial evidence, we examine the evidence produced by the prosecution against the appellants.
18. There is no last seen evidence that the deceased was lastly seen within the reasonable time gap from the time when his dead body was found.
19. PW-1, Pirit Ram is the complainant who lodged mere intimation to the police after seeing dead body. He stated in his evidence that he was informed by one Dwarika Prasad that a dead body was lying there and thereafter, he saw the dead body having injury on his head and then he lodged the report. After one two days the accused persons were taken into custody and their memorandum statement they disclosed that they committed the murder of the deceased near village Korar and thrown the dead body there. From the spot, the police have seized rope, half-pant of the deceased and gamcha. In cross-examination, he admitted that he

saw the accused person for the first time when they were brought by the police personnel. He further admitted in his police statement he has not disclosed that the accused persons have confessed their guilt in his presence.

20. PW-2, Om Prakash is the neighbour of the deceased. He has not supported the prosecution case and declared hostile. After declaring him hostile he stated that the deceased was working in a borewell vehicle and used to consume Ganja and liquor. He regularly raised quarrel by his brother and mother under the influence of Ganja and liquor. He also dancing by rasing full volume of the speaker in his house which was objected by the villagers many times. He shown his ignorance about the act of his dancing on 25.06.2019. Subsequently, he came to know that the deceased was being murdered by the accused person and the dead body was thrown near Ranwahi Culvert. In cross-examination, he admitted that he is a hearsay witness and deposed on the basis of whatever he heard. From the evidence of this witness it only comes that the deceased was in the habit of consuming liquor and Ganja and raising quarrels with his brother and mother.
21. PW-5, Devendra Durgashi, is the brother-in-law of the deceased. At the time when he was in his shop, he received a photograph in Whats App of his mobile phone, which was the photograph of the

dead body of the deceased. At that time the accused Kaushal was with him in the shop, and he had gone to identify the dead body; thereafter, the police called him along with his motorcycle and then the police took his motorcycle to his police station. This witness has also declared hostile and then he admitted that the accused Kaushal was using his motorcycle for conveyance, but he denied that the accused Kaushal took his motorcycle on 25.06.2019. On the next day he came to know about the incident through the newspaper and subsequently came to know that the accused person committed the murder of the deceased and threw the dead body near Ranwahi Culvert. In cross-examination, he admitted that he did not know as to has committed murder of the deceased Paleshwar.

22. PW-6, Kartik Ram Patel, has stated in his evidence that on the date of incident when he had gone for a morning walk towards Ranwahi River, he saw the dead body near the culvert and then informed it to his elder brother, Dwarkia Patel and who informed the village Kortwar and then the police came there. On being interrogation by the accused persons, they confessed their guilt that the deceased used to raise quarrels ad creating nuisance after consuming liquor, and therefore his brother Kaushal Nirmalkar committed his murder in the house and threw his dead body at Ranwahi Culvert. In cross-examination, he admitted that

the accused persons made their statement before the police, the statement of the accused persons recorded in the Police Station.

23. PW-7 Dwarika Prasad Patel, have stated in his evidence that on the date of incident his brother Kartik Ram informed him about the dead body at Ranwahi Culvert and then he informed it to the Kortwar of the village. Thereafter, Police came there. On the next day the police made interrogation of the accused persons and then they made disclosure statement and a wooden club was seized and thereafter, signature have been taken in the documents at Police Station. This witness too has declared hostile and then he stated that the Police personnel had taken them to village Salhetola and also the place where the accused Kaushal concealed the wooden club after committing the murder of the deceased. The accused persons also disclosed that the nylone rope and scarf were thrown near the dead body and t-shirt has been kept in his house. The accused Lokesh @ Loku Shori also disclosed that his clothes has been concealed in his house. In cross-examination, he admitted that at the time when the articles were seized from the house of the accused at village Salhetola, they were sitting in the police vehicle and had not gone to the place from where the club was recovered. From Mayana dam, only the club has been seized, before that, the clothes and two motorcycles had already been recovered by the police. In further cross-examination, he admitted that the club has been

seized in the police station. With respect to the memorandum and seizure, the evidence of this witness is inconsistent as at one point of time he stated that the police took them to the village for recovery of the items but only sat in the police vehicle only the club has been seized from the Mayana Dam he signed the seizure the memo in the village when the Panchama was prepared and later on he admitted tha the club has been seized at Police Station.

24. PW-8, Jagdu Ram Korram has stated in his evidence that the police personnel took him to village Salhebhat along with the Kartik Patel and Chaman Salam. At Salhebhat the accused persons were interrogated and then the accused persons disclosed that due to quarrel regularly raised by the deceased they fed up and committed his murder and committed his murder at Mayana Dam, the police took them to Mayana Dam and showed the place of occurrence from where the club has been seized; thereafter they took them to Ranwahi Culvert, where the dead body was found. In cross-examination, he admitted that the motorcycle has not been seized from the house of the accused persons. He admitted that the police had not recorded his statement.
25. From the aforesaid evidence, except for the motive, no other clinching evidence came on record to connect the accused

persons that they committed the murder of the deceased and thrown the dead body near Ranwahi Culvert. None of the witnesses has said that they saw the deceased along with the accused persons and also there is no changing evidence that on the date of the incident the deceased raised a quarrel under the influence of liquor and Ganja which have been objected by any of the neighbours. Though the witnesses have stated that the police has recorded their memorandum statement, the recording of their memorandum statement is suspicious as there are material discrepancies in the recording of their memorandum statement. The witness of the memorandum statement, Chaman Salam, has not been examined by the prosecution. Though he was a cited witness and only Dwarika Prasad Patel has been examined as PW-7.

26. In the present case, memorandum statements (Exs.P-9 and P-10) of the appellants have been proved by Investigating Officer Shashikala Uikey (PW-12), and on that basis, recoveries were made and the appellants were convicted.
27. A careful perusal of the memorandum statements of the appellants (Exs. P-9 and P-10) shows that they were recorded by the Investigating Officer, Shashikala Uikey (PW-12), in the presence of panch witnesses. In these statements, the appellants disclosed the concealment of the articles used in the commission of the offence, which were subsequently recovered at their instance.

28. 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.”

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

¹ AIR 2018 SC 5264

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 “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*³, in particular, paragraphs 23 to 29 thereof. The same read thus:

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

“... it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the

2 AIR 1947 PC 67

3 (2015) 1 SCC 253

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”

31. Reverting to the facts of the case in light of the principles of law laid down by their Lordships of the Supreme Court in **Asar Mohammad** (supra), only the factum of discovery of an object, the place from which it is produced, and the knowledge of the accused in that regard would be admissible under Section 27 of the Evidence Act. In the present case, pursuant to the memorandum statements of the appellants (Exs. P-9 and P-10), several articles were recovered at their instance. Therefore, to the extent the memorandum statements relate to the discovery of such articles and the knowledge of the appellants regarding their concealment, the same would be admissible under Section 27 of the Evidence Act; however, the incriminating portion containing

their confession regarding commission of the offence would not be admissible.

32. The Supreme Court in the matter of **Aghnoo Nagesia v. State of Bihar**⁴ has clearly held that confession to police whether in course of investigation or otherwise and confession made while in police custody would be hit by Section 25 of the Evidence Act and observed as under:-

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

4 AIR 1966 SC 119

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

other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.”

Their Lordships further held as under:-

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

33. In the case in hand, confessional statements (Exs.P-9, P-10) made by the appellants before the police officer is hit by Section 25 of the Evidence Act and no part of it is admissible under Section 27 of the Evidence Act. As such, we are of the considered opinion that alleged memorandum statements of the appellants (Exs.P-9, P-10) are hit by Section 25 of the Evidence Act and no part of it is admissible under Section 27 of the Evidence Act in view of decisions rendered by Privy Council in

Pulukuri Kotayya (supra) followed by the the Supreme Court in **Asar Mohammad** (supra).

34. Although blood has been found in the article allegedly seized from the accused person. However, there are discrepancies in the seizure of the club and clothes from the accused persons as the witnesses are not consistent in the seizure of the club and clothes for the accused persons. Even the presence of blood alone are not sufficient to connect the accused persons with the offence in question when the other evidences are not sufficient.
35. In the matter of ***Digambar Vaishnav and Another Vs. State of Chhattisgarh, 2019 (4) SCC 522***, the Hon'ble supreme Court has held :-

“14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

15. This Court in *Jaharlal Das v. State of Orissa*, (1991) 3 SCC 27, has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence,

there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

16. In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

- i.) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- ii.) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and
- iii.) 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 it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. In *Varkey Joseph v. State of Kerala*, 1993 Suppl (3) SCC 745, this Court has held that suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18. In *Sujit Biswas v. State of Assam*, (2013) 12 SCC 406, this Court, while examining the distinction between 'proof beyond reasonable doubt' and 'suspicion' has held as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place

of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense”.

36. It is settled principles of law that prosecution has Burden to prove its case beyond reasonable doubt and where two views are possible, arising based on the same evidence, the view which is favorable to the accused should be taken into consideration and the accused should be given benefit of doubt. In the matter of

Digambar Vaishnav (Supra) it has been held as under :

“19. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused,

should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence [See *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808].

37. Further, the trial Court has considered that the accused persons have either given false explanation or not explained the circumstances appears against them in their 313 CrPC statement which connect the link of the circumstantial evidence. Merely non explanation or false explanation is not a connecting link to hold conviction in case of circumstantial evidence, but it can only be considered to be an additional circumstance in case where all the other circumstances has duly been proved and the chain of circumstantial evidence has been completed unerringly pointing towards guilt of the accused persons.
38. In the matter of ***Shivaji Chintappa Patil Vs. State of Maharashtra, 2021 (5) SCC 626***, the Supreme Court has held that false explanation or non-explanation in 313 CrPC statement can only be used as an additional circumstance when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused. However, it cannot be used as a link to complete the chain of circumstance.
39. In view of the circumstances of the case and the evidence available on record, we are unable to sustain the conviction of the appellants for the alleged offence as there is a lack of sufficient cogent and clinching evidence and the chain of circumstances has not been completed, and there are various components

which are missing from the circumstances. By giving the benefit of doubt to the appellants, their appeals (**CRA No. 1063 of 2021** and **CRA No. 1066 of 2021**) are **allowed**. Both the appellants are acquitted from the alleged offences and impugned of conviction and sentence is hereby set aside.

40. The appellant- **Kaushal @ Deepak Nirmalkar** in **CRA No. 1063 of 2021** is in jail since 29.06.2019, whereas the appellant- **Lokesh Shori @ Loku** in **CRA No. 1066 of 2021** is in jail since 07.09.2021, i.e. from the date of judgment. They be released forthwith, if not required in any other case.
41. Keeping in view the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellants- **Kaushal @ Deepak Nirmalkar** and **Lokesh Shori @ Loku** are directed to furnish a personal bond for a sum of Rs. 25,000/- with one surety each in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.
42. The trial Court record along with a copy of this judgment be sent back to the trial Court concerned for compliance and necessary action.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice