Ramanand @ Nandlal Bharti vs The State Of Uttar Pradesh on 13 October, 2022

REPORTABL

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 64-65 OF 2022

Ramanand @ Nandlal Bharti …Appellant

Versus

State of Uttar Pradesh …Respondent

JUDGMENT

J.B. PARDIWALA, J.

1. Mark Twain, the great American writer and philosopher, once said:

> "It is like this, take a word, split it up into letters, the letters, may individually mean nothing but when they are combined they will form a word pregnant with meaning. That is the way how you have to consider the circumstantial evidence. You have to take all the circumstances together and judge for yourself whether the prosecution have established their case."

2. These appeals, by special leave, arise out of the judgment and order dated 09.07.2021 passed by the High Court of Judicature at Allahabad, Bench at Lucknow confirming the death sentence awarded to the accused appellant herein.

3. The accused appellant has been held guilty of the offence punishable under Section 302 of the Indian Penal Code (for short, "the IPC"). The trial court (Sessions Judge, Lakhimpur Kheri) sentenced the accused appellant to death under Section 302 of the IPC and pay fine of Rs. 20,000/☐ and in default of payment of fine to undergo further rigorous imprisonment for one year. While the Sessions Judge, Lakhimpur Kheri made a reference to the High Court for confirmation of death sentence under Section 366 of the Code of Criminal Procedure (for short, "the CrPC"), the accused appellant preferred Criminal Appeal No. 1959 of 2016 putting in issue his conviction and sentence. The High Court dismissed the Criminal Appeal No. 1959 of 2016 filed by the accused appellant thereby confirming the death reference under Section 366 of the CrPC.

4. In such circumstances referred to above, the accused appellant is here before this Court with the present appeals. CASE OF THE PROSECUTION

5. According to the case of the prosecution, the accused appellant Ramanand was married to Sangeeta (deceased) for the past 12 years before the incident in question. In the wedlock, five children were born – one son and four daughters, by name Gaurav Ambedkar aged 10 years, Tulsi aged 7 years, Lakshmi aged 5 years, Kajal aged 3 years and Guddi aged one and a half month.

6. On the fateful night of the incident i.e. the intervening night between 21st & 22nd of January, 2010 while the wife and four children were sleeping in the house situated at the village Basdhiya, the accused appellant is said to have mercilessly clobbered all the five to death with a sharp cutting weapon called Banka. At the relevant point of time, the son of the accused appellant was not residing with the family. The son aged 10 years at the time of incident was residing at a different village with one police constable. The motive behind the crime as put forward by the prosecution is the extra marital affair of the accused appellant with one married lady by name Manju. According to the prosecution, the accused appellant desperately wanted to marry Manju. Further, the wife of the accused appellant namely, Sangeeta (deceased) was highly opposed to the relationship of her husband with Manju. In such circumstances, it is the case of the prosecution that the accused appellant decided to terminate not only his wife Sangeeta but also his four minor daughters.

7. It all started with the First Information Report (FIR) lodged by the PW□1, Shambhu Raidas, who happens to be the brother□in□law of the accused appellant (husband of the accused appellant's sister). The FIR came to be lodged by the PW□1, Shambhu Raidas at the Dhaurhara Police Station, District Lakhimpur Kheri on 22.01.2010 at 9:45 A.M. The FIR (Ext. 40) reads thus:□"To, Station House Officer, Kotwali□Dhaurahara, District Kheri. Sir, It is submitted that the applicant Shambhu Raidas son of Late Shri Shyam Lal Raidas is the resident of village – Naamdar Purwa, Police Station – Kotwali Dhaurahara, District Lakhimpur Kheri. Today on 22.01.2010 when I was present at my home then at about 6.30 o'clock in the morning my saala (brother□in□law) Ramanand Raidas son of Gobre Raidas resident of Naamdar Purwa, Hamlet□Amethi, Police Station Dhaurahara, Lakhimpur Kheri came and told that, "Last night I was sleeping with my wife & children. Then at about 1.00 o'clock in the night someone knocked at my door, I woke up and asked who was there but none replied. Then I went to the roof of my house and saw that four persons were standing outside the house. I switched on the torch. I saw that that one person who was resident of village□Basadiha, Police Station Ishanaga and known to Ramanand fired on me by gun; I escaped and jumped and came down. Then one miscreant hit on my head by the butt of a gun. I ran away and hid in the fields and saw that the miscreants climbed into my home. I saw, smoke coming out of my home. Then I ran to Behnan Purwa and told about the incident at Crusher of Khaliq and to the people at Ramnagar Lahbadi but none came ahead. I came running here". Then I alongwith my nephew Pratap reached the house of Ramanand and saw that the wife of Ramanand namely Sangita, aged about 35 years, daughters Tulsi aged about 7 years, Laxmi aged about 5 years, Kajal aged about 3 years and a girl child of about 1½ month had been killed and the dead bodies were burning. Then I and Pratap started extinguishing the fire by pouring water with the aid of a bucket. Behind us Ramanand too came to his house & home, sat in the courtyard and started warming himself in front of the fire (Aag Taapne laga). On seeing this, both of us scolded him that, "Your wife□daughters have

been killed and you are sitting in the courtyard and warming yourself before fire". On this Ramanand got annoyed and went outside the house. The dead bodies are lying at the spot. I came to inform. Lodge the case and take legal action." Thumb Impression (T.I.) Shambhu Raidas, Applicant, Shambhu Raidas son of Late Shyam Lal Raidas, Resident of village Naamdar Purwa, Hamlet Amethi, Police Station Dhaurahara, District Khera. Date 22.01.2010." [Emphasis supplied]

8. Thus, it is the case of the prosecution that after the incident the accused appellant went straight to the house of the PW□1, Shambhu Raidas at about 6:30 in the morning. The accused appellant is said to have informed the PW□1, Shambhu Raidas as to what had transpired at around 1 o'clock in the night. PW□1, Shambhu Raidas thought fit to inform the police and accordingly lodged the FIR as aforesaid against four unidentified persons.

9. Upon registration of the FIR, the police started the investigation. The investigating officer carried out the inquest proceedings of all the five deceased persons. The dead bodies were sent to the Civil Hospital for post mortem. Thereafter, the investigating officer prepared a site plan of the crime scene (Ext. 6). The post mortem reports revealed that all the five deceased had suffered incised wounds mostly on the head and the neck region. The burn injuries were certified to be post mortem, whereas the incised wounds were certified as ante mortem injuries. The cause of death assigned in all the post mortem reports is shock and haemorrhage as a result of ante mortem head injuries.

10. The accused appellant is shown to have been arrested by the investigating officer on 24th of January, 2010. After the arrest and while the accused appellant was in custody, he is said to have made a voluntary statement that he would show the place where he had hidden the weapon of offence i.e. Banka and his blood stained clothes. Accordingly, the discovery panchnama was drawn of the weapon of offence (Ext. 5). It appears that in the course of investigation, the investigating officer recorded the statements of PW□3, Baburam Hans son of Ramcharan and PW□4, Ram Kumar son of Paanchoo before whom the accused appellant is said to have made extra judicial confession. The investigating officer also recorded the statement of the PW□1, Shambhu Raidas, the first informant and PW□2, Chhatrajpal Raidas (brother of the deceased Sangeeta).

11. At the end of the investigation, charge sheet came to be filed for the offence of murder punishable under Section 302 of the IPC. The Magistrate committed the case to the Court of Sessions Judge, Lakhimpur Kheri under Section 209 of the CrPC. Upon committal, the Sessions Trial No. 379 of 2010 came to be registered.

12. On 06.07.2010 the Additional District and Sessions Judge, Fast Track Court, Lakhimpur Kheri framed charge against the accused appellant. The statement of the accused appellant was recorded. The appellant did not admit the charge and claimed to be tried.

13. The prosecution adduced the following oral evidence in support of its case:

S. No.	Oral Evidence – Witness
1.	PW-1 Shambhu Raidas
2.	PW-2 Chhatrapal Raidas
3.	PW-3 Babu Ram Hans

4. PW-4 Ram Kumar
5. PW-5 Dr. A.K. Sharma
6. PW-6 S.I. Uma Shankar Mishra
7. PW-7 Inspector Yogendra Singh
8. PW-8 Dr. S.P. Singh
9. PW-9 Dr. Ankit Kumar Singh
10. PW-10 H.M. Dhani Ram Verma

a4. The prosecution also adduced the following documentary evidence:

S.No.	Documentary Evidence
1.	Tahreer /Written Complaint [Ex. Ka-1]
2.	Post-mortem report of deceased Laxmi [Ex. Ka-2]
3.	Post-mortem report of deceased Kajal [Ex. Ka-3]

4. Post-mortem report of deceased Chhoti @ Guddi [Ex. Ka-4]

5. Discovery memorandum of murder weapon and clothes [Ex. Ka-5]

6. Site plan of crime scene [Ex. Ka-6]

7. Site plan of discovery of murder weapon [Ex. Ka-7]

8. Charge sheet [Ex. Ka-8]

9. Seizure memo of ash-mixed and plain soil [Ex. Ka-9]

10. Inquest Report of deceased Sangeeta Devi [Ex. Ka-10]

11. Photo lash of deceased Sangeeta [Ex. Ka-11]

12. Police Paper No. 13 of deceased Sangeeta [Ex. Ka-12]

13. Specimen seal regarding deceased Sangeeta [Ex. Ka-13]

14. Letter to Reserve Inspector regarding deceased Sangeeta [Ex. Ka-14]

15. Letter to C.M.O. regarding deceased Sangeeta [Ex. Ka-15]

16. Inquest Report of deceased Km. Tulsi [Ex. Ka-16]

17. Photo lash of deceased Km. Tulsi [Ex. Ka-17]

18. Specimen seal regarding deceased Km. Tulsi [Ex. Ka□18]

19. Letter to Reserve Inspector regarding deceased Km. Tulsi [Ex. Ka□19]

20. Letter to C.M.O. regarding deceased Km. Tulsi [Ex. Ka□20]

21. Police Paper No. 13 of deceased Km. Tulsi [Ex. Ka□21]

22. Inquest Report of deceased Km. Kajal [Ex. Ka□22]

23. Police Paper No. 13 of deceased Km. Kajal [Ex. Ka□23]

24. Photo lash of deceased Km. Kajal [Ex. Ka□24]

25. Specimen seal regarding deceased Km. Kajal [Ex. Ka□25]

26. Letter to Reserve Inspector regarding deceased Km. Kajal [Ex. Ka□26]

27. Letter to C.M.O. regarding deceased Km.Kajal [Ex. Ka□27]

28. Inquest Report of deceased Km. Laxmi [Ex. Ka□28]

29. Photo lash of deceased Km. Laxmi [Ex. Ka□29]

30. Police Paper No. 13 of deceased Km. Laxmi [Ex.

Ka□30]

31. Specimen seal regarding deceased Km. Laxmi [Ex. Ka□31]

32. Letter to Reserve Inspector regarding deceased Km. Laxmi [Ex. Ka□32]

33. Letter to C.M.O. regarding deceased Km. Laxmi [Ex. Ka□33]

34. Inquest Report of deceased Km. Chhoti [Ex. Ka□34]

35. Photo lash of deceased Km. Chhoti @ Guddi [Ex. Ka□35]

36. Police Paper No. 13 of deceased Km. Chhoti @ Guddi [Ex. Ka□36]

37. Specimen seal regarding deceased Km. Chhoti @ Guddi [Ex. Ka□37]

38. Letter to Reserve Inspector regarding deceased Km. Chhoti @ Guddi [Ex. Ka□38]

39. Letter to C.M.O. regarding deceased Km. Chhoti @ Guddi [Ex. Ka-39]

40. Chik FIR [Ex. Ka-40]

41. Copy of general diary [Ex. Ka-41]

42. Post-mortem report of deceased Tulsi [Ex. Ka-42]

43. Post-mortem report of deceased Sangeeta [Ex. Ka-43]

44. Medical examination report of the accused [Ex.

Ka-44]

15. After completion of the oral as well as documentary evidence, the statements of the accused appellant under Section 313 of the CrPC were recorded in which the accused appellant stated that he was innocent and had been falsely implicated in the alleged crime. The accused appellant took the defence that few individuals of a rival party had committed the murder of his wife and daughters as Sangeeta (deceased) was the sole eye witness to the murder of the brother of the accused appellant. The trial against the accused persons who had killed the brother of the accused appellant was pending at that point of time. The rival party wanted to terminate Sangeeta and for that reason, four individuals came to his house at about 1 o'clock in the night of 22nd of January, 2010 and mercilessly killed all his five family members and thereafter set the bodies on fire. The trial court disbelieved such defence of the accused appellant.

16. At the conclusion of the trial, the Trial Judge convicted the accused appellant for the offence under Section 302 of the IPC and sentenced him to death relying upon the following incriminating circumstances:

> (i) Discovery of weapon of offence and blood-stained clothes at the instance of the accused appellant.
>
> (ii) Extra Judicial confession of the accused appellant before two prosecution witnesses.
>
> (iii) Strong motive to commit the crime.
>
> (iv) False explanation at the instance of the accused appellant and his unnatural conduct.

17. The appeal filed by the accused appellant in the High Court also failed and was ordered to be dismissed.

18. Being dissatisfied, the accused appellant has come up with the present appeals.

SUBMISSIONS ON BEHALF OF THE ACCUSED APPELLANT

19. Mr. S. Niranjan Reddy, the learned senior counsel appearing for the accused appellant vehemently submitted that both, the trial court and the High Court committed a serious error in holding the accused appellant guilty of the offence of murder of his wife and four minor daughters. He would submit that in the course of the trial the prosecution failed to lead any credible evidence to connect the accused appellant with the alleged crime. Mr. Reddy vehemently submitted that both the Courts below ought not to have accepted the evidence of PW-3, Babu Ram Hans and PW-4, Ram Kumar resply so as to believe the extra judicial confession alleged to have been made by the accused appellant before them. Mr. Reddy submitted that both the Courts below should have discarded the evidence of discovery of weapon and the blood-stained clothes as the prosecution has not been able to prove the authorship of concealment. He would submit that in a case of circumstantial evidence, the prosecution is required to establish the continuity in the links of the chain of the circumstances so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused.

20. Mr. Reddy vociferously submitted that the PW-3 and PW-4 resply are 'got up' witnesses. The evidence in the form of extra judicial confession is nothing but a fabricated piece of evidence at the instance of the investigating officer just with a view to bolster up the case of the prosecution in the absence of any direct evidence. He would submit that both these prosecution witnesses are absolutely unreliable.

21. Mr. Reddy submitted that in a case which is based on circumstantial evidence, motive plays an important role. He would submit that the prosecution has not been able to prove the motive behind the crime. The extra marital affair of the accused appellant with Manju and the desire of the accused appellant to marry Manju at any cost has been put forward as the motive behind the crime. However, there is no cogent and credible evidence in that regard. He would submit that even otherwise an accused cannot be convicted and sentenced to death only on the circumstance of motive.

22. Mr. Reddy would submit that the prosecution has not been able to explain the injuries suffered by the accused in any manner. He would submit that on the contrary, it is the accused who has been able to explain how he suffered the injuries on his head and chest while putting forward his defence before the High Court in his statement recorded under Section 313 of the CrPC. Having noticed that the accused appellant had suffered injuries on his head and was bleeding, the accused appellant along with one police constable was sent for medical examination at the District Hospital, District Kheri. The accused appellant was taken to the hospital by a constable viz. Brij Mohan Singh, Dhaurhara, District Kheri. The PW-9, Dr. Ankit Kumar Singh has issued a medical certificate Ext. 44 stating the nature of the injuries noticed on the body of the accused appellant.

23. Mr. Reddy further submitted that once the extra judicial confession alleged to have been made before the two prosecution witnesses i.e. the PW-3 and PW-4 resply and the evidence of the discovery of the weapon of offence is discarded and eschewed from consideration, then nothing

remains in the case of the prosecution.

24. Lastly, Mr. Reddy would submit that howsoever unnatural one may find the conduct of the accused after the alleged crime, the same, by itself, is not sufficient to convict the accused for an offence like murder. In such circumstances referred to above, Mr. Reddy prayed that there being merit in his appeals, those may be allowed. He prayed that the order of conviction and death penalty be set aside and the appellant may be acquitted of the charge of murder. SUBMISSIONS ON BEHALF OF THE STATE

25. Mr. Adarsh Upadhyay, the learned counsel appearing for the respondent-State of Uttar Pradesh has on the other hand vehemently opposed the appeals. He would submit that no error, not to speak of any error of law, could be said to have been committed by the Courts below in holding the accused appellant guilty of the offence of murder and imposing death penalty upon him for the gruesome murder of five of his family members. He would submit that there is no good reason to disbelieve the evidence of PW-3, Babu Ram Hans and PW-4, Ram Kumar resply before whom the accused appellant made the extra judicial confession. He further submitted that there is no good reason to even disbelieve the discovery of the weapon of offence at the instance of the accused appellant. He would submit that over and above the two incriminating circumstances in the form of extra judicial confession and the discovery of weapon of offence, there was a strong motive for the accused appellant to commit the crime.

26. Mr. Upadhyay vehemently submitted that the accused appellant desperately wanted to get married to Manju and his wife Sangeeta (deceased) was coming in his way. The accused appellant decided not only to terminate his own wife but also mercilessly killed four of his innocent minor daughters so that he may not have to take care of them after marrying Manju. He would submit that it is one of the most heinous and gruesome crimes committed by the accused appellant.

27. He further submitted that the prosecution is not obliged to explain the injuries suffered by the accused appellant as those injuries were found to be superfluous in nature. The prosecution is obliged to explain the injuries suffered by an accused, if any, only if such injuries are grievous in nature which may throw a considerable doubt on the very genesis or the origin of the case of the prosecution. He would submit that the defence of the accused appellant that four unidentified persons were the assailants stands falsified by his own unnatural conduct. Mr. Upadhyay would submit that the accused appellant has not been able to explain in what circumstances the smell of kerosene was coming from his clothes as deposed by the witnesses and the doctor. He would argue that if out of fear he had escaped from his house and ran away, then how he came in contact with kerosene. He would submit that the case of the accused appellant that one of the unidentified persons fired a shot from a firearm is also falsified as no cartridge or any pellets were recovered from the place of occurrence.

28. Mr. Upadhyay would submit that the scope of the present appeals filed under Article 136 of the Constitution is very limited. It is only in exceptional circumstances that this Court may disturb the concurrent findings of guilt recorded by the trial court and High Court respectively. He would submit that the view taken by the trial court and the High Court is correct and in no manner the

appreciation of evidence could be termed as perverse.

29. In such circumstances referred to above, Mr. Upadhyay prays that there being no merit in the appeals filed by the accused appellant, those may be dismissed.

ORAL EVIDENCE ON RECORD

30. The PW□1, Shambhu Raidas is the first informant. He happens to be the brother□in□law of the accused appellant i.e. husband of the accused appellant's sister. On 22.01.2010 while he was at his house, the accused appellant is said to have visited him at 6:30 in the morning and was informed that at 1 o'clock in the night four unidentified persons knocked at his door. The accused appellant woke up and enquired who was it. As no one replied, the accused appellant went on the roof of his house and saw four persons standing outside his house. The accused appellant is said to have seen those four persons under the light of a torch. The accused appellant informed the PW□1 that one of the persons was from the village Basadiha. One among the four persons fired at the accused appellant. The accused appellant is said to have jumped from the roof top. At that point of time, one of the four hit the accused appellant on his head with the butt of the gun. The accused appellant thereafter ran away towards a farm. The accused appellant is said to have witnessed those persons entering into his house from a distance. After sometime, he noticed smoke coming out of his house. The accused appellant went to Behnanpurwa, Khalikpurwa and Lahki for help but he was not able to procure any help. PW□1 has deposed that after the accused appellant narrated the entire incident, he himself along with one Pratap reached the house of the accused appellant. The accused appellant also accompanied the PW□1, Shambhu Raidas and Pratap. When the PW□1 reached the house of the accused appellant, he saw the dead bodies of Sangeeta and the four daughters burning. PW□1 with the help of Pratap started to douse the fire with water. PW□1 has deposed that while he himself and Pratap were trying to douse the fire, the accused appellant took out his blood stained baniyaan (vest) and threw it in the fire. The accused appellant thereafter started warming his body. On seeing this, the PW□1 got annoyed and told the accused appellant that how could he sit beside the fire when his wife and children had been killed. The PW□1, Shambhu Raidas thereafter went to the Dhaurhara Police Station and lodged the FIR. In the FIR, he named four unidentified persons as the suspects. The PW□1 has further deposed about the illicit relationship of the accused appellant with Manju. He has deposed that while the accused appellant was married to Sangeeta, he decided to get married to Manju. The engagement ceremony of Manju with accused appellant Ramanand was also performed. However, before the accused appellant could get married to Manju, he came to be arrested in connection with one offence registered against him under Section 307 of the IPC. He has deposed that Sangeeta (deceased) was highly opposed to the idea of her husband Ramanand getting married to Manju. He has further deposed that the accused appellant killed his wife and four children in the hope that he may receive some monetary compensation from the Government. In his cross examination, the PW□1 has deposed that his house is at a distance of one kilometre from the house of the accused appellant. When the accused appellant reached his house at 6:30 in the morning on the day of the incident, the PW□1 found the accused appellant in lot of tension. In his cross examination, he has categorically deposed that he was at the police station up to 2 o'clock in the night i.e. upto 23 rd of January, 2010 at 2 A.M. He has deposed in so many words that the accused appellant Ramanand was also with him at the police station all throughout. He has deposed that

while he left the police station, Ramanand – accused appellant was not allowed to leave the police station. He has deposed that Ramanand was challaned by the police on the third day, till then Ramanand was continuously staying at the police station.

31. What emerges from the evidence of the PW□1 is that after the incident, the accused appellant visited his house at 6:30 in the morning and narrated as to what had happened. PW□1 along with one Pratap thereafter reached the house of the accused appellant and saw the dead bodies of Sangeeta and four minor daughters burning. PW□1 tried to douse the fire by pouring water on the dead bodies with the help of Pratap. PW□1 has deposed about the illicit relationship of the accused appellant with Manju. However, what is important in the evidence of the PW□1 is that from the time the PW□1 reached the police station till the last the accused appellant was at the police station under the surveillance of the police.

32. The prosecution has examined the PW□2, Chhatrapal Raidas. The PW□2 happens to be the brother of the deceased Sangeeta Devi. In his examination in chief, he has deposed about the extra marital affair of the accused appellant with Manju. He has also deposed that ten days before the incident, Sangeeta had visited his house and had narrated about the harassment that was meted towards her by the accused appellant. In his cross examination, he has deposed that he came to know about the incident at 7 o'clock in the morning through Ramanand. According to the PW□2, Ramanand had visited his house and was informed that his wife and four children were burning in the house. According to the PW□2, the accused appellant saying so left his house. The PW□2 has further deposed in his cross examination that Pratap and PW□1, Shambhu Raidas were to be seen at the house of the accused appellant dousing the fire with water. He has deposed that villagers were standing outside the house of the accused appellant. He has deposed that the clothes of Ramanand were soaked with blood. After sometime, the Police Inspector reached the place of incident. The PW□2 has deposed that between 8 A.M. and 9 A.M. the police took the accused appellant to the police station. He has deposed that within no time, it was confirmed that none else but Ramanand□ accused appellant was the assailant.

33. What emerges from the evidence of the PW□2 is that the accused appellant was in an extra marital relationship with Manju and desperately wanted to get married to Manju. Because of the extra marital affair, Sangeeta was being harassed by the accused appellant. However, what is important to note in the evidence of the PW□2 is that Ramanand had visited his house also at 7 o'clock in the morning. The PW□2 also saw Pratap and PW□1, Shambhu Raidas at the house of the accused appellant trying to douse the fire with water. One important feature of the deposition of the PW□2 is that the accused appellant was taken away by the police between 8 A.M. and 9 A.M. on the day of the incident.

34. The prosecution has examined the PW□3, Babu Ram Hans to prove the extra judicial confession. The PW□3 in his examination in chief has deposed that on 23.01.2010 while he was at his house, the accused appellant came about 9 o'clock in the morning and informed about the incident. According to the PW□3, the accused appellant is said to have confessed before him of having brutally killed his wife and four minor children. According to the PW□3, the accused appellant sought his help as the PW□3 was a leader of the BSP ruling party at the relevant point of time. However, the PW□3

declined to help the accused appellant in any manner. The PW□3 has deposed that he had narrated to the police inspector about the confession said to have been made before him by the accused appellant and his statement was also recorded by the police. The PW□3 in his cross examination has deposed that his village is at the distance of 30 to 35 kilometres from Naamdar Purwa.

35. We shall explain as to how we are not inclined to believe the evidence of the PW□3, Babu Ram Hans a little later in our judgment.

36. The prosecution has examined the PW□4, Ram Kumar son of Paanchoo. It is the case of the prosecution that even before the PW□4, the accused appellant had made an extra judicial confession about the crime. The PW□4 in his examination in chief has deposed that at the relevant time, he was the member of the District Panchayat of BSP. He has deposed that on the very day i.e. 22.01.2010 at 6:30 in the morning Ramanand came to his house and informed that his wife and children had been assaulted and set on fire. The PW□4 told the accused appellant that he would help him provided he would tell the truth. According to the PW□4, thereafter the accused appellant confessed before him that he had killed his wife and children as he wanted to marry Manju and his wife Sangeeta was opposing him to get married. He has further deposed in his examination in chief that when he reached the village of the accused appellant, he saw that the son of Ramanand was sitting on Ramanand's lap and Ramanand was crying and talking to his son saying that he had killed his mother and sisters. In his cross examination, he has deposed that when the accused appellant visited his house at 6:30 in the morning, he noticed that there was blood on his shirt and pant. He has further deposed in his cross examination that he had informed the police officers that the accused appellant had visited his house at 6:30 in the morning.

37. What emerges from the evidence of the PW□4 is that on 22.01.2010, the accused appellant had visited the house of the witness at 6:30 in the morning and made an extra judicial confession about the alleged crime before him. We are not prepared to even believe the testimony of the PW□4. We shall assign reasons a little later as to why we are not ready to believe the PW□4, Babu Ram Hans.

38. The prosecution has examined the PW□5, Dr. A.K. Sharma who conducted the post mortems of the deceased Lakshmi, Kajal and Chhoti @ Guddi resply. Dr. Sharma in his examination in chief has deposed that on 23.01.2010, he was posted as a radiologist at the District Mahila Chikitsalaya, Lakhimpur. On that day, three dead bodies were brought to the hospital for post mortem. He has deposed that he had performed the post mortems of all the three dead bodies. He has recorded the injuries noticed by him in the post mortem reports of each of the three deceased persons. According to Dr. Sharma, the cause of death of all the three deceased persons was shock and haemorrhage as a result of the ante mortem injuries. He has deposed that he also noticed post mortem burn injuries on all the three dead bodies. He has deposed that the injuries could have been caused by a sharp□ edged weapon like Banka.

39. Nothing turns around so far as the evidence of the PW□5, Dr. A.K. Sharma is concerned.

40. The prosecution has examined the PW□6, Uma Shankar Mishra. At the relevant time, the PW□6, Uma Shankar Mishra was serving as the Sub□Inspector, Chowki in□charge Bahjam, Police Station

Neem Gaon, District Lakhimpur Kheri. He has deposed that on 24 th of November, 2010, he was posted at the Dhaurhara Police Station. According to him, the accused appellant was arrested on 24.11.2010 and was taken in custody. While in custody, the accused appellant is said to have made a statement on his own free will and volition to show the place where he had hidden the weapon of offence i.e. Banka and his blood stained clothes. According to the PW-6, upon such statement being made by the accused appellant, he along with the investigating officer, PW-7 left for the place as led by the accused appellant. On the way, the PW-6 is said to have picked up PW-2, Chhatrapal son of Rameshwar and Pratap son of Asharfi Lal, both residents of Naamdar Purwa to act as the panch witnesses for the purpose of drawing the discovery panchnama. According to the PW-6, the accused appellant led the police party to a coriander field and took out the weapon of offence i.e. Banka and also the blood stained clothes. The discovery panchnama was accordingly drawn under Section 27 of the Evidence Act, 1872. We do not propose to look into the cross examination of the PW-6 as there is hardly anything in the cross examination and not relevant for our purpose.

41. The prosecution has examined the PW-7, Inspector Yogendra Singh as the investigating officer. The PW-7 in his examination in chief has deposed that he had recorded the statements of the PW-2, Chhatrapal Raidas and others on 23.01.2010. He has deposed that he arrested the accused appellant on 24.01.2010. He has deposed that he recorded the statements of the PW-3 and PW-4 resply on 25.01.2010. Nothing turns around in the cross examination of the PW-7, Yogendra Singh.

42. It is not necessary for us to discuss the evidence of the PW-8 Dr. S.P. Singh. Dr. Singh had performed the post mortems of the deceased Tulsi and Sangeeta.

43. The prosecution has examined the PW-9, Dr. Ankit Kumar Singh. According to the PW-9, the accused appellant was brought at the C.H.C. Dhaurhara on 22.01.2010 at 10:30 in the morning for medical examination. He has deposed that on 22.01.2010 he was in-charge Medical Officer at the C.H.C. Dhaurhara. He has deposed that the accused appellant Ramanand was brought at the C.H.C. Dhaurhara by Constable Brij Mohan Singh of Police Station Dhaurhara along with a police yadi. During the medical examination of the accused appellant, he noticed the following injuries on the body of the accused appellant:

> "1. Lacerated wound 2 cm x 0.5 cm on left side of head, 10 cm above left ear.
>
> 2. Lacerated wound 5 cm x 0.5 cm on middle of the head; 2 cm away from Injury 1.
>
> 3. Lacerated wound 4.5 cm x 0.5 cm on middle of the head; 1 cm away from Injury No. 2.
>
> 4. Superficial burn injury on left side of neck in length 8 cm x 6 cm.
>
> 5. Superficial burn injury on right side of neck in length 10 cm x 7 cm."

44. Dr. Singh has further deposed that all the injuries were simple in nature and fresh. During the medical examination, the clothes of the accused appellant were smelling of kerosene oil. In the cross

examination of Dr. Singh, he has deposed that the injuries Nos. 1, 2 and 3 resply noted during the medical examination of the accused appellant could have been caused with the butt of a gun. He has deposed that the injury Nos. 4 and 5 resply could have been suffered by the accused appellant while trying to rescue. He has deposed that at the time of medical examination of the accused appellant, there was no fresh bleeding from the wounds. At the time of cleaning the wounds with cotton, the blood started to ooze. He has deposed that the injuries could not have been 12 hours old.
PRINCIPLES OF LAW RELATING TO APPRECIATION OF CIRCUMSTANTIAL EVIDENCE

45. In 'A Treatise on Judicial Evidence', Jeremy Bentham, an English Philosopher included a whole chapter upon what lies next when the direct evidence does not lead to any special inference. It is called Circumstantial Evidence. According to him, in every case, of circumstantial evidence, there are always at least two facts to be considered:

> a) The Factum probandum, or say, the principal fact (the fact the existence of which is supposed or proposed to be proved; &
>
> b) The Factum probans or the evidentiary fact (the fact from the existence of which that of the factum probandumis inferred).

46. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:

> 1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
>
> 2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;
>
> 3. The circumstances, if 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 but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved.

47. There cannot be any dispute to the fact that the case on hand is one of the circumstantial evidence as there was no eye witness of the occurrence. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement and guilty of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye

witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard.

48. A three-Judge Bench of this Court in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, held as under:

> "152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :
>
> 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.
>
> 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 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047] 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

49. In an Essay on the Principles of Circumstantial Evidence by William Wills by T. and J.W. Johnson and Co. 1872, it has been explained as under:

> "In matters of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions. ?· The term PRESUMPTIVE is frequently used as synonymous with CIRCUMSTANTIAL EVIDENCE; but it is not so used with strict accuracy, The word" presumption," ex vi termini, imports an inference from facts; and the adjunct "presumptive," as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference. Circumstances generally, but not necessarily, lead to particular inferences; for the facts may be indisputable, and yet their relation to the principal fact may be only apparent, and not real; and even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.
>
> The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the reductio ad absurdum."

50. Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

ANALYSIS OF THE INCRIMINATING CIRCUMSTANCES RELIED UPON BY THE TRIAL COURT AND THE HIGH COURT DISCOVERY OF WEAPON OF OFFENCE AND BLOOD□STAINED CLOTHES

51. It is the case of the prosecution that on 24.01.2010 the accused appellant was picked up by the investigating officer from nearby a bus stand and was arrested in connection with the alleged crime. After the arrest of the accused appellant and while he being in the custody at the police station, he is said to have on his own free will and volition made a statement that he would like to point out the place where he had hidden the weapon of offence (Banka) and his blood□stained clothes after the commission of the alleged crime. According to him, after such statement was made by the accused appellant, he along with his subordinates set forth for the place as led by the accused. There is something very unusual, that we have noticed in the oral evidence of the investigating officer. According to him while the police party along with the accused were on their way, all of a sudden, the investigating officer realized that he should have two independent witnesses with him for the purpose of drawing the panchnama of discovery. In such circumstances, while on the way the investigating officer picked up PW□2, Chhatarpal Raidas and Pratap to act as the panch witnesses. According to the investigating officer the accused led them to a coriander field and from a bush he took out the weapon of offence (Banka) and the blood□stained clothes. The weapon of offence and the blood□stained clothes were collected in the presence of the two panch witnesses and the panchnama Exh. 5 was accordingly drawn. The weapon of offence and the blood stained clothes thereafter were sent for the Serological Test to the Forensic Science laboratory. We are of the view that the Courts below committed a serious error in relying upon this piece of evidence of discovery of a fact, i.e., the weapon & clothes at the instance of the accused as one of the incriminating circumstances in the chain of other circumstances. We shall explain here below why we are saying so.

52. Section 27 of the Evidence Act, 1872 reads thus:

> "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."

53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first

part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

54. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW□2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

55. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.

56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW□7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the

panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

57. Let us see what has been exactly stated in the discovery panchnama (Exh.5) drawn on 24.01.2010. We quote the relevant portion as under:

> "Today on 24.1.2010, the arrested accused Ramanand alias Nandlal Bharti son of Late Shri Gobre, resident of Naamdar Purwa, Hamlet Amethi, original resident of village Basadhiya, Police Station Isanagar, District Lakhimpur Kheri has been taken out of the lock up, taken in confidence and then interrogated by me the Station House Officer Yogendra Singh before Hamrah S.S.I. Shri Uma Shankar Mishra, S.I. Shri Nand Kumar, Co. 374 Mo. Usman, Co. 598 Prabhu Dayal, Co. 993 Santosh Kumar Singh, Co. 394 Shrawan Kumar then he confessed the offence occurred in the incident and weepingly said in apologizing manner that, "I myself have committed this crime to get government grant for being a rich man and to marry Km. Manju D/o Kanhai, resident of Pakadiya, Police Station Tambaur, District Sitapur regarding whereof the detailed statement has been recorded by you. The baanka used in the incident and the pant shirt, on which blood spilled from the bodies of deceased persons got stained and which had been put off by me due to fear, have been kept hidden at a secret place by me which I can get recovered by going there." In expectation of recovery of murder weapon and blood stained clothes, I the Station House Officer Yogendra Singh alongwith aforesaid Hamrahis departed carrying accused Ramanand alias Nandlal Bharti by official jeep UP70AG0326 alongwith driver Raj Kishor Dixit for the destination pointed out by the accused, vide Rapat No. 7 time 07.15..." [Emphasis supplied]

58. We shall now look into the oral evidence of the PW 7, Investigating Officer wherein, in his examination in chief, he has deposed as under:

> "In January 2010 I was posted as Station House Officer, Kotwali Dhaurahara. On 22.1.10, I myself had taken the investigation of aforesaid case. On that day I had copied chik, rapat and recorded the statements of chik writer H. Constable Dhaniram Verma and complainant of the case. After recording the statement of complainant of the case Shambhu Raidas I inspected the occurrence spot on his pointing out and prepared the site plan which is present on record; on which Exhibit Ka 6 has been marked. And I had also recorded the statement of hearsay witnesses Ahmad Hussain and Nizamuddin. On 23.1.10, I recorded the statements of witnesses Kshatrapal, Rustam Raidas. On 24.1.10, I arrested accused Ramanand and recorded his statement and when he expressed that he may get recovered the murder weapon

used in the incident, I recovered the murder weapon baanka before the witnesses on his pointing out; which had been sealed□stamped at the spot and its recovery memo had been prepared at the spot itself, which is present on record as Exhibit Ka□5....” [Emphasis supplied]

59. We shall also look into the oral evidence of the PW□6, Uma Shankar Mishra who at the relevant point of time was serving as a Sub□Inspector Chowki In□charge Bahjam, Police Station. It appears that the PW□6 had also participated in the proceedings of discovery panchnama. He has deposed in his examination in chief as under:

“On 24.11.2010, I was posted at Police Station□Dhaurahara. That day, Ramanand S/o Gobre Rio Naamdar Purwa, Police Station□Dhaurahara, domicile of village Basadhiya, Police Station□Isha Ganj, District□Kheri, the arrested accused of Crime No. 49/10 U/S 302 State versus Ramanand alias Nandlal Bharti, was taken out of male lock up by the then In□charge Inspector and followers S.I. Nand Kumar, Co. Mo. Usman, Co. Prabhu Dayal, Co. Santosh Kumar Singh and Co. Shravan Kumar, and interrogated by the Incharge Inspector in my presence, during which he confessed and told that he would get recovered the murder weapon used in the murder and his blood stained pant□shirt which he had kept hidden at a secret place. On this, expecting the recovery of murder weapon and blood stained clothes, the SHO along with followers and force, carrying accused Ramanand with him, departed on an official jeep ~ vide GD No. 7 time 7:15 a.m dated 24.01.2010. On the way, he picked up public witnesses Chhatrapal S/o Rameshwar and Pratap S/o Asharfi Lal, both residents of Naamdar Purwa, Hamlet□Amethi for the purpose of recovery.” [Emphasis supplied]

60. From the aforesaid two things are quite evident. In the original panchnama (Exh.5), the statement said to have been made by the accused appellant figures, however, in the oral evidence of the PW□7, investigating officer & PW□6, Sub□Inspector the exact statement has not been deposed, more particularly when it comes to the authorship of concealment. The contents of the panchnama cannot be read into evidence as those do not constitute substantive evidence.

61. Further, the examination□in□chief of the PW□6, Sub□Inspector and PW□7, investigating officer does not indicate that they were read over the panchnama (Exh.5) before it was exhibited, since one of the panch witnesses was not examined and the second panch witness though examined yet has not said a word about the proceedings of the discovery panchnama. Everything thereafter fell upon the oral evidence of the investigating officer and the Sub□Inspector (PW□6).

62. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of Murli v. State of Rajasthan reported in (2009) 9 SCC 417, held as under:

“34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box.....” [Emphasis supplied]

63. One another serious infirmity which has surfaced is in regard to the authorship of concealment by the person who is said to have discovered the weapon.

64. The conditions necessary for the applicability of Section 27 of the Act are broadly as under:

> (1) Discovery of fact in consequence of an information received from accused;
>
> (2) Discovery of such fact to be deposed to; (3) The accused must be in police custody when he gave information; and (4) So much of information as relates distinctly to the fact thereby discovered is admissible – Mohmed Inayatullah v. The State of Maharashtra: AIR (1976) SC 483 Two conditions for application – (1) information must be such as has caused discovery of the fact; and (2) information must relate distinctly to the fact discovered □Earabhadrappa v. State of Karnataka: AIR (1983) SC 446"

65. We may refer to and rely upon a Constitution Bench decision of this Court in the case of State of Uttar Pradesh v. Deoman Upadhyaya reported in AIR (1960) SC 1125, wherein, Paragraph□71 explains the position of law as regards the Section 27 of the Evidence Act:

> "71. The law has thus made a classification of accused persons into two: (1) those who have the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their statements are not admissible, and in the case of the second category, only that portion, of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says: "I pushed him down such and such mineshaft", and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft." [Emphasis supplied]

66. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, which have become locus classicus, in the following words:

> "10. ....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."

67. What emerges from the evidence in the form of panchnama is that the appellant stated before the panch witnesses to the effect that "I will show you the weapon used in the commission of offence". This is the exact statement which we could read from the discovery panchnama and the Investigating Officer also could not have deposed as regards the exact statement other than what has been recorded in the panchnama. This statement does not suggest that the appellant indicated anything about his involvement in concealment of the weapon. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source. He may have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered weapon, he was the person who concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the panchnama of the discovery of weapon and the evidence in this regard is that he disclosed that he would show the weapon used in the commission of offence. In the same manner we have also perused the panchnama Exh.32 wherein the statement said to have been made by the accused before the panchas in exact words is "the accused resident of Roghada village on his own free will informs to take out cash and other valuables".

68. What emerges from the evidence of the investigating officer is that the accused appellant stated before him while he was in custody, “I may get discovered the murder weapon used in the incident”. This statement does not indicate or suggest that the accused appellant indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.

69. In Dudh Nath Pandey v. State of U. P., AIR (1981) SC 911, this Court observed that the evidence of discovery of pistol at the instance of the appellant cannot, by itself, prove that he who pointed out the weapon wielded it in the offence. The statement accompanying the discovery was found to be vague to identify the authorship of concealment and it was held that pointing out of the weapon may, at the best, prove the appellant’s knowledge as to where the weapon was kept.

70. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of

the panchnama (Exh.5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.

71. If it is the case of the prosecution that the PW-2, Chhatarpal Raidas, s/o Rameshwar Raidas had acted as one of the panch witnesses to the drawing of the discovery panchnama, then why the PW-2, Chhatarpal Raidas in his oral evidence has not said a word about he having acted as a panch witness and the discovery of the weapon of the offence and blood stained clothes being made in his presence. The fact that he is absolutely silent in his oral evidence on the aforesaid itself casts a doubt on the very credibility of the two police witnesses i.e. PW-6 and PW-7 respectively.

72. In the aforesaid context, we may also refer to a decision of this Court in the case of Bodhraj alias Bodha and Others v. State of Jammu and Kashmir reported in (2002) 8 SCC 45, as under:

> "18. .....It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] 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.

(See State of Maharashtra v. Damu Gopinath Shinde [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301] .) No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given." [Emphasis supplied]

73. Mr. Upadhyay, the learned counsel for the State would submit that even while discarding the evidence in the form of discovery panchnama the conduct of the appellant herein would be relevant under Section 8 of the Evidence Act. The evidence of discovery would be admissible as conduct under Section 8 of the Evidence Act quite apart from the admissibility of the disclosure statement under Section 27 of the said Act, as this Court observed in A.N. Venkatesh vs. State of Karnataka, (2005) 7 SCC 714:

"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.) [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . Even if we hold that the disclosure statement made by the accused□appellants (Exts. P□15 and P□16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8....." [Emphasis supplied]

74. In the aforesaid context, we would like to sound a note of caution. Although the conduct of an accused may be a relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction.

75. Thus, in view of the aforesaid discussion, we have reached to the conclusion that the evidence of discovery of the weapon and the blood stained clothes at the instance of the accused appellant can hardly be treated as legal evidence, more particularly, considering the various legal infirmities in the same.

EXTRA JUDICIAL CONFESSION

76. It is the case of the prosecution that on 23.01.2010 the accused appellant is said to have visited the house of the PW□3, Babu Ram Hans at about 9:00 o'clock in the morning and sought his help. While seeking help from the PW□3, Babu Ram Hans, the accused appellant is said to have made an extra judicial confession that he had brutally killed his wife Sangeeta for not giving consent to him to marry Manju. The accused appellant is also said to have made an extra judicial confession to the PW□3, Babu Ram Hans that he had also killed his four daughters viz. Tulsi, Lakshmi, Kajal and Guddi and thereby had committed a huge mistake. The trial court and the High Court have believed the so called extra judicial confession said to have been made by the accused appellant before the PW□3, Babu Ram Hans. However, the trial court as well as the High Court should have put a question to themselves before believing the extra judicial confession whether the accused appellant was a free man on 23.01.2010 so as to reach the house of PW□3, Babu Ram Hans at 9:00 o'clock in the morning and make an extra judicial confession. This is one of the basic infirmities we have noticed in the judgment of both the Courts. There is cogent evidence on record to indicate that on 22.01.2010, the accused appellant first visited the house of PW□1, Shambhu Raidas (first informant) and narrated about the incident. The PW□1, Shambhu Raidas thereafter lodged the First Information Report (FIR) at the police station and as deposed by him, the accused appellant all throughout was at the police station. If on 22.01.2010 the accused is sent for medical examination along with a police yadi accompanied by a police constable to the hospital then how does it lie in the mouth of the prosecution to say that after the medical examination the accused appellant was allowed to go home and move around freely. The witnesses have said in their oral evidence that the accused appellant was picked up by the police on 22.01.2010 in the early morning itself. This entire case put up by the prosecution that an extra judicial confession was made by the accused appellant before the PW□3, Babu Ram Hans on 23.01.2010 appears to be fabricated and engineered only to bolster up the case of the prosecution.

77. It is also the case of the prosecution that similar such extra judicial confession was made by the accused appellant before the PW□4, Ram Kumar, S/o Paanchoo on the very same day of the incident itself i.e. 22.01.2010 at 06:30 in the morning. If we peruse the oral evidence of the PW□4, Ram Kumar then according to him at the relevant point of time he was a member of the District Panchayat. According to PW□4, Ram Kumar, the accused appellant had visited his house at 06:30 in the morning and made an extra judicial confession that he had committed a serious crime. How does the prosecution expect us to believe even the second extra judicial confession alleged to have been made before the PW□4, Ram Kumar? How does the prosecution expect us to believe that the accused appellant was present at three different places on or about the same time. Either we believe PW□1, Shambhu Raidas (first informant) that the accused appellant visited his house at 06:30 in morning or we believe the PW□2, Chhatrapal Raidas, who has deposed that the accused appellant had visited his house at 07:00 o'clock in the morning or we believe the PW□4, Ram Kumar that the accused appellant had visited his house at 06:30 in the morning. How is it possible for the accused appellant to be present at three different places in or around between 06:30 A.M. to 07:30 A.M. One another aspect that makes the oral evidence of the PW□4, Ram Kumar very doubtful is that his house is situated at a distance of 6□7 kilometers from Dhaurhara and according to the PW□4, the accused appellant visited his house all the way walking from his own house. The PW□4, Ram Kumar also appears to be a 'got up' witness only for the purpose of creating evidence in the form of extra judicial confession. At this stage, we may once again go back to the oral evidence of the PW□1,

Shambhu Raidas (Exh.1). In his evidence, he has said, “the inspector had not interrogated me at the police station. The inspector had visited the place of the incident in his vehicle. I left the police station at the 02:00 o’clock in the night. I had stayed at the police station right from the time I lodged the FIR in the morning till 02:00 o’clock in the night and Ramanand also stayed with me at the police station. The police official had challaned Ramanand on the third day. Till then Ramanand was continuously staying at the police station. [Emphasis supplied]

78. The PW□2, Chhatrapal Raidas in his evidence has deposed, “I came to know about the incident at 07:00 o’clock in the morning. I came to know through Ramanand. Ramanand had come to my house at 07:00 o’clock. Ramanand was alone then. Ramanand told me that his wife and children were burning in the house; someone had killed and set them on fire. Saying this Ramanand left for his home. Thereafter, Pratap and Shambhu reached the place of Ramanand on a bicycle and I reached walking. When I reached the house of Ramanand, Pratap and Shambhu were dousing the fire at the house with water. Ramanand was warming his body sitting over here and villagers were standing outside. The clothes of Ramanand were soaked with blood. The Inspector reached sometime thereafter. Thereafter, I, Shambhu and Pratap went with the inspector to the police station in a jeep. It took half an hour for the inspector to arrive at the spot. It was about 8□9 o’clock in the morning the police officials took Ramanand to the police station before us.”

79. Thus, it is very difficult for us to believe that the accused appellant could have made extra judicial confession on 23.01.2010 before the PW□2 and also before the PW□4 on 22.01.2010 at 06:30 A.M. i.e. on the date of incident. We have reached to the conclusion that the investigating officer has deliberately shown arrest of accused appellant on 24.01.2010 and that too from a place like bus stand. As discussed above, the accused appellant was arrested and taken in custody in the morning of 22.01.2010 itself. One Police Constable along with a police yadi had taken the accused appellant to the hospital in the morning itself for medical examination. Only with a view to show that between 22.01.2010 and 24.01.2010 the accused appellant made extra judicial confession before two witnesses, the investigating officer has shown arrest of the accused appellant on 24.01.2010 which is just unbelievable.

80. Confessions may be divided into two classes, i.e. judicial and extra judicial. Judicial confessions are those which are made before Magistrate or Court in the course of judicial proceedings. Extra judicial confessions are those which are made by the party elsewhere than before a Magistrate or Court. Extra judicial confessions are generally those made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the CrPC or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra judicial confessions, two questions arise: (i) were they made voluntarily? And (ii) are they true? As the Section enacts, a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings

against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Evidence Act. The law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the Court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors at the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that its opinion, the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. [See R. V. Warwickshall: (1783) Lesch 263)]. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So, where the statement is made as a result of the harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe Evidence, 9th Edn. Page 284). A promise is always attached to the confession, alternative while a threat is always attached to the silence□alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude

the confession. The words 'appear to him' in the last part of the section refer to the mentality of the accused. (See State of Rajasthan v. Raja Ram, (2003) 8 SCC 180)

81. An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

82. Extra judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. It is considered to be a weak piece of evidence as it can be easily procured whenever direct evidence is not available. In order to accept extra judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra judicial confession is voluntary, it can be acted upon to base the conviction.

83. Considering the admissibility and evidentiary value of extra judicial confession, after referring to various judgments, in Sahadevan and Another v. State of Tamil Nadu, (2012) 6 SCC 403, this Court held as under:□"15.1. In Balwinder Singh v. State of Punjab [1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59] this Court stated the principle that: (SCC p. 265, para 10) "10. An extra□judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra□judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance." x x x x 15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra□judicial confession, this Court in State of Rajasthan v. Raja Ram [(2003) 8 SCC 180 : 2003 SCC (Cri) 1965] stated the principle that: (SCC p. 192, para

19) "19. An extra□judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made." The Court further expressed the view that: (SCC p. 192, para 19) "19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate

that he may have a motive of attributing an untruthful statement to the accused....” x x x x 15.6. Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan [(2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79] held that: (SCC p. 611, paras 29-30) “29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore [(1970) 2 SCC 105 : 1970 SCC (Cri) 320] , Mulk Raj v. State of U.P. [AIR 1959 SC 902 : 1959 Cri LJ 1219] , Sivakumar v. State [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari v. State of Maharashtra [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320] and Mohd. Azad v. State of W.B. [(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082]]”” [Emphasis supplied]

84. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey and Another, (1992) 3 SCC 204, this Court after referring to Piara Singh and Others v. State of Punjab, (1977) 4 SCC 452, held that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.

85. The sum and substance of the aforesaid is that an extra judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance like the case in hand. The Courts generally look for an independent reliable corroboration before placing any reliance upon an extra judicial confession.

MOTIVE

86. The Courts below have relied upon the strong motive for the accused appellant to commit the crime as one of the incriminating circumstances. It is the case of the prosecution that the accused appellant desperately wanted to get married to Manju. Manju herself at the relevant point of time was a married lady. It appears from the evidence on record that the accused appellant had even got engaged with Manju during the subsistence of his marriage with the deceased Sangeeta. It also appears that the engagement ceremony was celebrated with pomp and show. However, before the accused appellant could get married to Manju, he got arrested in one offence under Section 307 of the IPC. According to the prosecution thereafter, although the accused appellant tried his best to get married to Manju, more particularly, after being released on bail yet as there was lot of opposition at the end of his wife deceased Sangeeta, he was not able to marry her. In such circumstances, it is the case of the prosecution that the accused appellant decided to terminate his wife Sangeeta as well his four minor daughters on the fateful night of the incident.

87. It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no

doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.

88. Having regard to the nature of the evidence on record, there is something to indicate that the accused appellant had illicit relationship with Manju and wanted to settle in life marrying Manju. As noted above, in the past accused appellant had got engaged with Manju and was on the verge of getting married. At the relevant point of time when the accused appellant got engaged with Manju, it appears that one and all including the deceased Sangeeta were consenting parties. There is nothing on record to indicate that at the time of engagement of accused appellant with Manju, the deceased Sangeeta had raised hue and cry or had opposed such decision of her husband. Of course, this is something which is very personal. If at all we believe the illicit relationship of the accused appellant with Manju, then it is possible that the deceased Sangeeta might be an absolutely helpless lady and could not have done anything in that regard. However, the moot question is should this motive by alone be held sufficient to convict the accused appellant for the alleged crime and sentence him to death.

89. In the case of Sampath Kumar v. Inspector of Police Krishnagiri, (2012) 4 SCC 124, decided on 02.03.2012, this Court held as under:

> "29. In N.J. Suraj v. State [(2004) 11 SCC 346 : 2004 SCC (Cri) Supp 85] the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected the motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused.
>
> 30. To the same effect is the decision of this Court in Santosh Kumar Singh v. State [(2010) 9 SCC 747 :
>
> (2010) 3 SCC (Cri) 1469] and Rukia Begum v. State of Karnataka [(2011) 4 SCC 779 : (2011) 2 SCC (Cri) 488 :
>
> AIR 2011 SC 1585] where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai v. UT, Chandigarh [(2011) 12 SCC 258 :

(2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] . This Court explained the legal position as follows: (Sunil Rai case [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] , SCC p. 266, paras 31□32) "31. ... In any event, motive alone can hardly be a ground for conviction.

32. On the materials on record, there may be some suspicion against the accused, but as is often said, suspicion, howsoever strong, cannot take the place of proof."

31. Suffice it to say although, according to the appellants the question of the appellant Velu having the motive to harm the deceased Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased Senthil. Yet even assuming that the appellant Velu had not reconciled to the idea of Usha getting married to the deceased Senthil, all that can be said was that the appellant Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt." [Emphasis supplied]

90. Thus, even if it is believed that the accused appellant had a motive to commit the crime, the same may be an important circumstance in a case based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the accused appellant but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt.

91. The fact that we have ruled out the circumstances relating to the making of an extra judicial confession and the discovery of the weapon of offence as not having been established, the chain of circumstantial evidence snaps so badly that to consider any other circumstance, even like motive, would not be necessary.

FALSE EXPLANATION OFFERED BY THE ACCUSED APPELLANT AS AN ADDITIONAL LINK

92. It is the case of the prosecution all throughout that the accused appellant offered false explanation in his defence. To put it in other words, according to the courts below the say of the accused appellant that on the fateful night of the incident four unidentified persons killed his wife and daughters mercilessly and thereafter, set their dead bodies on fire stood falsified, in view of the incriminating circumstances pointing towards the guilt of the accused. According to the trial court and the High Court, the explanation offered by the accused appellant in regard to the injuries suffered by him on his head is established to be false. In such circumstances, both the courts took the view that the false explanation offered by the accused appellant is an additional link in the chain of circumstances.

93. It appears from the materials on record that in all, three further statements of the accused appellant were recorded by the trial court under Section 313 of the CrPC. This is one another unusual feature of this matter. Ordinarily and more particularly having regard to the language of Section 313 of the CrPC, the further statement of an accused is to be recorded once the prosecution closes its evidence and before the accused enters his defence. In the case on hand, it appears that on 19.07.2013, in all eight prosecution witnesses were examined. At the end of the day, the trial court recorded the further statement of the accused appellant. The Question No. 12 reads thus:

> "Question 12: ☐Do you want to submit anything else?
>
> Answer: ☐Manua alias Ramakant, Kamlkant and Ramakant had killed my elder brother Siyaram, & for that I had lodged F.I.R. My wife Sangita and Siyaram's daughter Gudiya were the eye witnesses of this case. The accused persons, with intention to erase evidence, had assaulted me and my wife Sangita, and burnt her by pouring kerosene oil. They wanted to kill me too. That's why they poured kerosene oil on me as well. The daughter of Siyaram died of sickness. This incident had been caused by Ramakant, Kamlakant and Ramakant."

94. On 14.11.2013, the second further statement of the accused appellant was recorded by the trial court wherein the Question No. 8 reads thus:

> "Question 8:☐Do you want to submit anything else?
>
> Answer:☐I am innocent. I may be acquitted."

95. On 21.07.2016, the third further statement of the accused appellant came to be recorded by the trial court wherein the Question No. 4 reads thus:

> "Question 4:☐Do you want to submit anything else?
>
> Answer:- I and my brother Siyaram were living at village Basadiya, Police Station-Dhaurhara. The brahmins of Basadiya had committed murder of my brother Siyaram. I was complainant in that case. Due to their fear, I started living at Naamdar Purwa. My wife and the daughter of Siyaram were witnesses of his murder. His daughter had died. The accused persons of the murder of Siyaram had killed my wife and family for erasing the evidence. They intended to kill me as well due to which I sustained injuries."

96. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law where there is any infirmity or lacunae in the prosecution case, the same could be cured or supplied by a false defence

or a false plea which is not accepted by a Court.

97. Before a false explanation can be used as an additional link, the following essential conditions must be satisfied:

> (i) Various links in the chain of evidence led by the prosecution have been satisfactorily proved.
>
> (ii) Such circumstances points to the guilt of the accused as reasonable defence.
>
> (iii) The circumstance is in proximity to the time and situation.

98. If the aforesaid conditions are fulfilled only then a Court use a false explanation or a false defence as an additional link to lend as assurance to the Court and not otherwise. [see Sharad Biridhichand Sarda v. State of Maharashtra, AIR (1984) SC 1622]

99. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. In the American Jurisprudence, 2nd Edition, Vol. 30, the expression “preponderance of evidence” has been defined in Article 1164. In America the term means “the weight, credit and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term greater weight of the evidence”, or “greater weight of the credible evidence”. It is a phrase which, in the last analysis, means probability of the truth. To be satisfied, certain, or convinced is a much higher test than the test of “preponderance of evidence”. The phrase “preponderance of probability” appears to have been taken from Charles R. Cooper v. F. W. Slade, (1857□59) 6 HLC 746. The observations made therein make it clear that what “preponderance of probability” means “more probable and rational view of the case”, not necessarily as certain as the pleading should be.

100. Again, at the cost of repetition, we may state that it is not necessary for us to go into the issue of false explanation, said to have been offered by the accused appellant as at the most a false explanation can be used as an additional link in the chain of evidence led by the prosecution. This issue pales into insignificance as the various links in the chain of evidence led by the prosecution having not been satisfactorily proved.

101. The inalienable interface of presumption of innocence and the burden of proof in a criminal case on the prosecution has been succinctly expounded in the following passage from the treatise "The Law of Evidence" fifth edition by Ian Dennis at page 445:

> “The presumption of innocence states that a person is presumed to be innocent until proven guilty. In one sense this simply restates in different language the rule that the burden of proof in a criminal case is on the prosecution to prove the defendant's guilt. As explained above, the burden of proof rule has a number of functions, one of which

> is to provide a rule of decision for the fact-finder in a situation of uncertainty. Another function is to allocate the risk of mis-decision in criminal trials. Because the outcome of wrongful conviction is regarded as a significantly worse harm than wrongful acquittal the rule is constructed so as to minimise the risk of the former. The burden of overcoming a presumption that the defendant is innocent therefore requires the state to prove the defendant's guilt."
>
> [Emphasis supplied]

102. The above quote thus seemingly concedes a preference to wrongful acquittal compared to the risk of wrongful conviction. Such is the abiding jurisprudential concern to eschew even the remotest possibility of unmerited conviction.

103. This applies with full force particularly in fact situations like the one on hand where the charge is sought to be established by circumstantial evidence. These enunciations are so well entrenched that we do not wish to burden the present narration by referring to the decisions of this Court in this regard.

104. Addressing this aspect, however, is the following extract also from the same treatise "The Law of Evidence" fifth edition by Ian Dennis at page 483:

> "Where the case against the accused depends wholly or partly on inferences from circumstantial evidence, fact-finders cannot logically convict unless they are sure that inferences of guilt are the only ones that can reasonably be drawn. If they think that there are possible innocent explanations for circumstantial evidence that are not "merely fanciful", it must follow that there is a reasonable doubt about guilt. There is no rule, however, that judges must direct juries in terms not to convict unless they are sure that the evidence bears no other explanation than guilt. It is sufficient to direct simply that the burden on the prosecution is to satisfy the jury beyond reasonable doubt, or so that they are sure. The very high standard of proof required in criminal cases minimises the risk of a wrongful conviction. It means that someone whom, on the evidence, the fact-finder believes is "probably" guilty, or "likely" to be guilty will be acquitted, since these judgments of probability necessarily admit that the fact-finder is not "sure". It is generally accepted that some at least of these acquittals will be of persons who are in fact guilty of the offences charged, and who would be convicted if the standard of proof were the lower civil standard of the balance of probabilities. Such acquittals are the price paid for the safeguard provided by the "beyond reasonable doubt"

standard against wrongful conviction."

[Emphasis supplied]

105. We must remind ourselves of what this Court observed in the case of Shankarlal Gyarasilal Dixit v. State of Maharashtra reported in (1981) 2 SCC 35. We quote as under:

> "32. .....But, while formulating its own view the High Court, with respect, fell into an error in stating the true legal position by saying that what the court has to consider is whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the "shadow of doubt". In the first place, "shadow of doubt", even in cases which depend on direct evidence is shadow of "reasonable" doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypotheses is far more rigorous than the test of proof beyond reasonable doubt." [Emphasis supplied] INJURIES ON THE BODY OF THE ACCUSED APPELLANT

106. It appears from the materials on record that the accused appellant was forwarded to the Community Health Centre (CHC) Dhaurhara, accompanied by the police constable Brij Mohan Singh for the purpose of medical examination on the date of the incident itself, i.e., 22.01.2010. PW-9, Dr. Ankit Kumar Singh had examined the accused appellant and in the medical certificate issued by him Exh. 44, he noted five injuries in or around the head and the neck region. The first three injuries noted are in the form of lacerated wounds, whereas the other two injuries as superfluous burn injuries. It was argued before us by the learned counsel appearing for the State that the injuries found on the body of the accused appellant points towards his complicity in the crime. It was also sought to be argued that the explanation offered by the accused appellant in regard to the injuries suffered by him is falsified by the circumstantial evidence on record. On the other hand, the defence also argued that the non-explanation of the injuries suffered by the accused appellant at the end of the prosecution is fatal. Thus, both the sides want to make the most of the injuries which were found on the body of the accused appellant.

107. We are of the view that both the sides are wrong in their own way. The settled law is that if there are serious injuries or grievous injuries found on the body of the accused then the prosecution owes a duty to explain such injuries and the failure on the part of the prosecution to explain may point towards the innocence of the accused. At the same time, the well-settled law is that if the injuries are superfluous or minor in nature then the prosecution need not explain such injuries. In the case on hand, the accused appellant has offered some explanation which could be said to be compatible with the defence he has put forward. As explained earlier, the accused has to establish his defence on preponderance of probability and not beyond reasonable doubt. The accused in his statement recorded under Section 313 of the CrPC has said that he suffered the head injuries as one of the assailants out of the four had hit him on his head with the butt of the gun. PW-9, Dr. Ankit Kumar Singh in his evidence has said that the injurie Nos. 1, 2 and 3 resply could have been caused by the butt of the gun. PW-9, Dr. Ankit Kumar Singh has not said that the injuries suffered by the accused appellant were self-inflicted injuries.

108. The prosecution wants us to accept the other side of the story. What the prosecution wants to convey is that the accused appellant suffered the injuries while committing the crime. This is suggestive of the fact that the accused appellant might have suffered the injuries only if one of the deceased persons had retaliated in defence at the time of the assault. Such is not even the case of the

prosecution. We rule out this theory of counter defence at the end of any of the deceased persons because out of five deceased persons four were minor children.

109. If anyone could have offered any resistance, then it could have been the deceased Sangeeta. However, having regard to the nature of the injuries suffered by the deceased Sangeeta, it is difficult to even say that she might have realised for even a second as to what was happening.

110. We see it from a different perspective. For the time being, we proceed on the footing or the assumption that the accused appellant wanted to do away with his wife and children. We fail to understand what could be the good reason for the accused appellant after the assault to cut the bodies into pieces. We find some merit in the submission of Mr. S. Niranjan Reddy, the learned senior counsel for the accused appellant that it could be a sign of grave warning from the other side who belong to the upper caste (Brahmins) as to how revengeful and venomous they could be.

111. In Dhananjay Shanker Shetty v. State of Maharashtra, (2002) 6 SCC 596, in paragraph 10 in reference to the circumstantial evidence, in the case of murder, the non explanation of injuries on accused by prosecution was held to be significant when there are circumstances which makes prosecution case doubtful. For the relevant purpose, the relevant extract of paragraph 10 is extracted as below:

> "10. ....But non explanation of injuries assumes significance when there are material circumstances which make the prosecution case doubtful. Reference in this connection may be made to recent decisions of this Court in the cases of Takhaji Hiraji v. Thakore Kubersing Chamansing [(2001) 6 SCC 145 : 2001 SCC (Cri) 1070] and Kashiram v. State of M.P. [(2002) 1 SCC 71 : 2002 SCC (Cri) 68]. In the present case, non explanation of injuries on the appellant by the prosecution assumes significance as there are circumstances which make the prosecution case, showing the complicity of the appellant with the crime, highly doubtful." [Emphasis supplied]

112. In Mohar Rai and Bharath Rai v. State of Bihar, AIR 1968 SC 1281, it was observed:

> "6. .....In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants." [Emphasis supplied]

113. In another important case Lakshmi Singh and Others v. State of Bihar, (1976) 4 SCC 394, after referring to the ratio laid down in Mohar Rai (supra), this Court observed:

> "12. .....where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants....."

114. It was further observed that:

> "12. .....in a murder case, the non□explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:
>
> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
>
> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
>
> (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case....."

115. In Mohar Rai (supra) it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true, or at any rate, not wholly true. Likewise in Lakshmi Singh (supra) it is observed that any non□ explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non□explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood, the mere fact that the injuries are not explained by the prosecution cannot itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in Vijay Singh and Ors. v. State of U.P., (1990) CriLJ 1510.
CONCLUSION

116. Thus, none of the pieces of evidence relied on as incriminating by the courts below, can be treated as incriminating pieces of circumstantial evidence against the accused. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In Shankarlal Gyarasilal (supra), this Court cautioned □"human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions". This Court has held time and again that between "may be true" and "must be true" there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict. [See Ashish Batham v. State of M.P., (2002) 7 SCC 31].

117. Before parting with the case, we would like to place on record an observation of ours, touching an important aspect of the case. Without any hesitation and with disappointment, we state that the

case on hand is one of most perfunctory investigation. It appears that the accused herein was provided with a legal aid. He might not have been able to afford a good and experienced trial side lawyer to defend himself. We have noticed that the cross-examination of each and every witness is below average. Questions, which the defence counsel was not supposed to put to the prosecution witnesses were put without realising or understanding the legal implications of the answers to such questions, more particularly, when they were not necessary. The defence counsel remained oblivious of the position of law that suggestions made to the witnesses by the defence the answers to those are binding to the accused.

118. Any defence counsel with a reasonable standing at the Bar is expected to know that cross-examination is not the only method of discrediting a witness. If the oral testimony of certain witnesses is contrary to the proved facts and if their testimony is on the face of it unacceptable, their evidence might well be discarded on that ground alone.

119. It is by far now well-settled for a legal proposition that it is the duty of the court to see and ensure that an accused put on a criminal trial is effectively represented by a defence counsel, and in the event on account of indigence, poverty or illiteracy or any other disabling factor, he is not able to engage a counsel of his choice, it becomes the duty of the court to provide him appropriate and meaningful legal aid at the State expense. What is meant by the duty of the State to ensure a fair defence to an accused is not the employment of a defence counsel for namesake. It has to be the provision of a counsel who defends the accused diligently to the best of his abilities. While the quality of the defence or the caliber of the counsel would not militate against the guarantee to a fair trial sanctioned by Articles 21 and 22 resply of the Constitution, a threshold level of competence and due diligence in the discharge of his duties as a defence counsel would certainly be the constitutional guaranteed expectation. The presence of counsel on record means effective, genuine and faithful presence and not a mere farcical, sham or a virtual presence that is illusory, if not fraudulent.

120. Article 39A of the Constitution speaks about free legal aid which reads thus:

> "39A. Equal justice and free legal aid. —The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

121. Section 304 of the CrPC refers to legal aid to the accused at State expenses in certain cases which reads thus:

> "304. Legal aid to accused at State expense in certain cases.—(1)Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State. (2) The High Court may, with the previous approval of the State Government, make rule providing for—

(a) the mode of selecting pleaders for defence under sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fee payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before the Courts of Session."

122. Under Section 9 of the Legal Services Authorities Act, 1987, the District Legal Services Authorities are constituted for every District in the State to exercise powers and perform functions conferred on, or assigned to, the District Authority under the said Act.

123. This Court in para 13 of the judgment reported in Kishore Chand v. State of Himachal Pradesh, (1991) 1 SCC 286, held thus:

"13. Though Article 39-A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides amicus curiae to defend the indigent accused, he would be meted out with unequal defence if, as is common knowledge the youngster from the bar who has either a little experience or no experience is assigned to defend him. It is high time that senior counsel practising in the court concerned, volunteer to defend such indigent accused as a part of their professional duty. If these remedial steps are taken and an honest and objective investigation is done, it will enhance a sense of confidence of the public in the investigating agency."

124. This Court, in the case of Zahira Habibullah Sheikh (5) and Another v. State of Gujarat and Others, reported in (2006) 3 SCC 374, has observed in paragraphs 30, 35, 38 and 39 as under:

"30. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

x x x x

> 35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata.

The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

x x x x

38. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an over hasty stage managed, tailored and partisan trial.

39. The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."

125. In Ranchod Mathur Wasawa v. State of Gujarat, (1974) 3 SCC 581, it is observed that, the Sessions Judge should view with sufficient seriousness the need to appoint State Counsel for undefended accused in grave cases. Indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocates, equal to handling the complex cases, not patronising gestures to raw entrants to the Bar. Sufficient time and complete papers should also be made available to the advocate chosen so that he may serve the cause of justice with all the ability at his command, and the accused also may feel confident that his counsel chosen by the court has had adequate time and material to defend him properly.

126. This case provides us an opportunity to remind the learned District and Sessions Judges across the country conducting sessions trials, more particularly relating to serious offences involving severe sentences, to appoint experienced lawyers who had conducted such cases in the past. It is desirable that in such cases senior advocate practising in the trial court shall be requested to conduct the case himself or herself on behalf of the undefended accused or at least provide good guidance to the advocate who is appointed as amicus curiae or an advocate from the legal aid panel to defend the case of the accused persons. Then only the effective and meaningful legal aid would be said to have been provided to the accused.

127. This Court, in the case of Madhav Hayawadanrao Hoskot v. State of Maharashtra, reported in (1978) 3 SCC 544, had emphasized upon the need of securing the competent and efficient legal services for a prisoner who is standing trial in a criminal case or for the commission of alleged offence. This Court, in paragraphs 14,15 and 18 of the above judgment, held as under:

> "14. The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature, moulded by Anglo□American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer□power for steering the wheels of equal justice under the law. Free legal services to the needy is part of the English criminal justice system. And the American jurist, Prof. Vance of Yale, sounded sense for India too when he said:
>
> What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the courts are open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee?
>
> 15. Gideon's trumpet has been heard across the Atlantic.

Black, J. there observed:

> Not only those precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defences. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief

that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trial in some countries, but is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him.

x x x x

18. The American Bar Association has upheld the fundamental premise that counsel should be provided in the criminal proceedings for offences punishable by loss of liberty, except those types of offences for which such punishment is not likely to be imposed. Thus, in America, strengthened by the Powell, Gideon and Hamlin cases, counsel for the accused in the more serious class of cases which threaten a person with imprisonment is regarded as an essential component of the administration of criminal justice and as part of procedural fair□play. This is so without regard to the sixth amendment because lawyer participation is ordinarily an assurance that deprivation of liberty will not be in violation of procedure established by law. In short, it is the warp and woof of fair procedure in a sophisticated, legalistic system plus lay illiterate indigents aplenty. The Indian socio□legal milieu makes free legal service, at trial and higher levels, an imperative processual piece of criminal justice where deprivation of life or personal liberty hangs in the judicial balance."

128. In the aforesaid context, we may refer to the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, more particularly, the Regulation□15, which reads thus:

"15. Special engagement of senior advocates in appropriate cases.□(1) If the Monitoring and Mentoring Committee or Executive Chairman or Chairman of the Legal Services Institution is of the opinion that services of senior advocate, though not included in the approved panel of lawyers, has to be provided in any particular case the Legal Services Institution may engage such senior advocate.

(2) Notwithstanding anything contained in the State regulations, the Executive Chairman or Chairman of the Legal Services Institution may decide the honorarium of such senior advocate."

129. This Court in Subhash Chand v. State of Rajasthan reported in (2002) 1 SCC 702 in para 26, while allowing the appeal and acquitting the accused appellant therein under Sections 302 and 376(2)(f) of the IPC, observed as under:

"26. Before parting with the case we would like to place on record, an observation of ours, touching an aspect of the case. There are clueless crimes committed. The

> factum of a cognizable crime having been committed is known but neither the identity of the accused is disclosed nor is there any indication available of the witnesses who would be able to furnish useful and relevant evidence. Such offences put to test the wits of an investigating officer. A vigilant investigating officer, well versed with the techniques of the job, is in a position to collect the threads of evidence finding out the path which leads to the culprit. The ends, which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to the hilt in a court of law. The evidence of the investigating officer given in the court should have a rhythm explaining step by step how the investigation proceeded leading to detection of the offender and collection of evidence against him. This is necessary to exclude the likelihood of any innocent having been picked up and branded as a culprit and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances treating them as of "beyond doubt" evidentiary value." [Emphasis supplied]

130. In the result, the appeals are allowed. The conviction of the accused appellant under Section 302 of the IPC is set aside. He is acquitted of the charge framed against him. He shall be set at liberty forthwith if not required to be detained in connection with any other offences.

131. Pending application, if any, also stands disposed of.

.....CJI.

(UDAY UMESH LALIT) .....J. (S. RAVINDRA BHAT) .....J. (J.B. PARDIWALA) NEW DELHI;

OCTOBER 13, 2022.

ITEM NO.1503 COURT NO.9 SECTION II
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 64-65/2022

RAMANAND @ NANDLAL BHARTI Appellant(s)

VERSUS

STATE OF UTTAR PRADESH Respondent(s)

(IA No. 109475/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT) Date : 13-10-2022 These matters were called on for pronouncement of judgment today.

For Appellant(s) Mr. S. Niranjan Reddy, Sr. Adv.

Mr. Vibhor Jain, Adv.
Ms. Stuti Rai, Adv.
Mr. Sahil Raveen, Adv.
Ms. Akhila Palem, Adv.
Mr. Mahfooz Ahsan Nazki, AOR
Mr. Polanki Gowtham, Adv.
Ms. Rajeswari Mukherjee, Adv.
Ms. Niti Richhariya, Adv.

For Respondent(s) Mr. Adarsh Upadhyay, AOR
Mr. Abhishek Chaudhary, Adv.
Mr. Anurag Kishore, Adv.
Mr. Amit Singh, Adv.
Mr. Aman Pathak, Adv.
Mr. Ajay Prajapati, Adv.

Hon'ble Mr. Justice J. B. Pardiwala, pronounced the reportable judgment of the Bench comprising Hon'ble the Chief Justice of India, Hon'ble Mr. Justice S. Ravindra Bhat and His Lordship. The appeals are allowed in terms of the signed reportable judgment.

The conviction of the accused appellant under Section 302 of the IPC is set aside. He is acquitted of the charge framed against him. He shall be set at liberty forthwith if not required to be detained in connection with any other offences. Pending application, if any, also stands disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(RANJANA SHAILEY)
COURT MASTER (NSH)

(Signed reportable judgment is placed on the file)