Charandas Swami vs State Of Gujarat & Anr on 10 April, 2017

Equivalent citations: AIR 2017 SUPREME COURT 1761, AIR 2017 SC 1761, (2017) 174 ALLINDCAS 32 (SC), 2017 CRI. L. J. 2904, AIR 2017 SC (CRIMINAL) 681, (2017) 2 RECCRIR 802, (2017) 2 ALD(CRL) 304, (2017) 2 CURCRIR 152, 2017 CRILR(SC MAH GUJ) 588, (2017) 2 DLT(CRL) 330, (2017) 6 MH LJ (CRI) 291, 2017 CRILR(SC&MP) 588, (2017) 2 MAD LJ(CRI) 444, (2017) 2 CRILR(RAJ) 588, (2017) 2 CRIMES 109, (2017) 4 SCALE 403, (2017) 67 OCR 585, 2017 (7) SCC 177, (2017) 2 UC 916, (2017) 100 ALLCRIC 617, 2017 (3) SCC (CRI) 343

Author: A.M. Khanwilkar

Bench: A.M.Khanwilkar, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
Criminal Appeal No. 1549 of 2007

Charandas Swami …Appellant

Versus

State of Gujarat & Anr. …Respondents

WITH
Criminal Appeal Nos.1550 of 2007 and 1586 of 2008

J U D G M E N T

A.M. KHANWILKAR, J

1. These appeals have been filed by the Accused No.1 (Criminal Appeal No.1586 of 2008), Accused No. 2 (Criminal Appeal No.1549 of 2007) and Accused No. 5 (Criminal Appeal No.1550 of 2007) against the judgment and final order of the High Court of Gujarat dated 1st September, 2006. The High Court has upheld the decision of the Sessions Court, convicting Accused Nos. 1, 2, 3 and 5 for offences under Sections 302 r/w 120-B, 364 and 201 of the Indian Penal Code, 1860 ('IPC') and for the murder of one Gadadharanandji. The High Court, however, has acquitted Accused No.4 of the said offences. The High Court commuted the death sentence awarded by the Sessions Court to a sentence of life imprisonment for the aforementioned four accused. Accused No.3 has not filed any appeal before this Court against the impugned judgment.

2. The factual matrix of the case in hand, as gleaned from the pleadings and submissions of the parties as also the record, is as under:

The Board of Trustees of the Swami Narayan sect of Vadtal Gadi Temple comprises of 8 members, including the Chairman and Chief Kothari, who handle the administration and financial management of the temples run by the sect.

One Gadadharanandji was elected as the Chairman of the Board of Trustees on 11th April 1998. At that point in time, one Bhakti Dasji was the Chief Kothari and Narayan Shastri (Accused No. 1) was the Assistant Kothari. Charandas Swami (Accused No.2) was informally working as an assistant to Accused No. 1, while Madhav Prasad (Accused No.3), Ghanshyam (Accused No.4, now acquitted) and Vijay Bhagat (Accused No.5) were henchmen of Accused Nos.1 and 2.

On 16th April, 1998, an agenda was circulated for a meeting of the Board of Trustees to be held on 22nd April, 1998, wherein the Chairman, Gadadharanandji, proposed to transfer the Kotharis away from the Vadtal Temple. That move was not approved by the rival camp. They also feared of being exposed of their misdeeds and maladministration.

On 3rd May, 1998, Gadadharanandji went missing from the temple premises. The next day i.e. 4th May, 1998, a burnt body was found in a ditch at Barothi Village, in the neighbouring State of Rajasthan which was subsequently identified as that of Gadadharanandji. A post mortem of the body revealed that the cause of death was asphyxia by strangulation.

Meanwhile, one of the deceased's disciples, Jatin Bhagat (PW3) filed a missing person complaint about the sudden disappearance of Gadadharanandji with the local police on 5th May, 1998. This complaint was transferred to the local crime branch and then the state crime branch. PW3 subsequently filed a petition before the High Court of Gujarat, which transferred the investigation of the case to the CBI on 5th October 1998.

The CBI eventually on 29th October, 1998 registered a new FIR against some persons, including the Appellants, for kidnapping Gadadharanandji. During the course of investigation, all the five accused were arrested in connection with the disappearance of Gadadharanandji.

The investigation established the chain of events leading to the disappearance of Gadadharanandji. According to the prosecution, the accused kidnapped Gadadharanandji from the Vadtal Temple complex, took him in a blue car/van to the Navli Temple complex where they procured a call girl for him, after which they sedated and then strangled him. However, this chain of events was at odds with the panchnama drawn at the behest of Accused No. 3 wherein he is stated to have confessed that he himself kidnapped Gadadharanandji from the temple, drove him to his (Accused No. 3) house in Vadtal and then strangled him there using the deceased's 'khesiya' (cloth usually placed around the neck). Accused No.3 also

claimed that he returned with the deceased's body in his car to Vadtal, informed Accused No.1 about the deed and then took Accused No.5 along with him to Rajasthan where they disposed of the dead body of deceased by throwing it in a ditch and lighting it on fire.

Post-investigation, the Chief Judicial Magistrate vide his order dated 10th August, 1999 remitted the case against all the five accused. The trial proceeded before the District and Sessions Court at Kheda at Hadiat, being Sessions Case No. 369 of 1999. Various charges including those under u/S. 120-B, 364, 302 and 201 of the IPC were framed against the Accused.

On 11th June, 2004, the Sessions Court, Nadiad convicted all the five accused for offence under Section 302 r/w 120-B of the IPC and sentenced them to death. The Accused were also convicted u/S. 364 r/w 120-B of the IPC and sentenced to rigorous imprisonment for life. Accused Nos. 2 and 5 were further convicted under S. 201 r/w S. 120-B and sentenced to 5 years' imprisonment.

The accused preferred an appeal to the High Court of Gujarat which was heard alongwith the confirmation reference. The High Court confirmed the conviction against Accused Nos.1, 2, 3 and 5, but acquitted Accused No.4. The High Court, however, commuted the death sentence to a sentence of life imprisonment.

3. The case of the prosecution is that the accused were misappropriating funds from the temple in which they were functionaries. Gadadharanandji, being the newly elected Chairman of the Board of Trustees of the temple, intended to transfer the accused from the Vadtal Temple. This proposal bewildered and irked the accused. They conspired to and subsequently murdered Gadadharanandji to put an end to his plan to transfer them. After the murder, the accused transported the body of the deceased to Rajasthan where they burned it to destroy the evidence.

4. We shall briefly advert to the approach of the Sessions Court and that of the High Court. The trial court proceeded to answer the charges against the appellants broadly on the following basis. Firstly, it has dealt with the circumstance of motive to kidnap the deceased with a common intention to murder. It has noted that in April 1998, the deceased was elected as the chairman of the Swaminarayan Temple at Vadtal. The Chief Kothari was in charge of administration of the temple and Accused No.1 was the assistant Kothari, helping him in administering the temple. Accused No.2, while not holding any official post, also worked in the temple, as did Accused Nos. 3 to 5. The Chief Kothari was the cashier of the temple and Accused No.1, by virtue of his position, assisted him as a cashier. Accused No.2 was also assisting Accused No.1. Further, the income generated by the temple was substantial and Accused Nos. 1 and 2 were involved in financial irregularities. Since the Chief Kothari was very old, Accused No.1 was doing all the financial deals on his behalf. Evidence of PW39, a grocer who supplied goods to the temple, reveals that he used to supply goods to the temple. These transactions would obviously have been possible only with the knowledge and approval of Accused No.1, who was in control of the administration and financial transactions of the temple at the relevant time. Further, PW39 gave huge amounts of cash to Accused Nos. 1 and 2,

which was corroborated in the form of bills, and credit memos recovered from the house of Accused No.1. There was also a large amount of unaccounted cash recovered from the house of Accused No.2. Neither of the accused could explain the source of such cash. The evidence brings to light that Accused Nos. 1 and 2 used to get kickbacks from purchase of goods supplied to the temple.

5. The trial court then found that the deceased, by virtue of being the Chairman of the Board of Trustees, was in a position to influence the transfer of the Kotharis and had even discussed the same with the Board. The transfer of the Chief Kothari would obviously have implications for the assistant Kothari i.e. Accused No.1 and by extension, Accused No.2. Accused Nos. 1 and 2 were aware of such a proposal to transfer the Kothari and had interacted with the deceased about the same. Accused No.1 had gone to the extent of telling the deceased that if he was transferred, he would rebel against that move. While the accused suggested that there were other persons who bore enmity towards the deceased and wanted him killed, no evidence was brought on record to substantiate the same by the defence. The prosecution case about motive of the accused to commit crime was corroborated by the evidence of PW3, PW4, PW5, PW21, PW22, PW33 and PW35. The motive of the accused to commit the crime has thus been proved.

6. The trial court then dealt with the factum of disappearance of deceased and last seen theory. The fact that the deceased disappeared on the afternoon of 3rd May, 1998, is indisputable. This is corroborated by the evidence of PW8 and PW3. The evidence of PW16 infact reveals that he had seen Accused No.3 sitting in a blue car at the steps of the Vadtal Temple around the time the deceased went missing. PW15 has also stated that he saw Accused No.3 driving away from the Vadtal Temple with the deceased in a blue coloured car. PW14 also turned hostile. The court noted that even if PW14 and PW15 had turned hostile, the totality of the evidence including of PW64 established the fact that Accused Nos. 3 and 4 were seen lastly with the deceased on the day of the disappearance. That was found crucial.

7. With regard to the presence of the accused at Navli, the trial court, relying on the evidence of PW17, found that Accused No.2 bought 7 cans of cold drinks from a shop outside the Vadtal Temple at around 2-2:30PM. The evidence of PW25, though he turned hostile, shows that he brought along a call girl-PW49 to the Navli Temple at around 2:30 PM on 3rd May, 1998; Accused No.2 met him there at around 3:00 PM. PW48 has deposed that a call was made by Accused No.2 to PW25 at around the same time. As the distance between the Vadtal and Navli Temples could be covered within 30-45 minutes, the presence of Accused No.2 at Navli is likely.

8. The trial court noticed that although PW49 has been declared hostile, she admitted to have given her statement to the investigating agency wherein she identified the deceased and of having physical relations with him on the day of the murder. This has been corroborated by an independent pancha witness.

9. The trial court has found that PW31 deposed that Accused No.5 had taken him to Navli and shown him where the alleged murder was committed. There, PW31 found tablets which were used to drug the deceased. PW28, who took videos of the same also deposed to the correctness of the video. PW20 deposed that he had supplied the said tablets to the accused. This evidence has been accepted

as reliable.

10. The trial court then held that the motive behind the murder of the deceased was that he was going to transfer Accused No.1 away from the Vadtal Temple and, therefore, Accused No.1 feared losing his control over financial matters of the temple and also of being exposed of the financial irregularities committed by him in the past in relation to temple finances. The said accused, therefore, hatched a conspiracy to kidnap the deceased with an intention to murder him. The deceased was last seen in the company of Accused Nos.3 and 4 before he went missing from Vadtal. Accused No.5 showed the spot where the offence was committed. The conspiracy to commit the murder, while not proved through ocular evidence, could be established through circumstantial evidence. While Accused No.1 was not personally in the forefront, he is responsible for criminal conspiracy.

11. The trial court also dealt with the evidence regarding recovery of dead body of the deceased. It has noted that PW50 deposed that he found a burnt body in a ditch behind his house in Barothi village and informed the police about the same. A video of the body was also taken by the police. The body was examined by PW57 who inter alia noted three golden teeth and a key. Blood and skin samples of the body were taken and subsequently identified as that of the deceased after performing a DNA test with blood samples of his sister. The key found on the body was similar to the one possessed by PW3. The said key opened the lock to the room of the deceased. The investigating agency was informed about the spot of disposal of the dead body by Accused No. 3 and that was corroborated by independent witnesses. The trial court rejected the argument that the investigating agency used witnesses who were already pre-disposed against the accused.

12. The trial court then found that the evidence of PW57 clearly showed that the death of the deceased was not accidental but homicidal. The deceased had been strangulated. The argument that since the body had suffered certain bone fractures, therefore strangulation could not have been the method of murder, was rejected. The Court found that any fractures on the body would have probably occurred as a result of it being burned and also because of the advanced age of the deceased.

13. The trial court held that the fact that the location of disposal of the dead body was shown by Accused No.3 and that the nature of crime was such that it involved pre-planning, indicative of conspiracy among the accused to commit the murder.

14. The trial court then took notice of the evidence regarding attempted disappearance of the evidence. In that, after the incident, the accused tried to destroy the evidence by setting the car on fire in which they had transported the deceased and then claiming insurance for the same as an accident case. The insurance company rejected the said claim. The Court found that the evidence of PW6 clearly showed that the car did not get burned due to any accident or internal malfunction.

15. The trial court adverted to the evidence of attempt of the Accused No.5 to dispose of a chain and pendant worn by the deceased by approaching a goldsmith, one Jignesh Soni (PW19). In his evidence, PW19 identified the chain and pendant and stated that he exchanged the same with gold.

16. The trial court, on the above analysis, recorded finding of guilt against all the five accused and was of the opinion that the offence committed by them was not only heinous but also a rarest of rare case warranting the death penalty. Accordingly, a death reference was forwarded by the trial court to the High Court for confirmation.

17. Before the High Court, besides the confirmation case, appeals filed by the accused assailing the order of conviction and sentence proceeded together for hearing. The High Court re-assessed and appraised the entire evidence afresh and recorded an independent finding of guilt against Accused Nos. 1, 2, 3, and 5. The High Court at the outset noted that the prosecution was not supporting the view taken by the trial court that the case would fall into the category of rarest of rare cases warranting death penalty. After taking note of that contention, the High Court proceeded to examine as to whether the prosecution had proved the charges against the Appellants beyond any reasonable doubt.

18. The High Court's decision proceeds in the following manner:

> In light of the judgment in Subbaiah Ambalam v State of Tamil Nadu[1], the High Court decided to examine the entire evidence before it, independent of the findings and conclusions of the trial Court. It noted that the jurisdiction of the High Court was co-extensive with that of the trial court in assessing, appraising and appreciating evidence.
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> Then, adverting to the evidence of PW57 who conducted the autopsy of the burnt body found at Barothi, the High Court opined that the burns were post- mortem and not ante-mortem. The fracture found on the body was probably caused as the deceased struggled while being strangulated or due to mishandling of the dead body. The presence of a fracture does not indicate that there was any other cause of death. Death was due to asphyxia by strangulation. The burning of the body was an attempt to destroy the evidence. The condition of the heart of the deceased, though disputed by the counsel for the accused, could not rule out the possibility that death was caused by strangulation.
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> As regards the identity of the dead body, the High Court took note of the following:
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> PW57, who conducted the autopsy of the dead body found at Barothi, deposed that a key tied with cotton thread was recovered from near the dead body. This key opened the lock to the room of the deceased at the Vadtal Temple.
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> Skin samples and teeth extracts of the deceased were obtained and matched with blood samples of the sister of the deceased. DNA testing showed a biological relation between the dead person and his sister.
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> Three teeth of the dead body had gold caps. PW1 deposed that he had treated the deceased in 1993 and that he had put the said gold caps on the teeth of the deceased

during treatment. This is corroborated by receipts and diary entries of PW1. Certain documentary evidence produced by the prosecution vis-à-vis photocopies of the case papers seemed to be exaggerated with regard to the number of teeth treated by PW1. Still, the deposition of PW1 was found to be reliable.

PW20 had taken a video of the post mortem carried out at the spot which corroborated the items found on the body/samples taken from the body.

d) While considering the evidence regarding the circumstance of last seen together, the High Court broadly noted thus:

The evidence of PW3 and PW8 corroborates the fact that the deceased was present in the Vadtal Temple on the day of his disappearance i.e. on 3rd May, 1998, at around 12:30PM. The witnesses further stated that they had left the deceased in his room while they went to get chappals but by the time they returned at around 2:30PM, he had gone from the room.

PW15 deposed that around the same time, he saw the deceased sitting with Accused No.3 in a blue car and also that he saw the deceased leaving with Accused No.3 in the said blue car between 1:50PM to 2:05PM. Even though PW15 had turned hostile, his evidence could not be wholly disregarded.

PW16 also deposed that he saw a blue car at the steps of the Vadtal Temple around the same time. Thus, an inference could be drawn against the accused in whose company the deceased was last seen and Accused No.3 failed to rebut the same.

e) The High Court then considered the evidence regarding the disclosure made by Accused No.3 during interrogation. That revealed to the police that the body of the deceased had been dumped in a spot at Barothi village (Exh.188). This disclosure was considered admissible u/S.27 of the Indian Evidence Act.

f) The High Court then considered the criticism of the defence that some of the panchas chosen by the prosecution were hostile towards the accused owing to prior disputes between the parties. It held that the investigating authorities ought to have been more careful before calling upon such persons who had a prior history of dispute with the accused. However, the High Court opined that the fact remains that the panchas were called merely to complete the formalities of preparing the panchnama. Hence, this lack of due diligence by itself would not render their evidence inadmissible.

g) The High Court also considered the argument of the defence that the case of the prosecution that they found various items such as pieces of cotton and tablet wrappers at the place of the alleged offence, seems highly unlikely given the time lapse between the time of the offence and the time when the officials actually reached

that place. The High Court noted that there was no evidence on record to prove how such lapse of time and weather conditions would not lead to contamination of such articles alleged to have been found.

h) The High Court then dealt with the evidence regarding the blue car in which the deceased was allegedly transported to Navli and then subsequently to Barothi village, where his dead body was found burned. The High Court held that the prosecution has proved that the car did not catch fire by accident but rather was intentionally burned by the accused to destroy traces of evidence. This has been corroborated by the evidence of the official of the insurance company which insured the said vehicle.

i) With reference to the evidence of procuring a call girl for the deceased, the High Court held that the evidence of the cellphone records clearly shows that Accused No.2 was in contact with PW25, who allegedly procured the call girl for the deceased. A telephone call was made around the time of the incident, most presumably summoning PW25 and the call girl to the Navli Temple. Additionally, the call girl herself PW49, identified the picture of the deceased as the man she had been with at the time of the incident. This fact is corroborated by PW32. Although both PW25 and PW49 have turned hostile, the totality of prosecution evidence corroborates the fact that PW49 was taken to Navli by PW25.

j) The High Court also considered the argument of the defence about the possibility of involvement of other persons who were inimical towards the deceased and were also named as suspects in the FIR. This argument has been rejected owing to lack of any evidence in support of the same. The High Court held that mere ill-will of the persons towards the deceased cannot be a reason to commit murder.

k) The High Court, however, held that the prosecution failed to conclusively prove that the accused procured specific kind of tablets for drugging the deceased.

l) The High Court also did not accept the prosecution evidence of Accused No.5 having approached PW19 to exchange the gold chain and amulet of the deceased, as conclusively proved.

m) The High Court held that the documents/receipts found in the house of Accused No.1 proving large amounts of financial transactions conducted on behalf of the Vadtal Temple and purportedly bearing his signature, have been proved. The handwriting on the documents seemed to tally with the handwriting of Accused No.1.

n) The High Court then examined the circumstance of criminal conspiracy hatched by the accused. It held that Accused No.1 was a managing trustee of the Navli Temple Gurukul, while Accused No.2 was a trustee. Accused No.5 was a disciple of Accused No.2, while Accused Nos. 1 and 3 were related by virtue of being disciples of one guru. It held that while the level of intimacy between the accused by itself cannot

> prove much, it must be seen in the context of the fact that the accused have been charged with conspiracy to commit murder.
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> o) The High Court then found that after the deceased proposed the transfer of the Chief Kothari, it is Accused No.2 who conveyed the message of the head of the temple, one Acharya Maharaj, to the deceased. Further, on the day of the alleged incident, Accused No. 2 purposely took PW3 and PW33 out from the Vadtal Temple to an event, after the crime had been committed, to allay their suspicion as to the whereabouts of the deceased. Additionally, Accused Nos. 2 and 4 left after attending an event at Nadiad in the evening while telling PW3 and PW33 that they would be going to Ahmedabad/Zundal.

This was presumably to mislead them. Later, both the accused surfaced at the Vadtal Temple.

p) The High Court found that there was clear evidence warranting inference of conspiracy hatched among the accused to commit the murder of the deceased. Further, considering the circumstances surrounding the incident, it is clear that more than two persons were required to carry out the crime. The fact that the Accused No.3 led the police to the place where the body was disposed of, links him to Accused Nos. 1 and 2. PW15 had also seen the deceased leaving from Vadtal with Accused No.3.

q) The High Court then noticed that the prosecution conceded that the evidence to link Accused No.4 to the incident was inadequate, as the material witnesses had turned hostile. At the most, the court could infer that Accused No.4 may have been present at Navli when the incident occurred but this would not be sufficient to convict him. However, while dealing with the presence of Accused No.5 at Navli, the High Court noted that he was present from the very beginning of the incident. Moreover, Accused No. 5 is the disciple of Accused No.2 and was even present with him on the day of the incident. Accused No.5 even led the investigating officials to the alleged room where the crime was executed in Navli. There is no reason to disbelieve that evidence. The High Court held that the disclosure made by Accused No.5 was crucial in discovering the place of murder.

r) The High Court noted that Accused No.5 was not present at Vadtal on the night of the incident, indicating that he was involved in disposing of the body of the deceased. His presence with Accused No.2, his knowledge of the murder and his conduct clearly marked him out as a co-conspirator.

s) The High Court while considering the evidence regarding the circumstance of motive, noted the following aspects:

> The seizure of large amounts of unaccounted cash as well as the presence of large amounts of investments from Accused Nos.1 and 2 goes to show the level of financial dealings of the said accused. No explanation has been offered by the said accused in that regard. Obviously, the said cash was illegally obtained. This goes to explain the common motive behind the actions of the accused, namely that they perceived a threat to their finances and control over the administration of Vadtal Temple.

The evidence adduced by the prosecution with regard to "last seen" theory, is such that even if there was a failure to lead evidence as to the motive of the accused, the fact that Accused No.3 pointed out the place where the body of the deceased was dumped goes to show that the crime was committed by them.

The fact that the deceased was intending to transfer the Chief Kothari and that the issue was discussed between the Board members, is clearly established.

The evidence of PW5 shows that the Chief Kothari had no fixed term and enjoyed the benefit of his office until and unless the Board decided otherwise. The Board of Trustees had discussed the proposal of the deceased with regard to transfer of the Chief Kothari. This was a huge concern to Accused Nos. 1 and 2, especially since they were dealing with the finances of the Vadtal Temple and their position was put under threat.

t) After analyzing the relevant circumstances and the evidence on record, the High Court found that the prosecution had proved that the accused were amongst the inner group which had a direct say in the financial and administrative matters of the Board. Apprehending their transfer, a conspiracy was hatched. Thus, there was strong motive for the Accused No. 1 and 2 in particular to commit the crime. In furtherance of that criminal conspiracy, the deceased was taken away by Accused No. 3 in his Maruti van from Vadtal Temple. He was taken to Navli Complex where he was done to death and his dead body was then disposed of in Rajasthan.

After disposing of the dead body, the car used in the commission of offence by the Accused No. 3 was set on fire to destroy the evidence. This was obviously done to mislead the investigating agency. The fact that large amounts were seized from the house of Accused Nos. 1 and 2, was sufficient to draw an inference that they had abused their position while dealing with financial matters at Vadtal Temple.

u) The High Court accordingly recorded a finding of guilt against Accused Nos. 1, 2, 3 and 5 for having murdered Gadadharanandji. This conclusion has been recorded even after noticing certain lacunae in the investigation, but the High Court found that the same did not impact the credibility of the prosecution case about the involvement of the Accused Nos.1 to 3 and 5, who have been found guilty of the murder of deceased Gadadharanandji.

19. These appeals were heard together. The arguments were opened by the counsel for Accused No.2, followed by Accused No.1 and Accused No.5. Mr KTS Tulsi, learned senior counsel appearing for Accused No.1, submitted that there is no evidence to show either meeting of minds by the accused or intention to commit criminal conspiracy. The prosecution's case that the accused were irked by the deceased's proposal to transfer them is imaginary because admittedly, the actual decision for transfer could be taken only by the entire Board, comprising of 7 (seven) other members. Eliminating a single person i.e. the deceased, would not have helped the accused in any way. This is further substantiated by the fact that Accused Nos. 4 and 5 were not even Kotharis and

eliminating the deceased would have served no purpose to them. Further, there is no evidence to prove that the deceased even proposed the transfer of the accused. The prosecution has failed to consider the possible involvement of one Navatam/Nautam/Nutan Swami and Premswarup Swami who were inimical towards the deceased. These two persons were named in the FIR but their names were dropped in the eventual chargesheet filed by CBI. Their hostile attitude towards the deceased was even recorded in the evidence of PW3 and corroborated by PW33. The impugned judgment also records that Navatam/Nautam/Nutan Swami failed a lie detector test. The real perpetrators were removed from the chargesheet but the innocent accused was charged. The alleged motive attributed to the accused is unfounded and unsubstantiated.

20. Mr. Tulsi further submits that certain witnesses, like PW15, who inter alia claimed to have last seen the deceased leaving the temple with some of the accused on the day of the alleged incident, have turned hostile and their evidence has to be disregarded. Despite PW15 turning hostile, part of his evidence was considered while convicting the accused. Infact, evidence of PW11 reveals that Accused No.3 was at home for the entire duration of the day on which the alleged incident took place. PW11 even stated that it was not true that Accused No.3 had taken the car out (in which the body of the deceased was allegedly transported) in the after math of the alleged incident or that he even returned with the car. Evidence of PW14 shows that he was present at the gate of the Vadtal Temple but did not see any car/van going past of the make and model as the one ascribed to the accused. Further, even PW14 has deposed that the deceased was in the temple on the day of the incident. Thus, the “last seen theory” falls flat.

21. Mr. Tulsi then submits that the chain of circumstances in the present case has been broken at several places, including:

> (a) The circumstances surrounding the actual kidnapping of the deceased and the place of crime being Navli, has not been substantiated by any evidence. Infact, PW3 states that on the day of the alleged incident, he along with Accused Nos.2 and 4 and PW33 had gone to Nadiad by car and stayed there till 6PM. In the evidence of PW11 and PW35, it is stated that all the accused were in Vadtal on the day of the alleged incident. Thus, the allegation of any of the accused kidnapping the deceased on the day of the incident has been disproved;
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> (b) The evidence of PW25 who allegedly brought a call girl for the deceased at the behest of the accused, sets out that he did not even know the Accused nor had he been given any message to bring any girl for the deceased. Further, the evidence of the so called call girl PW49 sets out that she did not even know PW25 and that she had never even been to the temple where the alleged incident occurred. She also states that she had not met any sadhu or maharaj at the temple.
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> (c) PW57, the doctor who conducted the autopsy of the burnt body, failed to establish that the cause of death was by strangulation and further failed to clarify whether the burns on the body were inflicted pre-mortem or post-mortem. Infact, the finding of the post mortem report shows that the burns were pre-mortem, thus completely

destroying the prosecution's case that the deceased died by strangulation. Further, evidence of PW 57 reveals that the right chamber of the heart was empty and the left chamber had clotted blood whereas medical jurisprudence dictates that in cases of asphyxia by strangulation, the right chamber should be full of clotted blood and the left chamber should be empty.

(d) The panchnama at the instance of Accused No.3, wherein he inter alia disclosed the place where the body of the deceased was burnt and dumped, is inadmissible under S. 27 of the Indian Evidence Act. The body had already been discovered at the said place and was a matter of public record.

Accused No. 3 did not reveal any exclusive information and thus the information in the panchnama was inconsequential. Further, the teeth and DNA samples of the body were not proved without reasonable doubt. Mr. Tulsi relies upon the judgment in State of Karnataka v David Rozari[2] to challenge the admissibility of the evidence on record.

22. Mr. Tulsi submits that the courts below ignored the well-established principle that in a case of circumstantial evidence, each and every circumstance has to be proved by independent, cogent evidence and each circumstance must be connected to each other as to complete the chain of circumstances. According to him, none of the circumstances in the present matter have been independently proved and there is a failure to complete the chain of circumstances. Mr. Tulsi has also relied on the following judgments to buttress his argument: Nizam v State of Rajasthan[3], Daulat Ram v State of Haryana[4], Dhanraj@ Dhand v State of Haryana[5], Kirti Pal v State of West Bengal [6], State of UP through Central Bureau of Investigation v Dr. Sanjay Singh & Anr.[7], State of Haryana v Satender[8], PK Narayanan v State of Kerala[9] and Baliya alias Bal Kishan v/s State of Madhya Pradesh[10].

23. Mr. Huzefa Ahmadi, learned Senior Counsel, appeared for the Accused No.2. He had opened the arguments for the appellants and raised points some of which have already been noted earlier. He submitted that the complete chain of events has not been established by the prosecution. According to him, the deceased's proposal to transfer the Kotharis was dropped by the deceased himself. Reliance has been placed in this regard on the application made by PW3 to the High Court of Gujarat, wherein it is stated that the deceased deferred his decision to effectuate the transfers by 6 (six) months. Infact, Navatam/Nautam/Nutan Swami and Premswarup Swami held a grudge against the deceased owing to the deferment as they wished to become the Kotharis in place of the incumbents. Their names were removed from the chargesheet without any explanation offered by the investigating agency. Additionally, the Sessions Court in its judgment has held that evidence of PW3 could not be considered for the purpose of establishing motive as he did not have any personal knowledge of the transfer of the Kotharis. Thus, no intent or motive of the accused to commit the crime was proved.

24. With regard to the allegation that the accused were misappropriating temple funds, Mr. Ahmadi submits that while the prosecution relied on money seized from the houses of the accused, however, no documentary evidence has been adduced to show that Accused No.2 had assets disproportionate

to his income. Mr. Ahmadi submits that the prosecution did not ask any questions with respect to the alleged disproportionate income of Accused No.2 in his statement under Section 313 of Cr.P.C. and hence cannot use that fact against him. Additionally, all the witnesses who testified regarding Accused No.2's alleged disproportionate income have turned hostile. Thus, the prosecution has miserably failed to show that Accused No.2 was misappropriating temple funds.

25. Mr. Ahmadi then submits that as regards the disappearance of the deceased from the Vadtal Temple premises, the two witnesses who claimed that they saw the deceased leaving with the accused, i.e. PW14 and PW15 have turned hostile. The evidence of other witnesses in connection with the disappearance viz of PW3, PW8 and PW16, are contradictory. The evidence of PW17 shows that Accused No.2 was with him during his absence from the Ashram for one hour. None of them have implicated Accused No.2 in any way nor was it possible for Accused No.2 to be at Navli complex when the alleged murder took place. Further, the evidence of PW64 investigating officer reveals that he attempted to falsely implicate two persons at the same time by recording statements under Section 161 of Cr.P.C. Mr. Ahmadi also invited our attention to the discrepancy about the age of the deceased in Exhibits 98 and 95 and contended that the record was fabricated.

26. Mr Ahmadi further submits that with reference to the allegation that the Accused killed the deceased, several factors belie the prosecution case. The panchnama drawn at the instance of Accused No.3 clearly sets out that Accused No.3 himself took the deceased to his house in Vadtal and strangled him there. No panchnama of house of Accused No.3 was recorded. Certain other factors, such as the fact that the deceased left behind his walking stick at Vadtal Temple which was regularly used by him and without which he could not walk on his own, discrepancies in the witness statements regarding the time of the alleged kidnapping, that the deceased could not have physically picked up the call girl in his room owing to his advanced age etc., all go to show that the prosecution's case is replete with figment of imagination. The Sessions Court clearly records that Accused No.2 was not present at the time when the alleged kidnapping took place. Further, the panchnama does not even make a mention of the alleged call girl who was present in the deceased's room. Thus, the allegation that Accused Nos. 2 to 5 took the deceased to the Navli Temple complex and murdered him there, is completely false and not borne out by the evidence on record.

27. Mr. Ahmadi submits that the prosecution's case about disposal of the deceased's body is also riddled with inaccuracies and errors. The panchnama drawn at the instance of Accused No.3, wherein he revealed about the commission of crime and the disposal of the deceased's body, is inadmissible and in any case cannot be used against other accused. Further, the panchnama suffers from factual and procedural inaccuracies, a fact noticed in the impugned judgment by the High Court for disregarding part one and part three of the same as inadmissible. As regards the identification of the deceased's body is concerned, Mr. Ahmadi submits that the evidence on record and the deposition by the doctor PW1 clearly show that the prosecution has fabricated the dental records of the deceased in an attempt to establish that the burnt body found in Rajasthan was that of the deceased. The High Court took note thereof in the impugned Judgment, but disregarded the same as immaterial.

28. Mr. Ahmadi finally submits that Accused No.2 has no links with the criminal conspiracy to murder the deceased. The panchnama prepared at the instance of Accused No. 3 does not even mention the role or involvement of Accused No.2. The panchnama prepared at the instance of Accused No.5 deserved to be disregarded owing to contradictory statements therein. The Sessions Court has recorded that Accused No.2 did not even hold an official post at the temple. Further, Accused No.2 was arrested without there being any sufficient proof against him and the prosecution went to the extent of fabricating documents to implicate him, as recorded in the impugned judgment. For the aforesaid reasons, the prosecution's case against Accused No.2 has not been proved beyond reasonable doubt. He pointed out that material facts were not put to the accused whilst recording his statement under Section 313 and, therefore, these facts cannot be made the basis for recording a finding of guilt against the accused. He has also produced a table in his written submissions, pointing out the discrepancies in the judgment of the trial court and the impugned judgment of the High Court. Mr. Ahmadi has filed elaborate written submissions. We treat the same as his argument. Mr. Ahmadi has relied upon the decisions in the cases of Pulukuri Kottaya and others v. Emperor[11], Mohmed Inayatullah v. The State of Maharashtra[12], and State of Himachal Pradesh v. Jeet Singh[13].

29. Mr. D.N. Ray, appeared for Accused No.5. He submits that the impugned Judgment is perverse as some of the primary findings recorded therein are diametrically opposite to the case set out by the prosecution and the findings recorded by the Sessions Court. Mr. Ray submits that the time of death of the deceased, as set out by the prosecution and as accepted by the Sessions Court, was between 3 PM to 4:30 PM whereas the High Court has assumed the time of death to be between 5 PM to 7 PM. This discrepancy arises out of the prosecution's failure to establish the time of death of the deceased.

30. Mr. Ray then submits that the prosecution's case, as accepted by the trial Court, is that the deceased was administered sleeping pills to render him unconscious after which Accused Nos. 3 to 5 strangulated him while Accused No.2 was guarding the room from outside. The High Court, however, has recorded that the prosecution fabricated evidence and planted the sleeping pills. More importantly, the High Court has changed the narrative of the prosecution and recorded that the deceased was smothered by a pillow, not strangulated. No basis for such change in narrative is forthcoming. Further, the prosecution's case draws support from two different panchnamas drawn by Accused No.3 and Accused No. 5, both of which are contradictory to each other. Infact, panchnama drawn at the instance of Accused No.3 does not even set out a case against Accused No.5. Finally, the entire case against Accused No.3 rests on the link that he was seen along with the deceased while leaving the Vadtal Temple complex in the car/van. This link is propagated by a sole witness, PW15 who claims to have seen Accused No.3. PW15, however, has been declared hostile. In his cross examination, he stated that he had only seen a white car and could not see who was sitting therein. The above discrepancies are fatal to the prosecution case as it puts forth a new case without affording the accused an opportunity to counter the same.

31. Mr. Ray also submits that the innocence of Accused No.5 can be inferred from the fact that no charges were levelled against him at the initial stages. Even the FIR filed by the CBI did not contain his name. Accused No.5 was far removed from the main accused and was a stranger to the criminal conspiracy alleged by the prosecution.

32. Finally, Mr. Ray submits that the presence of Accused No.5 at the stated place of offence at Navli, was spoken by PW17. But he was contradicted in cross examination. The evidence of PW35 infact mentions that Accused No.5 was at Vadtal at the time when the offence was committed at Navli. Further, the High Court has contradicted itself by first inferring from a panchnama that Accused No.5 was present at the place of the offence only to subsequently state that the panchnama could only be accepted in part and was only true to the extent that it proved that the deceased was taken from Vadtal to Navli. The only way that the High Court inferred the involvement of Accused No.5 was his alleged presence at Navli because he was not seen at Vadtal. This reasoning is a case of gross perversity. The contradictory finding recorded by the High Court has seriously affected the admissibility of the panchnama. At the most, contends learned counsel, the Accused No.5 can be proceeded against for disposing of the deceased's body and not for murdering him. Mr. Ray has relied on the decisions in the cases of H.D. Sikand (D) Through L.R.S. v/s Central Bureau of Investigation and Anr.[14], Hodge's Case[15] and Pawan Kumar Vs. State of Haryana[16].

33. In reply, Ms. Kiran Suri, learned Senior Counsel appearing for the prosecution, first submits that the accused had conspired with each other to murder the deceased and that their conviction by the lower Courts is based on the evidence available on record. Ms. Suri also submits that the chain of circumstances proving the guilt of the accused has been established and proved through the various witnesses.

34. With regard to the guilt of the accused in appeal, Ms. Suri submits that there cannot be direct evidence of hatching a criminal conspiracy and the same has to be reasonably inferred from the evidence. In the present case, the prosecution has proved the guilt of the accused on the basis of motive, 'last-seen' theory, place of murder and disposal of body, panchnama at the instance of Accused No.5, recovery of the body of the deceased and conduct of Accused No.3.

35. Ms. Suri submits that it is indisputable that Accused No.1 was the Assistant Kothari of the temple and Accused No.2 was assisting him. From the circumstantial evidence and considering the unaccounted money found at their house/in their bank accounts, it is apparent that Accused Nos.1 and 2 were involved in financial irregularities of the temple funds and that their continuation at Vadtal was threatened by the deceased's proposal to transfer the Kotharis out of the Vadtal Temple. Thus, there was clear apprehension in the minds of Accused Nos. 1 and 2 that they would be replaced. Ms. Suri in support of this argument has relied on the evidence of PW3, PW5, PW21, PW22, PW33, PW35, PW36, PW37, PW39, PW40 and PW41. Further, contends Ms. Suri that the accused have not been able to give any explanation for the huge amounts of money found in their accounts and at their houses. In this regard, Ms. Suri relies upon the evidence of PW22, PW35 and PW39.

36. On the issue of the 'last-seen' theory, Ms. Suri submits that the evidence of PW16 clearly establishes that he saw Accused No.3 near the room of the deceased on the day and at the time he went missing. Further, PW16 states that he initially saw the blue car (in which the deceased was taken away) near the temple steps and later, the said blue car, along with Accused No.3, had disappeared. This has been substantiated by the evidence of PW15 wherein he claims that he saw Accused No.3 with the deceased at the relevant time, even though PW15 has turned hostile. Further,

the car used to take away the deceased was subsequently put on fire to mislead the investigating agency. Ms. Suri also relies upon the evidence of PW3, PW8, PW14 and PW48 in this regard.

37. With regard to the actual murder of the deceased, Ms. Suri submits that the crucial evidence is panchnama (Exh. 198) prepared at the instance of Accused No.5. He has admitted to the place of the crime and Accused No.3 showed the police where the body of the deceased had been disposed of. Further, the evidence of PW25 who brought the call girl and the evidence of PW49 the call girl summoned by the accused for the deceased, also establishes the presence of the accused at the place and time of the crime. PW49 has stated that she saw Accused No.2 at the Navli Temple complex when she was summoned there and that she had physical relations with the deceased after that. Again, while both PW25 and PW49 have turned hostile, their evidence clearly establishes the presence of the various accused at the place and time of the alleged murder. Further, panchnama clearly establishes that the deceased was strangulated in a room at Navli while Accused No.2 waited outside the room. Additionally, the statement made by PW20 that Accused No.2 bought tablets from him, which were then used to sedate the deceased before the murder, is also established by the prosecution.

38. Ms. Suri then submits that panchnama drawn at the instance of Accused No.3 and the statement given to the police was an attempt to mislead the prosecution from the real events that unfolded. The panchnama sets out the real incident wherein the deceased was murdered at Navli and not at Vadtal as claimed by Accused No.3. Accused No.3 possessed the car/van which was subsequently found in a burnt state in the garage of PW13. A false insurance claim was lodged regarding the accident to the car, which was rejected. Pertinently, Accused No.3 has not been able to explain what happened to the car.

39. Ms. Suri finally submits that the prosecution has clearly proved the recovery of the deceased's body and its identification. PW50 has deposed that he found the burnt body in a ditch at Barothi Village, Rajasthan. It has been proved that the said body was of the deceased through DNA testing and by the presence of gold caps on the teeth of the body. This has been corroborated by PW1, the doctor who put the caps on the teeth of the accused. Thus, the chain of events is complete in the present case so as to leave no manner of doubt regarding the guilt of the accused. She submits that this Court should be loath to interfere with the concurrent findings of guilt recorded by the two Courts against the appellants herein. Ms. Suri has relied upon the reported decisions in the cases of Pandurang Kalu Patil and Another v. State of Maharashtra[17], State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru[18], Udai Bhan v. State of U.P.[19], State of Maharashtra v. Damu[20], H.P. Admn. v. Om Prakash[21] and Vasanta Sampat Dupare v. State of Maharashtra[22].

40. We have thus heard the learned counsel appearing for the respective parties at length. With their able assistance we have also examined the relevant record, the judgments rendered by the two Courts and the reported decisions cited by them during arguments. The prosecution case hinges on circumstantial evidence. The following circumstances have been pressed into service by the prosecution:

Motive;

"Last seen" in the company of Accused No. 3;

Murder of deceased at Navli complex and disposal of the dead body in Rajasthan;

Panchnama drawn on the basis of disclosure made by Accused No. 5; The recovery of dead body and its identification;

The discovery of location, on the basis of disclosure made by Accused No.3, where the dead body was dumped;

Conduct of Accused No. 3 to mislead the investigation; Criminal conspiracy to commit the crime.

41. In all, five accused were put on trial. Accused No. 4 has been acquitted by the High Court. The prosecution has not challenged the acquittal of Accused No. 4. In fact, from the judgment of the High Court it is evident that the prosecution in all fairness conceded that the evidence against Accused No. 4 was insufficient. As regards Accused No. 3, both the courts have found that the prosecution succeeded in establishing the guilt of Accused No. 3. As a result, he has been convicted by the trial court and the finding of guilt against him has been affirmed by the High Court. Accused No. 3 has not filed any appeal against his conviction. That leaves us to consider the case against Accused Nos. 1, 2 and 5 in the present appeals.

42. Before we embark upon the points urged by the counsels appearing for the respective appellants, it may be apposite to bear in mind the settled legal position about the quality of evidence required for recording a finding of guilt against the accused in respect of circumstantial evidence. (See decisions relied by the Appellants, Paras 15 to 19 of Dr. Sanjay Singh (supra), Para 18 of H.D. Sikand (supra); and Sharad Birdhichand Sarda v. State of Maharashtra[23]). At the same time, we must remind ourselves of the settled legal position that this Court should be loath to overturn the concurrent findings of fact recorded by the two Courts unless the same are found to be palpably untenable or perverse.

43. In this backdrop, we shall now examine the findings recorded by the two Courts with reference to the relevant circumstances on the basis of which finding of guilt has been recorded against the appellants. The first such circumstance is about the presence of Gadadharanandji at the Vadtal Temple complex at around 12:30 - 12:45 P.M. on 03.05.1998. Both the Courts have concurrently found that the prosecution has succeeded in establishing the fact that Gadadharanandji returned to the Vadtal Temple at around 12:30

- 12:45 P.M. This has been stated by PW3 who was present in the room of Gadadharanandji at the relevant time. After Gadadharanandji returned, PW3 pressed his legs for about half an hour and left the room at around 1:00 P.M. PW3 returned to the room at around 2:00 - 2:30 P.M. and noticed that the turban and walking stick of Gadadharanandji were left behind in the room but Gadadharanandji himself was not seen around. PW 8 has also deposed that on the day of the incident, he had reached the Vadtal Temple complex/residence of Gadadharanandji at around 11:00

A.M. At that time, PW3 and PW33 were also present. PW8 has also stated that Gadadharanandji arrived at the Vadtal Temple in a vehicle about half an hour later, after which PW3 and he went inside the room of Gadadharanandji and PW3 pressed his legs. At that time he (PW8) sat on the sofa and read some paper. PW33 has also deposed that on the day of incident, he was at the Vadtal Temple complex when Gadadharanandji left for 'Khandli' (Khanjali) village at around 8:00 A.M. and returned to the temple at 12:00 - 12:30 P.M. PW16 has also deposed that on the day of incident at around 1:00 - 1:15 P.M., he entered the room of Gadadharanandji along with one Gandalal and served him for five minutes before leaving the room. From the evidence of these witnesses, the presence of Gadadharanandji at Vadtal Temple complex on 03.05.1998 between 12:00 - 1:30 P.M. is indisputable. No serious argument has been advanced to challenge this factual position.

44. The argument of the appellants, however, is that there is no credible evidence regarding the manner of disappearance of Gadadharanandji on 03.05.1998 after 1:30 P.M. For, the prosecution has not produced any direct evidence regarding the manner of disappearance of Gadadharanandji from the Vadtal Temple, as to whether he was forcibly kidnapped from his room or coaxed to go to the Navli Temple complex by the accused. However, the prosecution has certainly produced evidence to establish the fact that Gadadharanandji was seen along with Accused No.3 in a car, leaving the Vadtal Temple. The Trial Court as well as the Appellate Court have relied upon the evidence of PW15 and 16, for having established the aforesaid fact. The prosecution has also relied on the evidence of PW3 and PW14. But PW3 does not claim to have personally seen Gadadharanandji leaving the room along with any person, much less Accused No.3. He could not have witnessed that event as he had gone out to fetch chappals and by the time he returned at 2:00 - 2:30 P.M., Gadadharanandji was not seen in his room. PW14 was examined to establish the fact under consideration. However, he turned hostile. In his statement given to the investigating agency, he claimed to have seen the deceased leaving the Vadtal Temple in a blue car but in his evidence before the Court later changed his stance by saying that he never saw such a car. However, the prosecution has been able to establish from the totality of the evidence that Gadadharanandji was seen going in a car from Vadtal Temple. PW15, who also turned hostile, initially deposed that he saw the deceased leaving the Vadtal Temple with Accused No.3 in a blue car but subsequently stated that he had seen a white colour Maruti car coming out of the temple gate with "Swami" sitting in the front. Be it noted that Accused No.3 did not cross examine PW15 or challenged the version of his presence at the spot spoken by this witness in any manner. The Courts below have accepted the version of PW15 to the limited extent of having seen the deceased going out of the Vadtal Temple in a car along with Accused No.3. The fact that Accused No.3 was sitting in the blue colour car parked near the steps of Sabha Mandap at the relevant time has been corroborated by the evidence of PW16. The courts below have accepted the evidence of PW16 as truthful and reliable. The criticism by the appellants, however, is that the presence of PW16 has not been spoken either by PW3 or by PW8. From the evidence of PW16, however, it is seen that PW16 arrived at the room of Gadadharanandji at around 1:00 P.M. - 1:15 P.M. when PW3 and PW8 had already left. PW16 along with one Gandalal remained inside the room of Gadadharanandji for some time and he (PW16) served him for around five minutes before leaving the room. PW16 thereafter went to the nearby machine room from where he saw a blue colour car parked near the steps of the temple, in which Accused No.3 was sitting. He then went to sleep and when he woke up around 2:00 - 2:20 P.M., the said blue car and Accused No.3 was not seen. The Courts below after analyzing this evidence, have

recorded a concurrent finding including by weighing the admissible part of the evidence of hostile witnesses and of PW16. The view so taken cannot be said to be perverse. The Trial Court found that the evidence given by the above named witnesses was reliable atleast with regard to the manner of disappearance of Gadadharanandji from Vadtal Temple. The discrepancy in the evidence of these witnesses has been considered by the Trial court before it recorded the finding on the circumstance under consideration. Even the Appellate Court reached at the same conclusion independently. Both the Courts have analysed the evidence and after sifting the irrelevant or inadmissible part therefrom, found that the evidence was sufficient to answer the circumstance against the appellants. The two Courts have held that Gadadharanandji was last seen together with Accused No.3 leaving the Vadtal Temple complex in a blue car and that he was not seen thereafter until his dead body was found on 4th May, 1998 (i.e. next day of disappearance) at Barothi village in the neighbouring state of Rajasthan. This finding arrived at by the Courts below is unassailable. It is neither perverse nor warrants interference by this Court.

45. The dead body of deceased Gadadharanandji was found on 4th May, 1998 in a burnt condition in a ditch behind the house of PW50 in Barothi village in Rajasthan. How the dead body of Gadadharanandji reached that spot was revealed by none other than Accused No.3. In what circumstances burnt injuries were caused on the dead body of Gadadharanandji, no prosecution witness has spoken about that. Be that as it may, the fact that the dead body recovered from Barothi village on 4th May, 1998 was that of Gadadharanandji could be known only after Accused No.3, during the course of investigation, made a disclosure about the location where he had disposed of the dead body of Gadadharanandji. Till the aforesaid disclosure was made, in the records of the Rajasthan police, the dead body was noted as that of an unknown person. If, the Accused No.3 had not disclosed to the Investigating Officer about the location where the dead body was dumped by him - which information was personally known to him and at best Accused No.5 and none else, then the investigation would not have made any headway. The disclosure made by Accused No.3 to the investigating officer was recorded in the panchanama Exh. 188, when he had led the police party to the spot where the dead body was dumped by him. That location matched with the location from where the dead body of an unknown person was recovered on 4th May, 1998 on the information given by PW50 to the local police at Barothi. The fact that the dead body was already recovered from the same place on 4th May, 1998 and so noted in the public records in the State of Rajasthan does not undermine the admissibility of the disclosure made by Accused No.3 to the investigating officer about the location where the dead body of Gadadharanandji was dumped by him, which information was exclusively within the personal knowledge of Accused No. 3. The fact that the dead body recovered on 4th May 1998 was of Gadadharanandji, was unraveled and discovered only after the results of its medical examination became available to the investigating agency. Till then, it was considered to be of an unknown person. The Courts below have accepted the case of the prosecution that the disclosure made by Accused No.3 about the location where the dead body of Gadadharanandji was dumped by him, was admissible under Section 27 of the Evidence Act. The appellants, however, take exception to that by relying on the reported decisions. In our view, the decision in the case of Navjot Sandhu (Supra) has adverted to all the previous decisions and restated the legal position. In paragraph 114, while considering the arguments advanced by the parties regarding the sweep of Section 27 of the Evidence Act, the Court formulated two questions which read thus:

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

(ii) Whether it is necessary that the discovery of fact should be by the person making the disclosure or directly at his instance. The subsequent event of discovery by the police with the aid of information furnished by the accused — whether can be put against him under Section 27." In the context of these questions, the argument of the counsel for the State in that case has been adverted to in paragraphs 115 to 118. The Court then after analyzing Section 27 of the Evidence Act, in paragraphs 120 to 144 adverted to the relevant decisions on the point. In paragraphs 120 and 121, the Court noted thus:

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

121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts

> to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in Kottaya case64: (AIR p. 70, para 10) "clearly the extent of the information admissible must depend on the exact nature of the fact discovered" and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said: (AIR p. 70, para 10) "Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused." We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words: (AIR p. 70, para 10) "If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect." Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court: (AIR p. 70, para 10) "In Their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant." (emphasis supplied)

46. This Court has restated the legal position that the facts need not be self-probatory and the word "fact" as contemplated by Section 27 is not limited to "actual physical material object". It further noted that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. In paragraph 128, the Court noted the statement of law in Udai Bhan (Supra) that, "A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence." The Court then posed a question as to what would be the position if the physical object was not recovered at the instance of the accused. That issue has been answered on the basis of precedents, as can be discerned from Paragraphs 129 to 132 of the reported judgment. In paragraph 139, the Court noticed the decision in the case of Damu (Supra) which had dealt with the case where broken glass piece was recovered from the spot matched with broken tail lamp and in paragraph 37 of that decision, the Court observed thus:

> "37. How did the particular information lead to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the investigating officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot." (emphasis supplied).
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> The Court then noted that the above view taken in Damu's case does not make it a dent on the observations made and the legal position spelt out in Om Prakash (supra) which distinguishes Damu's case because there was discovery of a related physical object at least in part. We may usefully reproduce paragraph No.142 to 144 of the same reported decision, wherein the Court observed thus:
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> "142. There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the investigating officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the investigating officer will be discovering a fact viz. the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the police officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the

immediate and proximate cause of discovery. If the police officer chooses not to take the informant accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence." "143. How the clause "as relates distinctly to the fact thereby discovered" has to be understood is the next point that deserves consideration. The interpretation of this clause is not in doubt. Apart from Kottaya case various decisions of this Court have elucidated and clarified the scope and meaning of the said portion of Section 27. The law has been succinctly stated in Inayatullah case. Sarkaria, J. analysed the ingredients of the section and explained the ambit and nuances of this particular clause in the following words: (SCC p. 832, para 12) "The last but the most important condition is that only 'so much of the information' as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word 'distinctly' means 'directly', 'indubitably', 'strictly', 'unmistakably'. The word has been advisedly used to limit and define the scope of the provable information. The phrase 'distinctly relates to the fact thereby discovered' is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered." In the light of the legal position thus clarified, this Court excluded a part of the disclosure statement to which we have already adverted.

144. In Bodhraj v. State of J&K this Court after referring to the decisions on the subject observed thus: (SCC p. 58, para 18) "The words 'so much of such information' as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate." (emphasis supplied)

47. Reliance was also placed on the recent decision of this Court in the case of Dupare (supra). The Court adverted to the relevant precedents and observed thus, in paragraphs 23 to 29:-

"23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in Pulukuri Kotayya v. King Emperor has held thus: (IA p.77) "... it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will

produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

24. In Mohmed Inayatullah v. The State of Maharashtra, while dealing with the ambit and scope of Section 27 of the Evidence Act, the Court held that:

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

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

12. The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26.

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

13. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Emperor, Ganu Chandra Kashid v. Empror). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Palukuri Kotayya v. Emperor, Udai Bhan v. State of U P). (emphasis in original)

25. In Aftab Ahmad Anasari v. State of Uttaranchal after referring to the decision in Palukuri Kotayya, the Court adverted to seizure of clothes of the deceased which were concealed by the accused. In that context, the Court opined that: (Aftab Ahmad Anasari Case, SCC p. 596, para 40) "40. ...the part of the disclosure statement, namely, that the Appellant was ready to show the place where he had concealed the clothes of the deceased is clearly admissible Under Section 27 of the Evidence Act because the same relates distinctly to the discovery of the clothes of the deceased from that very place. The contention that even if it is assumed for the sake of argument that the clothes of the deceased were recovered from the house of the sister of the Appellant pursuant to the voluntary disclosure statement made by the Appellant, the prosecution has failed to prove that the clothes so recovered belonged to the deceased and therefore, the recovery of the clothes should not be treated as an incriminating circumstance, is devoid of merits."

26. In State of Maharashtra v. Damu it has been held as follows:

> "35. ...It is now well settled that recovery of an object is not discovery of a fact as envisaged in [Section 27 of the Evidence Act, 1872]. The decision of the Privy Council in Pulukuri Kotayya v. King Emperor is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect." The similar principle has been laid down in State of Maharashtra v. Suresh , State of Punjab v. Gurnam Kaur, Aftab Ahmad Anasari v. State of Uttaranchal, Bhagwan Dass v. State (NCT of Delhi) , Manu Sharma v. State (NCT of Delhi) and Rumi Bora Dutta v. State of Assam.

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

28. Additionally, another aspect can also be taken note of. The fact that the Appellant had led the police officer to find out the spot where the crime was committed, and the tap where he washed the clothes eloquently speak of his conduct as the same is admissible in evidence to establish his conduct. In this context we may refer with profit to the authority in Prakash Chand v. State (Delhi Admn.) wherein the Court after referring to the decision in H.P. Admn. v. Om Prakash held thus: (Prakash Chand Case, SCC p.95, para 8) "8. ...There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible Under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police

Officer in the course of an investigation which is hit by Section 162 of the Code of Criminal Procedure. What is excluded by Section 162, Code of Criminal Procedure is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, Under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act."

29. In A.N. Vekatesh and Anr. v. State of Karnataka it has been ruled that:

> (SCC p. 721, para 9) "9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct Under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (Delhi Admn.). Even if we hold that the disclosure statement made by the 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. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence Under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible Under Section 8 of the Evidence Act." (emphasis supplied) The other decision relied upon is the case of Pandurang Kalu Patil (supra).
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> 48. It is not necessary to multiply the authorities on this aspect. In our opinion, the Courts below have rightly placed reliance on the fact discovered by the Investigating Officer (PW64) on the basis of the disclosure made by the Accused No.3 on 2nd April 1999, after his arrest on 29th March, 1999, as recorded in Exh. 188. The panchanama Exh.188 was proved by pancha witness PW30. The fact that PW30 was not on good terms with the accused cannot be the basis to discard his evidence. This aspect has been considered by the High Court and in our opinion, rightly, that the evidence of PW30 was relied upon for the limited purpose to prove the panchanama and not for any other relevant fact. We affirm the view taken by the courts below about the admissibility of disclosure of the spot where the dead body of Gadadharanandji was disposed of by Accused No.3. The same stood corroborated from the recovery of a dead body of an unknown person from the same spot by the Rajasthan Police on 4th

May, 1998 on the information provided by PW50. That dead body, on subsequent medical examination was found to be of none other than that of Gadadharanandji.

49. As regards the identity of the dead body, the Courts below took note of the evidence of PW57 and PW50. PW50 had informed the local police of Barothi on 4th May, 1998 about the dead body of an unknown person lying at the same spot, later on discovered to be that of Gadadharanandji due to the disclosure made by Accused No. 3. PW57 conducted the post-mortem of the burnt dead body found at Barothi village in Rajasthan. He deposed that the death was homicide. He also deposed about the golden teeth and a key found near the dead body. During the course of investigation, it was revealed that the said key could open the lock put up on the room of the deceased in the Vadtal Temple complex. PW3 corroborated that fact. Further, the identity of the dead body was conclusively established from the DNA testing results of the skin sample of the body which matched with the blood samples of the biological sister of the deceased. Additionally, PW1 also confirmed that he had treated the deceased in 1993 by implanting gold caps on his teeth. That statement was corroborated by the receipts and diary entries of PW1. Indeed, the Appellants have vehemently contended that the said medical records are fabricated because of the discrepancies therein. However, the said discrepancies would not discredit the other evidence regarding the identity of the dead body which has been duly corroborated. This view taken by the High Court, in our opinion, is a possible view. It is certainly not a perverse view. As the identity of the dead body of deceased Gadadharanandji is established, it is a strong circumstance to link it to Accused No.3 who had voluntarily disclosed to the investigating agency about the spot/location where the dead body of the deceased was dumped by him and that being the same place in Barothi village in Rajasthan from where the dead body of an unknown person was recovered earlier by the local police.

50. That brings us to the efficacy of the disclosure made by Accused No.5 to the investigating agency - the place where Gadadharanandji was brought from Vadtal Temple and the crime of murder was finally executed. The disclosure so made by Accused No. 5 on 18th April, 1999, after his arrest, has been corroborated by the panchanama Ex.198 proved by pancha PW31. The Accused No.5 disclosed the room number in Navli Temple complex where Gadadharanandji had stayed on the day of incident. The Courts below have held the disclosure by Accused No.5 about the place where Gadadharanandji was brought at Navli Temple complex, as admissible. We affirm that view for the reasons noted while considering the efficacy of disclosure of Accused No.3. From this evidence, it is obvious that Gadadharanandji was taken away by Accused No.3 in a car from Vadtal Temple complex and brought to Navli Temple complex on 3rd May, 1998 itself. His dead body was dumped in a ditch in village Barothi in Rajasthan (another State) which was traced on 4th May, 1998 as a consequence of the information given by PW50.

51. We shall now deal with that aspect of evidence which shows the presence of the accused at the Navli Temple complex on the day of the incident. For that, the Courts below have taken into account the circumstantial evidence as well as the ocular evidence to the extent it is admissible. The evidence of PW25 and PW49 at the Navli Temple throws light on the said issue. According to the prosecution, prior to the incident, Accused No.2 was in touch with PW25 to arrange for a call girl for the pleasure of Gadadharanandji.PW48 has deposed that his company had allocated cellphone number '9825017197' to Accused No.2. The form for allocating the said number to Accused No.2 is Exh. 241. The mobile bills of Accused No.2 concerning the aforesaid number 9825017197 for the months of January-April 1998 and April-May 1998 are produced at Exh. 242. PW48 had stored the information concerning the details of the aforesaid number 9825017197 on his computer and a print out of the said information has also been produced at Exh. 242, while receipt of such information is produced at Ex. 243. The defence has chosen not to cross examine PW48, thus accepting that the number 9825017197 belonged to Accused No.2 and about the calls made from and received on that numbers. Hence, it is established that Accused No.2 was using number 9825017197.

52. Further, PW25 has deposed that he had a telephone at his residence bearing number 32670. Exhs. 242 and 243 reveal that several calls were made from the number 9825017197 (belonging to Accused No.2), to the number '02692-32670', between 18th April 1998 to 20th May 1998. The aforesaid exhibits also reveal that on 2nd May 1998, there were calls made between the said numbers on two occasions. On the day of the incident i.e. 3rd May 1998, the number 9825017197 used by Accused No.2 received six calls from the telephone number of PW25 between 5:10PM and 6:55PM. On 4th May 1998, the number 9825017197 used by Accused No.2 received a phone call after mid night, for a duration of around '4:55' minutes. Exhs. 242 and 243 reveal that calls were exchanged between the two numbers even in June-July 1998.

It is safe to infer that Accused No.2 was not talking to anybody else but PW25, on the land line number of PW25. No evidence has been adduced by Accused No.2 to dispel the same. It is clear from the above conduct of the parties that PW25 was well acquainted with Accused No.2. PW64 investigating officer has deposed that PW25 made a statement before him that he knew Accused No.2 and that Accused No.2 had contacted him for procuring a girl for Gadadharanandji. He (PW25) had also stated to PW64 that on 2nd May, 1998, he contacted Accused No.2, when Accused No.2 asked him to bring a girl at Navli complex on the next day i.e. 3rd May, 1998. On that day, PW25 received a call at his residence from Accused No.2 at around 1:30PM, asking him to reach Navli. PW25 then stated that he brought PW49 to Navli at around 2:15-2:30PM, after which they had met Accused No.2 in the Navli Temple complex. During examination, though PW25 turned hostile and denied that Accused No.2 contacted him for the purpose of arranging a girl, the evidence on record, as set out hereinabove, clearly establishes that Accused No.2 was in constant contact with PW25. The Courts below have rightly held in our opinion, that the subsequent stance taken by PW25 that he did not know Accused No.2, was patently incorrect and that there was enough evidence on record to show otherwise. Thus, from the evidence on hand, it is apparent that PW25 knew Accused

No.2 and there is no other evidence on record to disprove the theory that PW25 had gone to Navli with PW49 on the instructions of Accused No.2.

53. With regard to the evidence of PW49, the call girl procured by PW25, she had appeared before the investigating officer (PW64) to give her statement on 2nd May, 1999, during the course of the investigation. PW64 has deposed that when PW49 was called for investigation, she was shown photographs of the deceased Gadadharanandji and she had identified him as the man she had physical relations with at the Navli Temple complex. She also identified Accused No.2 as one of the persons she met at the Navli Temple complex on the day of the incident. These statements were given in the presence of PW32. PW32 is an independent witness. His evidence has been accepted by both the Trial Court and the High Court as independent and truthful. We see no reason to conclude otherwise. We are also in agreement with the finding given by the Courts below that the evidence given by PW32 and the investigating officer (PW64) in this regard cannot be discredited. Thus, it can be inferred that PW49 was taken to the Navli Temple complex by PW25 on 3rd May, 1998, where Accused No.2 and Gadadharanandji were present.

54. The presence of Accused No.2 at the Navli Temple on 3rd May, 1998 can also be deciphered from the evidence of PW42. PW42 has turned hostile. However, in his evidence, he has admitted that in 1998, Accused No.2 was running the Navli Temple. Further, on 3rd May, 1998 as he was leaving the Navli Temple complex, Accused No.2 reached with another person, whose identity could not be ascertained by him. We agree with the reasoning of the Courts below that even if the denial of PW42 on other facts is accepted, his presence at the Navli Temple on the day of the incident and at the relevant time is proved. His hostility does not destroy the evidence led by the prosecution to show that the Accused No. 2 had come to the Navli Temple complex on 3rd May 1998. The presence of PW42 at the Navli Temple complex has been corroborated by the evidence of PW43, wherein although he (PW43) has turned hostile, has admitted that PW42 “hadn’t gone anywhere” on the day of the incident. Thus, indicating that PW-42 was at the Navli Temple on the day of the incident.

55. It is significant to also note the conduct of Accused No.2 in light of the evidence which we have analysed above. On the day of the incident, Accused Nos.2 and 4 took PW3 and PW33 along with them to Nadiad for an event at around 4-4:15PM. The prosecution has argued that Accused No.2 purposely did this so as to not arouse any suspicion of PW3 and PW33 as to the whereabouts of Gadadharanandji and to hide his real intentions. PW36 deposed that Accused No. 2 along with another person (described as “sant”) and two disciples had reached the event at Nadiad around 5-5:30PM and stayed for around 10-15 minutes. PW3 has deposed that at the time of leaving from Nadiad, the accused received a call from Accused No.1 after which Accused No. 2 told PW3 and PW33 to go to Vadtal by themselves in an auto as they (Accused Nos. 2 and 4) were going to Ahmedabad, whereas Accused No.4 told them that they were going to Zundal village. This was presumably an attempt by the said accused to create confusion in the minds of PW3 and PW33. There is evidence to show that Accused No.2 was spotted in the Navli Temple complex on 3rd May, 1998. Additionally, no evidence has been led to show the whereabouts of both Accused Nos. 2 and 4 after leaving from Nadiad until their arrival at Vadtal Temple complex. PW3 deposed that Accused Nos.2 and 4 were with him from afternoon till around 6PM on the day of the incident. The period from 2:30 PM till the Accused No. 2 left for Nadiad with PW3 at around 4-4:15PM, has not been

explained by the said accused. The Courts below have rightly inferred on the basis of the evidence adverted to hereinabove that Accused No.2 had picked up soft drinks at around 2:30PM from the shop of PW17 at Vadtal, gone to Navli at around 3:00PM and remained there until he returned to the Vadtal Temple complex, after which he left with PW3 and PW33 for Nadiad.

56. In addition to the above, we must also point out here the conduct of Accused No.3 post the murder of Gadadharanandji. As set out by the prosecution, once the murder was committed, Accused No.3 along with Accused No.5 carried his body to Barothi village in Rajasthan where it was dumped in a ditch and set on fire. After that, the Accused No.3 set the car on fire and took it to the garage of PW13. Thereafter insurance claim was filed on 6th May, 1998 (Ex.129) in the name of the car owner (PW11) under the signature of Accused No.3 as an accident case. However, the insurance company rejected the claim. PW6, surveyor of the insurance company who had examined the said car, deposed that the car did not get burned due to any accident or internal malfunction.

57. As noted earlier, it was only on the basis of the disclosure made by Accused No.5 as to the place where the murder was committed, that the investigating agency was able to take the investigation forward and then interrogate the aforesaid witnesses i.e. PW25, PW42, PW43 and PW49. Only a person who was present at the time of commission of the offence could have known about the location of the offence and Accused No.5 undoubtedly had exclusive knowledge about the place where the crime was committed, a fact which has been affirmed by both the courts. The panchnama drawn on the basis of this disclosure has been corroborated by independent pancha witness PW31.The Courts below, on analyzing the relevant evidence, have held that the inescapable conclusion is that the deceased was taken to Navli. We are in agreement with this finding, as the evidence on record supports that conclusion.

58. On the basis of the aforementioned circumstances, the Courts below have held that the link connecting the chain of events and the link between Accused Nos.1, 2, 3 and 5 was complete in all respects, pointing to the guilt only of the said accused.

59. The moot question is as to why the appellants should have thought of committing the crime. The motive behind the crime according to the prosecution was that Accused Nos.1 and 2 were irked by the proposal of the deceased Gadadharanandji to transfer them immediately after taking over as the Chairman of the Board of Trustees of the Vadtal Temple on 11th April, 1998. The Courts below have adverted to the evidence of PW3, PW5, PW33, PW37 and PW39 and after analyzing the same, took the view that there was strong motive for Accused No.1 and 2 to murder Gadadharanandji as they felt threatened about their current position and of losing control over the affairs of the Vadtal Temple. Resultantly, the Accused Nos.1 and 2 hatched a conspiracy to commit the offence in question and took the assistance of Accused Nos.3 and 5 who were co-conspirators along with them. This finding was assailed by the appellants mainly on the ground that such a case was a figment of imagination of the prosecution. In fact, there were other persons who were inimical to Gadadharanandji after he was elected as Chairman of the Vadtal Temple. The Courts below have analysed this aspect and have rejected that argument. Both the Courts have held that mere unhappiness of those persons could not have been a ground to take such an extreme step. The fact that the names of other persons were mentioned in the F.I.R. but were dropped in the eventual

chargesheet filed by the investigating agency does not diminish the credibility and the quality of evidence adduced by the prosecution about the involvement of the appellants in the commission of crime. As far as Accused Nos.1 and 2 are concerned, the Courts below have held that they were in complete control of the affairs of the Vadtal Temple complex. It is these Accused who were entertaining apprehension that their financial irregularities would also be exposed, in the event of their transfer. The fact that financial irregularities were committed by Accused Nos.1 and 2 and that they were getting kickbacks from PW39, has come on record. The argument of the appellants, however, is that the prosecution has neither produced any evidence about the disproportionate assets of these appellants nor put any specific question to them during their examination under Section 313 of the Code. This argument needs only to be rejected, in that the prosecution case against Accused Nos.1 and 2 was not one of having amassed disproportionate assets but was only of unexplained high-value cash amounts and other investments recovered during the search of their residence.

60. The Counsel for the Appellant (Accused No. 1) had contended that there was no evidence against Accused No. 1 and he has been falsely implicated. He had placed reliance on Satender's Case (Supra). In that case, the High Court had acquitted the accused on recording a finding (see Para 29) – that there was no evidence of any overt act attributed to the accused. In the present case, however, the Courts below have after due analysis of the legal evidence and the proved circumstances has unambiguously found that the Accused No. 1 was the mastermind of the conspiracy to murder Gadadharanandji. We see no reason to take a different view. Similarly, it has been concurrently found that Accused Nos.3 and 5 are the henchmen of Accused Nos.1 and 2, a fact which has not been challenged by the said appellants. In other words, the future prospect of Accused Nos.3 to 5 was fully dependent upon the existence and continuation of the Accused Nos.1 and 2 at Vadtal Temple complex. Both the Courts below have analysed these aspects and come to the conclusion that there were strong circumstances indicating the involvement of the appellants in the commission of the crime and excluding any possibility of their innocence.

61. Relying upon paragraphs 6, 7 and 9 of the decision in P K Narayanan (Supra), it was argued that mere evidence regarding motive and preparation for commission of the offence is not enough to substantiate the charge of conspiracy to commit offence. In our view, the conclusion reached in that case was on the facts of that case. In the present case, we find that the Courts below have analysed the evidence on record and correctly answered the issue under consideration on the basis of circumstances proved before, during and after the occurrence indicating complicity of the Appellants. These circumstances were not compatible with the possibility of innocence of the Appellants; and moreso because of absence of any explanation from them. We are in agreement with the view so taken by the two Courts, about the involvement of Accused Nos.1, 2, 3 and 5 in the commission of the offence in question.

62. Relying upon Paragraphs 13 to 15 of the decision in Baliya @ Bal Kishan (supra), it was argued that the finding of conspiracy recorded by the Courts below is untenable. We are not impressed with this argument. It is well settled that such a conspiracy is rarely hatched in the open. There need not be any direct evidence to establish the same. It can be a matter of inference drawn by the Court after considering whether the basic facts and circumstances on the basis of which inference is drawn have

been proved beyond all reasonable doubts and that no other conclusion except that of the complicity of accused to have agreed to commit an offence is evident. That is precisely what has been done by the Courts below in the present case. There is no legal evidence to give benefit of any doubt to the Appellants. We have no hesitation in affirming the view taken by the Courts below in this regard.

63. The Appellants have made fervent effort to persuade the Court about the several other discrepancies - such as about the age of the deceased in Exhibits 95 and 98 or that the High Court having discarded the circumstance of wrappers of sleeping pills found at the Navli Temple. That, however, does not discredit the other clinching circumstances established by the prosecution, which completes the chain of events indicative of the involvement of the Appellants in commission of the crime. The circumstances taken into account by both the Courts and as adverted to herein before, leave no manner of doubt about the complicity of the appellants in commission of the crime in question. It is, therefore, not necessary for us to dilate on those contentions.

64. We are also not impressed by the argument of Accused No. 5 that he should be given the same benefit as given to Accused No. 4 by the High Court. In so far as Accused No. 5, there is ample evidence about his involvement in commission of the crime. The Courts below have rightly noticed that he was involved, right from the disappearance of Gadadharanandji from Vadtal Temple complex till the disposal of his dead body at Barothi. Those aspects have been considered while discussing the relevant circumstances. We are, therefore, in agreement with the conclusion reached by the Courts below that there is sufficient evidence to indicate the complicity of Accused No. 5 in commission of the crime in question. Suffice it to observe that the circumstances established indicating the complicity of Accused No. 5 cannot be compared with the role of Accused No. 4, so as to give the same benefit to him.

65. On analyzing the evidence and the judgments including the findings and conclusion recorded by both the Courts, we have no hesitation in upholding the order of conviction against Accused Nos.1, 2 and 5 (appellants herein). For, the presence of Gadadharanandji at Vadtal Temple complex on the day of incident, the evidence that he was last seen together with Accused No.3 going from Vadtal Temple complex in a car, the recovery of a dead body in village Barothi in the neighboring state of Rajasthan on the next day of disappearance of Gadadharanandji, the disclosure made by Accused No.3 about the location as to where the dead body of Gadadharanandji was dumped by him in a village at Barothi, the discovery of the fact after subsequent medical examination that the dead body so recovered was of none other than that of Gadadharanandji, the disclosure made by Accused No.5 of the location where Gadadharanandji was strangled at Navli Temple complex, the conduct of Accused No.3 in misleading the investigating agencies, the burning of the vehicle used in the commission of the crime and then filing of a false insurance claim which was rejected by the insurance company, the strong motive for committing the murder of Gadadharanandji and the criminal conspiracy hatched in that behalf and executed, leave no manner of doubt about the involvement of the appellants in the commission of the crime. We fully agree with the opinion recorded by the Courts below in that regard. It is not a case of finding of guilt recorded in absence of any legal evidence or contrary to the evidence available on record. We find that the finding of guilt against the appellants is inescapable. Hence, we see no tangible reason to interfere with the final conclusion so reached by both the Courts.

66. Accordingly, we dismiss all the three appeals filed by the original Accused Nos.1, 2 and 5 respectively and uphold the order of conviction and sentence passed by the High Court, which is impugned in these three appeals. The Accused on bail shall surrender forthwith.

.....J. (Kurian Joseph) .....J. (A.M.Khanwilkar) New Delhi, Dated: April 10, 2017

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[2] AIR 1977 SC 2046 [4] (2002) 7 SCC 728 [6] (2016) 1 SCC 550 [8] (2015) 11 SCC 378 [10] (2014) 6 SCC 745 [12] (2015) 11 SCC 178 [14] 1994 Supp(2) SCC 707 (Paras 15 to 19) [16] (2014) 7 SCC 291 (Paras 25, 29) [18] (1995) 1 SCC 142 (Paras 6, 7, 9) [20] (2012) 9 SCC 696 (Paras 15 to 17) [22] AIR (1934) 1947 Privy Council 67 (Paras 10 & 11) [24] 1976 (1) SCC 828 (Paras 12 to 16) [26] 1999 (4) SCC 370 (Para 27) [28] 2016 (12) Scale 892 (Paras 15, 18) [30] English Reports 168 Crown Cases, Liverpool Summer Assizes, 1838 [32] (2003) 11 SCC 241 [34] 2002 (2) SCC 490 (Paras 14 & 15) [36] 2005 (11) SCC 600 (Paras 114, 115 to 118, and 120 to 144) [38] 1962 Supp (2) SCR 830 [40] 2000 (6) SCC 269 (Para 37) [42] 1972 (1) SCC 249 [44] (2015) 1 SCC 253 (Paras 23 to 29) [46] (1984) 4 SCC 166