A VENKATESH @ CHANDRA & ANR. ETC.

v.

STATE OF KARNATAKA

(Criminal Appeal Nos. 1476-1477 of 2018)

B APRIL 19, 2022

[UDAY UMESH LALIT AND PAMIDIGHANTAM SRI NARASIMHA, JJ.]

Evidence Act, 1872: s.27 – Settled Legal Position – Going by the parameters of s.27 of the Evidence Act, only so much of
C *information which relates distinctly to the facts thereby discovered can be stated to have been proved – Only that part of the statement which leads to the discovery of certain facts alone could be marked in evidence and not the entire of the statement – All the earlier facts narrated in the statement about past history which are in the nature*
D *of self-implication, would be inadmissible as amounting to a confession made to a police officer.*

Practice and Procedure: The Prosecuting Agency should u/ s.27 of Evidence Act, 1872 record only that part of the statement which leads to the discovery of fact – The practice of putting the
E *confession of the accused made to the police officer which is otherwise hit by the principles of Evidence Act must immediately be stopped as such kind of statements may have a direct tendency to influence and prejudice the mind of the Court.*

Evidence: Circumstantial Evidence – Legal Position – The
F *circumstances on the basis of which the conclusion of guilt is to be drawn, must be fully established and the circumstances forming the chain of evidence must be so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and should rule out every possible hypothesis except the one to be proved by the prosecution.*

G *Media Trial: Consequences and Limitations – All matters relating to the crime and whether a particular thing happens to be a conclusive piece of evidence must be dealt with by a Court of Law and not through a TV channel – If at all there was a voluntary statement, the matter would be dealt with by the Court of Law – The*
H *public platform is not a place for such debate or proof of what*

otherwise is the exclusive domain and function of Courts of law – Any such debate or discussion touching upon matters which are in the domain of Courts would amount to direct interference in administration of criminal justice.

Criminal law: Approach of Court in considering the involvement of accused in other crime – Distinction, during bail and trial proceedings – Approach at different stages including the stage of considering the bail application are qualitatively different – At the stage of consideration of bail, the primary concern is to weigh in balance the liberty of an accused and the possible prejudice that may get visited upon the societal interest in case he is released and therefore it would be apt and proper to consider his involvement in other crimes – But at the stage of final assessment whether conviction be recorded or not, the matter must be considered purely on its merits unless the very membership of a gang or a group or an outfit itself can amount to an offence or as an aggravated form of an offence – At the stage of sentencing, his involvement in other crimes may be a relevant factor provided the concerned material in the form of concluded judgments in the other matters are brought on record in a manner known to law – The established involvement in other matters would then certainly be relevant while dealing with the question whether the concerned accused is required to be dealt with sternly or leniently.

Allowing the appeals, the Court

HELD: 1. It was observed by the Privy Council in *Pulukuri Kotayya and Ors. v. King-Emperor* the words - "with which I stabbed A" were inadmissible since they did not relate to the discovery of knife in the house of the informant. Applying this logic, only that part of the statement which leads to the discovery of certain facts alone could be marked in evidence and not the entirely of the statement. Coming to the instant case and going by the principle and the illustration highlighted by the Privy Council the expression "where we committed murder" must not come on record. Similarly, all the earlier facts narrated in the statement about past history which are in the nature of self-implication, would be inadmissible as amounting to a confession made to a Police Officer. All the statements must be read accordingly. [Para 18][579-C-F]

2. It must be observed that there is a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them. The other disturbing feature that may be noticed is that voluntary statements of the appellants were recorded on a DVD which was played in Court and formed the basis of the judgment of the Trial Court. Such a statement is again in the nature of a confession to a Police Officer and is completely hit by the principles of Evidence Act. If at all the accused were desirous of making confessions, the Investigating Machinery could have facilitated recording of confession by producing them before a Magistrate for appropriate action in terms of Section 164 of the Code. Any departure from that course is not acceptable and cannot be recognized and taken on record as evidence. The Trial Court erred in exhibiting those DVD statement. As a matter of fact, it went further in relying upon them while concluding the matter on the issue of conviction. [Paras 19 and 20][579-F-H; 580-A-C]

3. What has further aggravated the situation is the fact that said statements on DVD recorded by the Investigating Agency were played and published in a program named "Putta Mutta" by Udaya TV. Allowing said DVD to go into the hands of a private TV channel so that it could be played and published in a program is nothing but dereliction of duty and direct interference in the administration of Justice. All matters relating to the crime and whether a particular thing happens to be a conclusive piece of evidence must be dealt with by a Court of Law and not through a TV channel. If at all there was a voluntary statement, the matter would be dealt with by the Court of Law. The public platform is not a place for such debate or proof of what otherwise is the exclusive domain and function of Courts of law. Any such debate or discussion touching upon matters which are in the domain of

Courts would amount to direct interference in administration of Criminal Justice. [Para 21][580-D-F]

4. The approach at certain stages including the stage of considering the bail application may be qualitatively different. At the stage of consideration of bail, the primary concern is to weigh in balance the liberty of an accused and the possible prejudice that may get visited upon the societal interest in case he is released. It would therefore be apt and proper to consider his involvement in other crimes. But at the stage of final assessment whether conviction be recorded or not, the matter must be considered purely on its merits unless the very membership of a gang or a group or an outfit itself can amount to an offence or as an aggravated form of an offence. Again, at the stage of sentencing, his involvement in other crimes may be a relevant factor provided the concerned material in the form of concluded judgments in the other matters are brought on record in a manner known to law. The established involvement in other matters would then certainly be relevant while dealing with the question whether the concerned accused is required to be dealt with sternly or leniently. [Para 23][581-B-E]

Sharad Birdhichand Sarda v. State of Maharashtra **AIR 1984 SC 1622 : [1985] 1 SCR 88;** *Musheer Khan @ Badshah Khan & Anr. State of Madhya Pradesh* **(2010) 2 SCC 748 : [2010] 2 SCR 119 – relied on.**

Pulukuri Kotayya and Ors. v. King-Emperor **AIR (34) 1947 PC 67 – reffered to.**

Case Law Reference

[1985] 1 SCR 88	**relied on**	**Para 25**
[2010] 2 SCR 119	**relied on**	**Para 31**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 1476-1477 of 2018.

From the Judgment and Order dated 04.09.2017 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 799 of 2011 and Criminal Appeal No. 637 of 2012.

A Lakshmeesh S. Kamath, Kaustubh Shukla, Ms. Smriti Ahuja, Ms. Nancy Shamim, Advs. for the appellants.

Nikhil Goel, AAG, V. N. Raghupathy, Adv. for the respondent.

The Judgment of the Court was delivered by

B **UDAY UMESH LALIT, J.**

1. These appeals by special leave filed by original accused Nos.1 to 4 are directed against the common judgment and order dated 04th September 2017 passed by the High Court[1] in Criminal Reference Case No.14 of 2010; and in Criminal Appeal No.799 of 2011 and Criminal C Appeal No.637 of 2012.

2. The appellants along with original accused Nos.5 to 9 were tried by the Trial Court[2] in Sessions Case No.443 of 2001 and Sessions Case No.55 of 2004 for having committed offence punishable under Section 396 of the IPC[3]. Accused No.9 died during the pendency of the D trial and the proceedings against her stood abated. The Trial Court[2] acquitted original accused Nos.5 to 8 by its judgment dated 17.09.2010 but convicted the appellants for having committed offences punishable under Section 396 read with Section 34 of the IPC[3]. By a subsequent order of punishment dated 30.09.2010, the Trial Court imposed death sentence upon all the appellants for the offence committed by them.

E

3. This resulted in Criminal Reference Case No.14 of 2010 for confirmation of death sentence before the High Court. The convicted accused, namely, the appellants herein also preferred Criminal Appeal Nos.799 of 2011 and 637 of 2012 in the High Court. By its judgment and order presently under challenge, the High Court did not find sufficient F reasons to affirm the death sentence. It found that the appellants were guilty of having committed the offence under Section 394 of the IPC[3] and sentenced them to suffer life imprisonment.

4. The instant proceedings arise out of Crime No.874 of 1999 registered pursuant to FIR dated 28.10.1999 lodged with Vijayanagar G Police Station, Bengaluru. The reporting made by one Dr. Prakash Vishnu was:-

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[1] The High Court of Karnataka at Bengaluru

[2] XXXIV Additional City Civil and Sessions Judge (Special Court), Central Prison Premises, Bengaluru

H [3] The Indian Penal Code, 1860

"I, Dr. Prakash Vishnu, hereby inform that today at about 9.15 AM, I left home as usual to attend my work in Bowring Hospital. At that time, my father and mother both were alright. In our house only myself, my father and mother are staying. Each one of us are keeping separate key with us. My father is working as an Imposer in Indian Express. My mother runs a Novelty Store near our house.

Today afternoon when I returned home after work, some burnt smell was coming from kitchen. I called my mother 2-3 times. There was no reply. I myself went and opened the door, in kitchen, stove was on. I left it as it is and open the room door, when I opened room door, I saw my mother lying in blood pool. Pan was also lying there, hoping that she is alive, I tried Resuscitation. But her heart beat was stopped (I did not get pulse). Entire body was turned bluish. Tongue was stretched out. I was very much shocked and screamed very loudly. Then neighboring people came and gathered there. I humbly request you to kindly trace out the culprits who have murdered my mother and take suitable action against them. Yesterday, my father had night duty and he was back at 6.00AM."

Accordingly, crime under Section 302 of the IPC was registered against unknown persons.

5. During investigation, statements of the mother, sister and husband of the deceased were recorded, who stated that the deceased normally used to wear certain gold ornaments which were stolen as part of the transaction. The Inquest Report, later marked as Exh.P-2 conducted on the body of the deceased also showed injuries on the ear, presumably caused while taking away the earrings.

6. The post-mortem on the body was conducted by Dr. S.B. Patil and the Post-Mortem Report, later marked as Exh. P-14 indicated that the deceased had suffered 13 injuries. According to the medical opinion, injuries 1 to 10 were possible by an iron road while injuries 11-13 were inflicted by a knife. The external injuries noted in Post-Mortem Report were as under: -

"1. Lacerated wound over right parietal region 7 cm above right ear measuring 3cm x 1cm bone deep;

2. Lacerated wound over right parietal 2.5 cm above injury No. (1) measuring 5 cm x 2 cm bone deep.

A 3. Lacerated wound over inter parietal region 2 cm to left of injury (2) measuring 2 cm x 0.5 cm.

4. Lacerated wound over left parietal region measuring 5cm x 3 cm x skull cavity deep through which brain matter is draining out. It is situated 10 cm above left ear.

B 5. Lacerated wound 4 cm above left ear measuring 10cm x 3cm x skull cavity deep situated in the fronto parietal temporal region.

6. Lacerated wound 1cm above left ear in the temporal region measuring 4cm x 1cm x skull cavity deep.

C 7. Lacerated wound 4cm behind injury No.5 in left side of occipital region measuring 4cm x 1.5.cm x bone deep.

8. Lacerated wound in the mid occipital region measuring 3 cm x 1cm x bone deep.

D 9. Lacerated wound over right parietal-occipital region situated 7cm behind and above right ear.

10. Lacerated wound over left occipital region measuring 1.5 cm x 1cm x bone deep.

11. Incised wound over right ear lobule measuring 1cm x 0.5 cm x 0.5 cm.

E 12. Incised wound over left ear lobule measuring 1cm x 0.5 cm x 0.5 cm.

13. Incised wound over palmar aspect of left thumb distal phalanyx measuring 3 cm x 2cm x muscle deep."

F The Post-Mortem Report further stated:

"3. On reflection of scalp blood extraverted all over-scalp skull-left frontal bone, left partial bone, left temporal bone, and occipital bone fractured into multiple pieces and blood extraverted at fracture site. Bones of middle cranial and

G posterior cranial fosse fractured into multiple pieces and blood extraverted at fracture site.

4. Membrane-lacerated at fracture sites.

5. Brain covered by subdural and subarachnoid hemorrhage all over base and surface and is partially drained out on left

H side."

7. More than 15 months after the incident, the appellants were arrested on 01.02.2001 by the police in connection with said crime. Soon after their arrest, voluntary statements of the appellants were recorded by the Investigating Officer. These four statements marked as Exh. P-21, P-22, P-23 and P-24 in the trial, as extracted in the judgment of the Trial Court were:

"27. The lst Accused has given his voluntary statement as hereunder:

"Krishnadu and the ladies Lakshmi, Venkata Lakshmi, Padma in the guise of begging food and water to the children got open the door of a house at Moodalapalya and went away. Immediately all of us rushed inside the house. My brother-in-law Venkatesh alias Ramesh was waiting at the door of the house. We dragged and took the woman who was present in the said house and took her inside the house. I caught hold of her closing her mouth, Munikrishna assaulted to the back of her head with the rod he had, Chikkahanuma pierced with the knife he had to the ear of said woman, I snatched one pair of ear rings (vole), gold bangles which wore on the body of said lady. Munikrishna snatched two chains from her neck, Nallathimma took one ring and one pair of silver leg chain and he handed over the leg chain to Lakshmi, who is the wife of Doddahanuma. We have thrown the iron rod and knife to the fence erected by the side of drainage therein. I have sold the ornaments stolen by me to a shop at Raja market. If I am taken there, I will show the spot where we committed murder, and we will show the place where we have thrown the knife and the rod. And we will show the shop in which we sold the jewelleries and get the said articles", and accordingly he got the said articles through the Mahazar at Ex.P-21.

28. The. 2nd accused has given his voluntary statement as hereunder:

"Krishnadu and the ladies Lakshmi, Venkata Lakshmi, Padma in the guise of begging food and water to the children got open the door of a house at Moodalapalya and went away. Immediately all of us rushed inside the house. My

A brother-in-law Venkatesh alias Ramesh was waiting at the door of the house. We dragged and took the woman who was present in the said house and took her inside the house. My elder brother caught hold of her closing her mouth, and I assaulted to the back of her head with the rod I had, Chikkahanuma pierced with the knife he had to the ear of said woman, my elder brother snatched one-pair of ear rings (vole), gold bangles which wore on the body of said lady, 'and I snatched two chains from her neck, Nallathimma took one ring and one pair of silver leg chain and he handed over the leg chain to Lakshmi, who is the wife of Doddahanuma. We have thrown the iron rod and knife to the fence erected by the side of drainage therein. I have sold the ornaments stolen by me to a shop at Raja market. If I am taken there, I will show the spot where we committed murder, and we will show the place where we have thrown the knife and the rod. And we will show the shop in which we sold the jewelleries and get the said articles", and accordingly he got the said articles through the Mahazar at Ex.P-22."

29. The 3rd accused has given his voluntary statement as hereunder:

"Krishnadu and the ladies Lakshmi, Venkata Lakshmi, Padma in the guise of begging food and water to the children got open the door of a house at Moodalapalya and went away. Immediately all of us rushed inside the house. Venkatesh alias Ramesh was waiting near the door of the house. We dragged and took the woman who was present in the said house and took her inside the house. I caught hold of her closing her mouth, Munikrishna assaulted to the back of her head with the rod he had, Chikkahanuma pierced with the knife he had to the ear of said woman, Venkatesh alias Chandra snatched one pair of ear rings (vole), gold bangles which wore on the body of said lady. Munikrishna snatched two chains from her neck, and I took one ring and one pair of silver leg chain and handed over the leg chain to Lakshmi, who is the wife of Doddahanuma. We have thrown the iron rod and knife to the fence erected

by the side of drainage therein. I have sold the ornaments stolen by me to a shop. at Raja market. If I am taken there, I will show the spot where we committed murder, and we will show the place where we have thrown the knife and the rod. And we will show the shop in which we sold the jewelleries and get the said articles", and accordingly he got the said articles through the Mahazar at Ex.P-23.

30. The 4th accused has given her voluntary statement as hereunder:

"Myself, Padma, Venkatalakshmi and Krishnadu came identifying a house. One day in the guise of requesting for water got open the door, immediately the male persons Venkatesh, Munikrishna, Nallathimma, Venkatesh alias Ramesh, Krishnadu rushed inside the house, we left said place. Thereafter the male persons returned and informed us that we assaulted and murdered a lady in the said house and snatched away the jewelleries wore by the said lady on her body, and Nallathimma gave one pair of silver leg chain which was brought from the said house. Further, he also paid the amount for my expenditure. I wear the leg chain given to me, she stated that if she is taken there she will show the house which identified by her and shown to the male persons. I have produced before you the silver leg chain given to me by Nallathimma" and she handed over the same through Mahazar at Ex.P.24""

8. On 6.2.2001, Voluntary Statements of the appellants were recorded by the Investigating Officer on a DVD, later marked as Exh. P-25 to P-28 in the trial. The discussion with regard to said DVD by the Trial Court is in paragraph 35 of its judgment. It appears that what was recorded on said DVD was played and published in a program named "Sutta Mutta" by Udaya TV.

9. It must be stated that according to the prosecution, a gold ring and a pair of silver anklets were recovered from the person of accused No.4- Lakshmamma *alias* Lakshmi at the time of her arrest. More than seven days after the recording of their voluntary statements, *i.e.* on 07.02.2001 and 08.02.2001, three of the appellants allegedly led the Investigating team to a jewellery shop named Sathyanarayana Jewellery

A Mart owned by one D.Janardhana Shetty, as a result of which, following jewellery items were recovered:-

On 07.02.2001

1.	accused No.1-Venkatesh *alias* Chandra	Recovery of three gold bangles and a pair of gold ear studs.
2.	accused No.2-Munikrishna *alias* Krishna	Recovery of one gold chain with two lines mangalya and gold necklace.

C On 08.02.2001

1.	accused No.3-Nallathimma	Recovery of 13 gold and silver articles.

D 10. On 09.02.2001, accused No.2 Munikrishna allegedly led the Investigating Team to an open space near a drainage which resulted in recovery of an iron rod and a knife (which were marked as MO-16 and MO-17 in the trial) in the presence of a panch witness, named Manjunatha examined as PW-12 in the trial. The relevant portion with regard to such recovery dealt with by the Trial Court was as under:-

E "36. In order to prove regarding seizure of articles utilized for commission of offence, the prosecution has examined one Manjunatha as PW-12 in the above case as the witness who was present at the time of seizure of the iron rod and knife said to have been utilized by the accused for committing offence and as the person who has signed the Mahazar at the time of seizure. On observing the said evidence the 2nd accused has taken out the M.O.16 and 17 the iron rod and knife from the ditch situated by the side of an open space near the drainage in the 5th Cross Shanthaveri Gopala Gowda Nagar, Moodalapalya and the same was seized by the police, and at that time have also conducted Mahazar as per Ex.P-11. He identified the Ex.P-11 (A) as his signature, and stated that M.O.16 and 17 are the weapons taken out by the Accused Munikrishna.

11. MO-16 and MO-17 were sent for chemical examination and both the articles were found to be stained with human blood. However, H in terms of the FSL Report, later marked as Exh. P-10, blood group

could not be determined and the tests were inconclusive. The recovered gold ornaments were not subjected to any Test Identification Parade but were stated to have been identified by the relations of the deceased in police station.

12. After completion of investigation, the accused were sent up for trial and tried by the Trial Court in Sessions Case No.443 of 2001 and 55 of 2004. In support of its case, the prosecution relied upon testimony of 24 witnesses and it marked 29 documents, namely, Exh. P-1 to P-39 and produced material objects MO-1 to MO-17. The gist of the testimony of the witnesses was: -

A. PW-1, Shri Vishnu, husband of the deceased deposed that after he had returned home, he found the deceased lying in a pool of blood and in the same night he came to know that gold mangalya chain, gold necklace, three gold bangles, a ring, pair of silver anklets etc. which the deceased used to wear were missing.

B. PW-2, Sharadamani, sister of the deceased did not support the case of the prosecution that she had gone to the police station and identified the gold ornaments. She was declared hostile.

C. PW-3, PW-7 and PW-22 were panch witnesses to Inquest Report Exh.P-2 while PW-4, R. Mohan Kumar was panch witness to Spot Mahzar Exh. P-3. PW-5, Babu was panch witness to the search and seizure of the gold ring and the pair of silver anklets recovered from the person of accused No.4 at the time of her arrest. PW-6, Rudra Prasad was the panch witness to Mazhar Exh.P-6 in terms of which accused nos.1 to 4 had led the investigating team to the house of the deceased where the murder was allegedly committed.

D. PW-10, Suresh Gaonkar, Director, Forensic Laboratory, Kalaburagi deposed that he had examined MO-16 iron rod and MO-17 knife and had found the same to be stained with human blood and that he had given opinion as per Exh. P-10.

E. PW-11 and PW-13 were panch witness to the seizure of ornaments at the instance of accused nos.1, 2 and 3, while

PW-12 Manjunath was the panch witness to the recovery of MO-16 iron rod and MO-17 knife.

F. PW-14, K.H. Manjunath, Professor, Forensic Medicine, Victoria Hospital, Bengaluru was examined to prove the signature of the author of Exh. P-14 Post-Mortem Report as Dr. S. D. Patil who conducted the post-mortem examination was no more.

G. PW-18, Smt. Jayamma, mother of the deceased also failed to identify the ornaments stated to be belonging to the deceased and produced by the prosecution.

H. PW-23, D. Janardhan Shetty, receiver of gold ornaments from accused no.1 to 4 deposed about the recoveries effected on 7th and 8th of February 2001, as tabulated in paragraph 9 above.

I. PW-24, N. Chalapathi, Deputy Superintendent of Police, the Investigating Officer deposed about the steps taken during investigation including the recording of voluntary statements of the appellants Exh. P-21 to P-24. He further stated that on the evening of 06.02.2001, he had got the statements of the appellants recorded through video-recording on DVDs, marked as Exh. P-25 to P-28. He also produced a chart Exh.P-29 giving details about the cases pending against the gang of which the appellants were alleged to be members. However, no documents either in the form of chargesheets, depositions or orders were produced. Even no question regarding Chart Exh.P-29 was put to the appellants in their examination under Section 313 of the Code.

13. The Trial Court accepted the case of the prosecution against the appellants *i.e.* accused Nos.1 to 4 relying *inter alia* on the voluntary statements Exh. P-21, P-22, P-23 and P-24 and the DVD Exh. P-25 to P-28. The relevant discussion on the point was:-

> "31. On noticing all these factors, it is pertinent to note that if at all the accused No.1, 2 and 3 had not sold either M.O.-6 To 10 or other articles to PW-23, why the PW-23 was giving statement before the Court that the accused had sold the said articles to the him. If at all he wanted to give false evidence or he wanted to

give evidence with an intention to harass the accused, then there should be hatredness, jealousy and ill-will against them. However, the defense Advocate has not made any such suggestion of hatred, jealousy or ill-will against the accused or any proof in that regard. Further, on observing the statement made by him that the PW-1 has identified that the said article belonged to his wife, and that the PW-23 has stated that the accused No.1, 2 and 3 have sold the said article to him, and then on their request he has returned the same, and that the PW-11 was present at that time, and that the PW-12 Rangaswamy was present while he got seized the said article, and similarly, according to the voluntary statement of Ex.P-24 the 4th accused Lakshmamma out of the jewellers smuggled having wore one pair of a ring (vole) and one pair of leg chain and a saree, she has handed over the said articles to the police. She admitted these factors in her voluntary statement. Further, the said articles are got seized before the witness PW-5 Babu through Mahazar at Ex.P-5 conducted in that regard. The said Babu also clarified this fact in his evidence stating that the police through a Woman Constable in their station made arrangement for her to wear another saree, and out of the articles stolen by her got seized the saree, ear ring (vole) and leg chain, and M.O.5 is the leg chain pertaining to this case. The accused Lakshmi has stated that her Associate Nallathimma stolen and handed over the said articles to her, and she identified the Ex.P-5 (a) as her signature. During her cross-examination she has stated that on that day the Inspector Chalapathi had called her to the Station, showing the accused in the station stated that she has committed robbery, some articles were kept on the table and on seeing them she stated that he has conducted Mahazar and further stated that during her re-examination the M.O.5 and other articles were seized from the accused Lakhsmi only.

32. The accused have not clarified in any manner before the Court as to how the said articles came to their possession and they have not proved that the said articles belong to them, and the statement and voluntary statement made regarding the articles kept and handed over is just and proper according to Section 27 of Evidence Act and the Court has to perform the same.

33. Furthermore, Lakshmamma Venkatesh alias Chandra, Munikrishna, Doddahanuma (Chinnappa and Doddahanuma who

A said to be not the accused in this case) having given their voluntary statement in the D.V.D. at Ex.P-25, wherein they have narrated about this offence.

34. In 313 Statement to the accused Doddahanuma, Munikrishna, Venkatesh *alias* Chandra, Deceased Chinnappa and Lakshmanna having given their voluntary statement to Question No.26 and the same has been recorded in the C.D. and D.V.D. When it is stated that it will be shown and it should be seen, Munikrishna, Venkatesh *alias* Chandra, Lakshmamma have replied that they will not see it, and they will not tell anything in that regard, and the said reply has been recorded.

35. On noticing the said D.V.D. (Ex.P-25), the accused Nos.l, 2 and 4 had given voluntary statements, and the persons found therein are the accused No.1, 2 and 4 before this Hon'ble Court, and on observing the statement given by them, they are the persons who have given their statement naturally without subjecting any pressure or threat in the natural manner. On observing their appearance while recording the same, they did not have the situation of any tension or shock, It will make the statement which is given naturally. If at all they had not given any statement or if the said statement was obtained and recorded by the police forcibly by duress, they could have stated the same in their Section 313 Statement. But, without giving any such reply, they even do not like to watch the D.V.D. and the C.D. containing of the photographs of the persons subjected to incident and also the D.V.D. of Sutta Mutta Program participated by the accused. On noticing the statement given by them that they do not like to say anything in that regard, it reveals that if at all if they had seen it they ought have identified themselves and they should have given some reply regarding the facts of the statement given by them. But, they have stated that they will not see the C.D. and also the D.V.D. and that they will not give any reply, the intention behind it will be non-admitting the true facts."

14. The Trial Court finally concluded:

"52. On the basis of voluntary statements given by the accused No.1 to 3, the 4th accused Lakshmamma has stated that she along with others in the guise of requesting of water went to the residential house of the deceased and got open the door of the

house, and then the accused rushed inside the house and committed her murder, and though she has not directly participated to the commission of murder, according to her, she and her group……. Therefore, I answer the issues No.1 to 4 in the affirmative and came to the conclusion that through circumstantial evidence the prosecution has proved that the accused No.1, 2 and 3 made attack against her and murdered her, and also stolen the gold and silver ornaments which she had wore on her body. This Court having been constituted for conducting trial and deciding the heinous offence committed by Dhadupalya gang, and the Inspector called Chalapati got arrest of the accused in all the cases which are registered for trial and having recovered from them the stolen articles, and also even the place of occurrence shown by the accused conducted mahazar, and thus played a main role in the investigation. Subsequently, he transferred the cases to the concerned jurisdictional police stations. Though there may be some defects in all these cases, several Investigating Officers having taken up investigation for the reason of their transfer or for any other reason, and though might have caused some defects in the said circumstances, the Police Inspector Sri. Chalapathi and his team by arresting the accused and their gang and subjected to the actions of the Court, and this Court will appreciate the actions taken by him."

15. While considering the matter at the stage of sentencing, the Trial Court in its order dated 30.09.2010 observed: -

"15. The prosecution through the Investigating Officer Chalapathi who traced the accused for the first time submitted a detailed statistical report that what kind of offence committed by the persons of Dandupalya Group. Further, the statistical report reveals that Munikrishna alias Venkataswamy the accused in this case has totally participated in 54 different cases within the limits of various police stations of Karnataka State and out of them he participated in 28 dacoit and murder cases, and out of them he committed 50 murder offence, and that the accused Venkatesh alias Chandra has participated in 45 different cases, and out of them he participated in 28 dacoit and murder cases, and that the accused Nallathimma participated in 28 dacoit and murder cases and that the accused Lakshmamma participated in 18 murder cases.

A 16. In view of the above facts the prosecution has argued to impose the punishment of death imprisonment to the accused, and the offence committed by the accused being extremely heinous offence, it is also prayed impose death imprisonment considering the offence as most rarest of rare cases.

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18. According to the statistical report furnished before the Court totally 111 cases are registered. The accused are released in most of the cases among them. In some of the cases as stated commencing from life imprisonment other punishments also C imposed against them which they are suffering. Further, on observing all these cases, the modus operandi of the accused is that the accused are doing the profession of taking assistance of women in their group, through them got marked the houses (the houses in which weak persons, aged persons and woman are staying) and got themselves introduced in the guise of requesting D for water and food, and in the same guise they will got open the door of the house, the male persons of the gang will trespass into the house and assault the ladies, aged persons and weak persons with the iron rod, cut the neck from the knife, tying the neck tightly from the thread kill them holding their breath, take away E the gold ornaments and other ornaments from their body and from their house, sell them and lead their life from doing so. Since the year 1991 to 2000 the same gang have committed the said act in all the parts of Karnataka and also in Kerala State, and according to the statistical report furnished they have totally committed 74 F murders, out of them being 34 men and 40 women and they are murdered in different ways. That too, it states that 23 men and 21 women are murdered in Bangalore City only. The defense counsel have not questioned the same."

16. Criminal Reference Case No.14 of 2010 and Criminal Appeal G Nos.799 of 2011 and 637 of 2012 arising from the decision of the Trial Court were dealt with by the judgment and order presently under challenge, as stated above. Some of the relevant paragraphs of the decision were: -

"12. Further, the Trial Court having noted the offence proved against accused Nos.1 to 4 was not only heinous, but accused H

Nos.1 to 4 committed the said offence with utter brutality and that they were facing trial before various courts in as many as 111 cases involving similar charges and the appellants/ accused having been convicted in some of the cases, the Trial Court found it proper to award death sentence on all the four accused persons.

31. From the material on record, it is evident that there are no eyewitnesses to the incident. The case of the prosecution is rested entirely on circumstantial evidence. These circumstances relied on by the prosecution are:-

The factum of the murder and the simultaneous missing of gold and silver ornaments from the person of the deceased.

Recovery of the missing ornaments belonging to the deceased at the instance of the appellants/ accused Nos.1 to 4.

Recovery of weapons viz. iron rod – M.O.16 and knife M.O. 17 near the spot of occurrence at the instance of the appellants/ accused Nos.1 to 4.

The conduct of the appellants/ accused Nos.1 to 4 in pointing out the place of occurrence.

54. Apropos the contention of the learned counsel that the contents of Ex.P6 and the evidence of PW-6 do not have the effect of incriminating the accused, as the spot of occurrence was known to the Investigating officer much prior to the arrest of accused No.1 is concerned, suffice it to note that there is nothing in the entire evidence to suggest that accused Nos.1 to 4 derived knowledge of the spot of occurrence through the Investigating officer or through any other mode. There is no explanation by the accused that they came to know of the spot of occurrence through the Investigating Officer or through any other witnesses. On the other hand, the evidence of PW.6 coupled with the contents of Ex.P6 clearly establish that accused Nos.1 to 4 by themselves showed the place of occurrence to the police and the panch witnesses, as a result, this evidence is rendered relevant under section 8 of the Evidence Act thereby establishing yet another circumstance in proof of the complicity of accused Nos.1 to 4 in the offence charged against them.

66. Thus, it is clear that simultaneous or identical disclosures are not an anathema to Section 27 of the Evidence Act. In the instant case, the evidence produced by the prosecution clearly goes to show that all the four accused persons made similar disclosures relating to the hiding of the weapons, knowledge of the spot of the offence and the sale or ornaments belonging to the deceased. It is proved that the information given by the accused has led to the discovery of facts which clearly establish the nexus between accused Nos.1 to 4 and the crime in question.

70. .....We have discussed at length the evidence of PW-1 and other witnesses who have unequivocally stated before the Court that during the murder of the deceased, the gold ornaments worn by her were found missing. It is also proved by the prosecution that the very same articles were recovered from the possession of the accused. The accused did not furnish any explanation for the possession of the said ornaments belonging to the deceased. Coupled with the above circumstances, the recovery of the weapons clinchingly establish that the injuries found on the deceased were caused with M.Os. 16 and 17. Added to that, knowledge and conduct of the accused in pointing out to the place of occurrence completes the chain of circumstances establishing the complicity of accused Nos.1 to 4 in the act of robbery and murder of the deceased. The prosecution therefore has conclusively proved all the above circumstances which in our opinion lead to the guilt of accused Nos.1 to 4 beyond all reasonable doubt. The decisions relied on by the learned counsel for the appellants-accused are therefore distinguishable on the facts of the present case.

71. In the case in hand, the accused were charged under Section 396 read with Section 34 of IPC. The Trial Court has held that the facts proved against the accused constitute the offence under Section 396 of the IPC. This finding in our opinion is contrary to the provisions of section 396 of IPC. As per section 396 of Indian Penal Code, in order to constitute the offence of dacoity with murder, any one of the five or more persons should commit murder while committing the dacoity. Therefore, participation of five or more persons is a *sine qua non* to maintain the charge under Section 396 of IPC. In the instant case, none of the witnesses

have spoken about the presence or participation of five or more persons either in the act of murder or in the commission of robbery. Even though charges were framed against accused Nos.1 to 5, 6 to 9 under Section 396 of the IPC, the Trial Court has acquitted accused Nos.6, 7 and 8 on the ground that there is no evidence to prove the ingredients of the offence against these accused Nos.6, 7 and 8. The Trial Court has not recorded any finding to the effect that in addition to accused Nos.1 to 4, other accused also participated in the commission of the crime in question. The circumstances proved by the prosecution, as discussed above, establish the involvement of only accused Nos.1 to 4. Therefore, the conviction recorded against accused Nos.1 to 4 under section 396 of the IPC and the consequent death sentence awarded against them cannot be sustained. Hence, the conviction of accused Nos.1 to 4 under section 396 r/w. 34 of Indian Penal Code and the death sentence imposed against them deserves to be set aside.

73. Under Section 394 of Indian Penal Code, not only the person who actually causes hurt, but his associates also would be equally liable to the act by fiction of Law. The expression "if any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other persons jointly concerned in committing or attempting to commit such robbery, shall be punished" brings within its purview all other accused involved in the robbery. As the prosecution has established beyond reasonable doubt that accused Nos.1 to 4 have committed robbery of the ornaments of the deceased and in committing robbery have also caused her death, we are of the view that accused Nos.1 to 4 are guilty for the offence punishable under Section 394 of IPC, accused Nos.1 to 4 are therefore liable for conviction under section 394 read with Section 34 of Indian Penal Code.

74. We have also heard the learned counsel for the accused and the learned SPP on the sentence. The learned counsel for the appellants/ accused Nos.1 to 4 plead that the accused have already undergone custody for more than 16 years from the date of their arrest and at the time of arrest, all the accused were of young age and therefore having regard to the above circumstances, in the interest of justice, the period of custody already undergone by them be set off towards the imprisonment to be awarded for the

offence under section 394 read with Section 34 of Indian Penal Code.

75. We have considered the submissions. We do not find any good reason to take a lenient view in the matter. The material on record indicate that the accused have committed a ghastly and gruesome murder in a highly depraved manner. The facts proved in evidence go to show that the accused murdered an innocent aged lady only to rob her valuables. It is a clear case of murder for gain. The manner in which the accused have inflicted injuries on the victim indicate the pervert and diabolical tendencies of the accused. That apart, the prosecution has furnished statistics Which go to show that the accused were involved in similar offences for which they have been either convicted or are serving sentences. Therefore, we do not find any reason to show leniency to the appellants. On the other hand, having regard to the facts and circumstances of this case, we are of the opinion that the ends of justice would require that maximum punishment prescribed under section 394 Indian Penal Code is awarded to the accused, as the fact situation of this case requires that the sentence awarded to the accused should serve as a deterrent. It is also noticed that several cases are pending against the accused before this Court wherein it is alleged that the accused have been attacking helpless lonely womenfolk and have been committing ghastly murders by inflicting injuries inhumanly without showing any mercy whatsoever to the victims. Hence, we are of the view, that the accused do not deserve any sympathy at the hands of this Court. For all these reasons, maximum punishment prescribed under Section 394 Indian Penal Code deserves to be awarded on the appellants/ accused No.1 to 4. Hence the following order:

ORDER

1. Criminal Appeal Nos.799 of 2011 and 637 of 2012 are allowed in-part.

2. The conviction of accused Nos.1 to 4 under Section 396 of Indian Penal Code and the consequent imposition of death sentence passed by XXXIV Addl. City Civil & Sessions Judge (Special Court), Central Prison, Parappana Agrahara, Bengaluru in S.C.No.443 of 2001 and S.C.No.55 of 2004 is set aside.

3. The accused Nos.1 to 4 are held guilty of the lesser offence punishable under Section 394 read with Section 34 of Indian Penal Code and are accordingly convicted for the said offence. The accused Nos.1 to 4 are sentenced to undergo rigorous imprisonment for life and a fine of Rs.25,000/- each for the offence under section 394 read with Section 34 Indian Penal Code.

4. Accused Nos.1 to 4 are entitled for the benefit of set off as provided under Section 428 of Code of Criminal Procedure subject to the provision contained in Section 433-A and provided that orders have been passed by the appropriate authority under Section 432 or Section 433 of the Code of Criminal Procedure.

5. Criminal Referred Case No.14 of 2010 stands rejected in terms of the above order."

17. In this appeal, we have heard Mr. Lakshmeesh S. Kamath, learned Advocate for the appellants and Mr. Nikhil Goel, learned Additional Advocate General for the State.

18. Before we consider the merits of the matter, some of the features of the present case which we have found to be quite disturbing must be noted and deliberated upon. The Trial Court in paragraphs 27 to 30 of its judgment extracted voluntary statements of the appellants. First and foremost, going by the parameters of Section 27 of the Evidence Act[4] only so much of information which relates distinctly to the facts thereby discovered can be stated to have been proved. The extent and ambit of said provision as well as applicability thereof were considered by the Privy Council in ***Pulukuri Kotayya and Ors. v. King-Emperor***[5] as under:

"**10.** Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered

[4] The Indian Evidence Act, 1872.
[5] AIR (34) 1947 PC 67.

A may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but 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.

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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. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. 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. On normal principles of construction their Lordships think that the proviso to s. 26, added by s. 27, should not be held to nullify the substance of the section. 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

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> 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. <u>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.</u>"
>
> (Emphasis added)

As was observed by the Privy Council the words - "with which I stabbed A" were inadmissible since they did not relate to the discovery of knife in the house of the informant. Applying this logic, only that part of the statement which leads to the discovery of certain facts alone could be marked in evidence and not the entirely of the statement. Coming to the instant case and going by the principle and the illustration highlighted by the Privy Council, out of the statement of accused No.1, only the following portion except the words printed in "italics" would be admissible and can be marked in evidence:

> "…..If I am taken there, I will show the spot *where we committed murder,* and we will show the place where we have thrown the knife and the rod. And we will show the shop in which we sold the jewelleries."

The expression "where we committed murder" must not come on record. Similarly, all the earlier facts narrated in the statement about past history which are in the nature of self-implication, would be inadmissible as amounting to a confession made to a Police Officer. All the statements namely, Exhs. P-21 to P-24 must be read accordingly.

19. We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them.

A 20. The other disturbing feature that we have noticed is that voluntary statements of the appellants were recorded on a DVD which was played in Court and formed the basis of the judgment of the Trial Court as is noticeable from paragraph Nos.34 and 35 of its judgment. Such a statement is again in the nature of a confession to a Police Officer and is completely hit by the principles of Evidence Act. If at all the B accused were desirous of making confessions, the Investigating Machinery could have facilitated recording of confession by producing them before a Magistrate for appropriate action in terms of Section 164 of the Code. Any departure from that course is not acceptable and cannot be recognized and taken on record as evidence. The Trial Court erred in C exhibiting those DVD statement Exh.P-25 to 28. As a matter of fact, it went further in relying upon them while concluding the matter on the issue of conviction.

21. What has further aggravated the situation is the fact that said statements on DVD recorded by the Investigating Agency were played D and published in a program named "Putta Mutta" by Udaya TV. Allowing said DVD to go into the hands of a private TV channel so that it could be played and published in a program is nothing but dereliction of duty and direct interference in the administration of Justice. All matters relating to the crime and whether a particular thing happens to be a conclusive E piece of evidence must be dealt with by a Court of Law and not through a TV channel. If at all there was a voluntary statement, the matter would be dealt with by the Court of Law. The public platform is not a place for such debate or proof of what otherwise is the exclusive domain and function of Courts of law. Any such debate or discussion touching upon matters which are in the domain of Courts would amount to direct F interference in administration of Criminal Justice.

22. The last disturbing feature is the fact that Chart Exh.P-29 was taken to be proof of the activities of the gang to which the appellants allegedly belonged. Apart from exhibiting the chart, no details or documents either in the form of chargesheet or orders, depositions G were produced on record. If the Prosecution wanted the Court to take note of the fact that there were other matters in which accused were involved, the concerned Chargesheets should have been produced on record along with sufficient details including the judgments or orders of conviction. A mere chart cannot be taken as proof of the involvement

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of the accused in other crimes either at the stage of conviction or sentence. But that factor seriously weighed with the Trial Court as is obvious from paragraphs 15 to 18 of the order of sentence. In fact, such involvement was taken to be one of the reasons why the death sentence was awarded by the Trial Court. Such a practice can never be approved.

23. We must clarify that the approach at certain stages including the stage of considering the bail application may be qualitatively different. At the stage of consideration of bail, the primary concern is to weigh in balance the liberty of an accused and the possible prejudice that may get visited upon the societal interest in case he is released. It would therefore be apt and proper to consider his involvement in other crimes. But at the stage of final assessment whether conviction be recorded or not, the matter must be considered purely on its merits unless the very membership of a gang or a group or an outfit itself can amount to an offence or as an aggravated form of an offence. Again, at the stage of sentencing, his involvement in other crimes may be a relevant factor provided the concerned material in the form of concluded judgments in the other matters are brought on record in a manner known to law. The established involvement in other matters would then certainly be relevant while dealing with the question whether the concerned accused is required to be dealt with sternly or leniently.

24. We have gone through Chart Exh. P-29. According to said chart, in so far as the present appellants are concerned, they were said to be involved in one more crime which has given rise to Special Leave Petition (Crl) Diary No.24079 of 2020 and was listed along with the instant appeal before us. That matter is still pending consideration before us. Therefore, what weighed with the Trial Court was the alleged involvement of the other members of the alleged gang in so many similar activities, in support of which there was no concrete material, other than the confessions of the appellants.

25. Coming to the merits, the present case is based on circumstantial evidence and as observed by the High Court in Paragraph 31 of its judgment, four circumstances were relied upon to bring home the case against the appellants. Before we deal with the material in support of and connected to said four circumstances, the principles concerning circumstantial evidence cases must be stated for facility. After noting various decisions, following principles were noted in the decision of

A this Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***[6], whichprinciples have since then been followed consistently:

> "**151.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on
B circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant* v. *State of Madhya Pradesh* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance,
C the cases of *Tufail (Alias) Simmi* v. *State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal* v. *State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :
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> > "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused.
> E Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show
> F that within all human probability the act must have been done by the accused.""

Thus, the first principle is that the circumstances on the basis of which the conclusion of guilt is to be drawn, must be fully established.

G 26. We may now deal with the circumstances to consider whether the prosecution has been able to establish them.

27. The initial reporting in the case was made by Dr. Prakash Vishnu son of the deceased. In that reporting, nothing was alleged about

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H [6] AIR 1984 SC 1622 = (1984) 4 SCC 116

the missing ornaments. However, the Inquest Report noted injuries on the earlobes which were specified in detail in Post Mortem Report (Exh.P-14). Injuries 11 and 12 of the said Post Mortem Report are quite clear. Further, the statement of PW-1, the husband of the deceased, recorded soon after the incident did refer to the normal ornaments which were missing. It may therefore be taken to have been established that the missing of gold and silver ornaments from the person of the deceased was quite simultaneous with the murder of the deceased. The first circumstance propounded by the prosecution in support of its case was thus well established.

28. We may now deal with the second circumstance regarding recovery of the missing ornaments at the instance of the appellant. It must be noted that the appellants were arrested 15 months after the incident. Soon after their arrest their voluntary statements Exhs. P-21, 22, 23 and 24 were recorded on 01.02.2001. These voluntary statements do indicate the willingness on the part of the appellants to show the shop in which the items of jewellery were sold by them. However, the actual recoveries from the concerned shop were made only on 7th and 8th February, *i.e.* more than 7 days after the voluntary statements. There is no explanation why it took so much time for the Investigating Machinery to take the accused to the concerned shop. Further, the shop owner could not produce any register or documentation that any of the appellants had come to his shop on a particular day and sold the concerned ornaments. We must therefore go only by his oral assertions and not any contemporaneous record. The description of the ornaments, the weight of the ornaments and the price paid by the shop owner to the appellants and such other details are not forthcoming from any record. It definitely means that the ornaments were not purchased by the jeweller in regular course of his business and he must be taken to be aware that the ornaments were a stolen property. Even then, the ornaments were kept in the same condition by the jeweller for more than 15 months, which again is not quite consistent, as in normal circumstances the nature of such stolen property would be attempted to be changed as early as possible.

The crucial aspect is that even after the recovery of the ornaments, no Test Identification Parade was arranged by the Investigating Machinery. The ornaments worn by the deceased were normal ornaments which a lady would wear. Out of three witnesses examined

by the Prosecution, the mother and the sister of the deceased did not support the case of the prosecution on identification of the ornaments. The only person who supported the case was the husband of the deceased who was not subjected to any Test Identification Parade.

The missing links in this circumstance are quite crucial and important. We, therefore, do not hold this circumstance to have been fully established and the connection of the appellants with the missing ornaments cannot be said to have been established.

29. We now turn to the third circumstance which is about recovery of iron rod M.O.- 16 and knife M.O.-17. As the statements of the appellants indicate, these objects were thrown by them near the fence erected by the side of a drainage. The objects were said to have been recovered 15 months later and yet were carrying blood stains sufficient enough for the Chemical Examiner to analyze and report that it was human blood. First and foremost, the objects, going by the case of the prosecution, went completely unnoticed all the while by anyone. During this period of 15 months, the concerned area must have received rain showers on number of occasions. Additionally, there would be insects and other living beings who may feed on the blood stains present on these objects. It is impossible to believe that even after 15 months the material objects would still carry bloodstains. The chemical examination also simply found the bloodstains to be of human blood but failed to analyze the blood group and other details which could be associated with the deceased. Considering the fact that the objects were supposed to have been thrown 15 months earlier in a place which was accessible to everyone and was open to the vagaries of nature, we do not accept said circumstance to have been proved. In our view, this circumstance cannot be held against the accused.

30. We may hold the fourth circumstance to be proved. It is not as if that the prosecution was unaware about the place of occurrence but the fact that the appellants could point the house where the incident had occurred may show knowledge on their part about the place of occurrence.

31. Thus, out of four circumstances projected by the prosecution, the second and the third circumstances must be eschewed for consideration while seeing whether the circumstances form a chain of

evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and whether they rule out every possible hypothesis except the one to be proved by the prosecution. In this analysis, we are guided by the approach which must be adopted in such matters as has been observed in ***Musheer Khan @ Badshah Khan & Anr. v. State of Madhya Pradesh***[7]. The relevant passages from the judgment are:

> "**39.** In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.
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> **40.** Chief Justice Fletcher Moulton once observed that "proof does not mean rigid mathematical formula" since "that is impossible". However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion. Circumstantial evidence, on the other hand, has been compared by Lord Coleridge "like a gossamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches". The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.
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> **41.** To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. (See *Raghav Prapanna Tripathi* v. *State of U.P.* [AIR 1963 SC 74 : (1963) 1 Cri LJ 70])

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[7] (2010) 2 SCC 748.

42. The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused. (See *State of U.P.* v. *Dr. Ravindra Prakash Mittal* [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : 1992 Cri LJ 3693] , SCC p. 309, para 20.)

43. While appreciating circumstantial evidence, we must remember the principle laid down in *Ashraf Ali* v. *King Emperor* [21 CWN 1152 : 43 IC 241] (IC at para 14) that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

44. The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and are incapable of explanation upon any other reasonable hypothesis except his guilt.

45. When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role. In *Nibaran Chandra Roy* v. *King Emperor* [11 CWN 1085] it was held that the fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence.

46. The same principles have been followed by the Constitution Bench of this Court in *Govinda Reddy* v. *State of Mysore* [AIR 1960 SC 29 : 1960 Cri LJ 137] where the learned Judges quoted the principles laid down in *Hanumant Govind Nargundkar* v. *State of M.P.* [AIR 1952 SC 343 : 1953 Cri LJ 129] The ratio in *Govind* [AIR 1952 SC 343 : 1953 Cri LJ 129] quoted in AIR para 5, p. 30 of the Report in *Govinda Reddy* [AIR 1960 SC 29 : 1960 Cri LJ 137] are:

"*5*. … '*10*. … in cases where the evidence is of a circumstantial nature, the circumstances [which lead to the conclusion of guilt should be in the first instance] fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be [shown] that within all human probability the act must have been [committed] by the accused.' [As observed in *Hanumant Govind Nargundkar* v. *State of M.P.*, AIR 1952 SC 343 at pp. 345-46, para 10.] "

The same principle has also been followed by this Court in *Mohan Lal Pangasa* v. *State of U.P.* [(1974) 4 SCC 607 : 1974 SCC (Cri) 643 : AIR 1974 SC 1144]"

32. We are, thus, left with only two circumstances, namely; first and the fourth circumstances. Before we consider them, a submission advanced on behalf of the State on the basis of Chart Exh.P-29 must be dealt with. According to the said Chart, the appellants belonged to a particular gang which was indulging in crimes of similar nature and as observed by the Trial Court in its order of sentence dated 30.09.2010, there were about 111 cases registered against the members of the gang. However, as stated earlier, not a single document either in the form of a Chargesheet order, depositions or orders were produced on record. A mere chart giving description of offences, numbers and the sections of the offences and about the nature of offences cannot be taken into account at the stage of conviction.

33. Weighing the first and the fourth circumstances on the touchstone of the principles accepted by this Court, in our view, the Prosecution has not been able to discharge the burden to such an extent that the presumption of innocence weighing in favour of the accused stands displaced. As a matter of fact, with the non-establishment of the second circumstance, the first circumstance by itself does not point in the direction of the appellants. In any case, the first and the fourth circumstances are wholly inadequate. They do not form a consistent

A chain leading to a hypothesis sought to be proved by the Prosecution. We, therefore, grant benefit of doubt to the appellants and acquit them of the charges levelled against them. They be set at liberty unless their custody is required in any other case.

34. The appeals are allowed accordingly.

Devika Gujral Appeals allowed.
(Assisted by : Mahendra Yadav, LCRA)