Subramanya vs The State Of Karnataka on 13 October, 2022

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 242 OF 2022

SUBRAMANYA ….. APPELLANT

VERSUS

STATE OF KARNATAKA ….. RESPONDENT

JUDGMENT

J.B. PARDIWALA, J.

1. This statutory criminal appeal is at the instance of a convict accused charged with the offence of murder of one Kamalamma (deceased) and is directed against the judgment and order of conviction passed by the High Court of Karnataka dated 02.07.2019 in the Criminal Appeal No. 473 of 2013 by which the High Court allowed the acquittal appeal filed by the State of Karnataka against the judgment and order of acquittal passed by the Principal Sessions Judge, Chikmagalur dated 20.12.2012 in the Sessions Case No. 59 of 2011 and held the appellant herein guilty of the offence of murder punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'the IPC'). The High Court sentenced the appellant herein to undergo life imprisonment with fine of Rs. 25,000/□ and in the event of default of payment of fine to undergo further simple imprisonment for a period of six months.

CASE OF PROSECUTION

2. The appellant herein along with two other co□accused, namely, Gowri alias Gowramma wife of late Nagaraj and Seetharam Bhat son of late Nagabhatt were put to trial in the Sessions Case No. 59 of 2011 for the offences punishable under Sections 120□B, 302, 379 and 201 read with Section 34 of the IPC. All the three accused were put to trial in the court of Principal Sessions Judge, Chikmagalur. The original accused No. 2, namely, Gowri (acquitted) was born in the wedlock of one Manjappanaika and his first wife. The deceased, namely, Kamalamma was the second wife of the Manjappanaika. Gowri (original accused No.

2) happens to be the step daughter of the deceased Kamalamma. After the demise of Manjappanaika his immovable properties were divided between the deceased Kamalamma and Gowri (A□2). In the

wedlock of Manjappanaika and the deceased two daughters were born, namely, Sugandha (PW 1) and Sujatha. The deceased Kamalamma used to reside all alone at the village Horabylu adjacent to the house of the original accused No. 2 Gowri. Gowri is a widow and at the relevant point of time was staying along with her two children. It is the case of the prosecution that Gowri (A□2) had an illicit relationship with the appellant herein. The deceased Kamalamma was highly opposed to such illicit relationship and used to reprimand both, the appellant and Gowri.

3. According to the case of the prosecution, the appellant herein and Gowri conspired on 23.08.2010 to do away with the deceased Kamalamma. Both are alleged to have entered her house and somewhere near the cattle shed, the deceased was hit on her head and neck with a hard object like a club. Later, the appellant and Gowri are alleged to have removed the gold chain, a pair of ear studs and one gold ring from the body of the deceased Kamalamma. They took away her mobile also.

4. It is the case of the prosecution that after the deceased Kamalamma was done to death, the original accused No. 3, namely, Seetharam Bhat came into picture. Seetharam Bhat (A□

3) is alleged to have helped the appellant and Gowri in wrapping the dead body of the deceased in a sari and thereafter dumping it on the land of one Dinamani. The land of Dinamani is situated besides a water channel. It is alleged that with the aid of a crowbar, a pit was dug and the dead body of the deceased was buried with the intention to destroy the evidence.

5. According to the case of the prosecution, the appellant sold the gold ornaments to a jeweller, namely, Somashekhara Shetty (PW

9). PW 9 Somashekhara Shetty at the relevant point of time was running a jewellery shop at Rippanpet. So far as the mobile is concerned, the same is said to have been sold by the appellant herein to one Ashok alias Meeranath (PW 16). Ashok alias Meeranath (PW 16) is a resident of a place called Surathkal.

6. On 24.08.2010, Alok (son of Gowri) informed the son□in□law of the deceased, namely, H.T. Yogesh (PW 7) that his mother□in□law (deceased) had been missing since 23.08.2010. In such circumstances, H.T. Yogesh went (PW 7) to the Koppa, Police Station (P.S.) and filed a missing complaint.

7. On 09.12.2010 at 21:30 hours, Seetharam Bhat (A□3) is said to have met H.T. Yogesh (PW7) and made an extra judicial confession before him stating that about four months back the appellant herein and Gowri had lured him with a bottle of brandy and saying so had asked him to accompany them as they had some work. Thereafter, the appellant and Gowri are said to have revealed or rather made an extra judicial confession before Seetharam Bhat (A□3) that they had committed murder of the deceased Kamalamma and had kept the body in a cattle shed.

8. The appellant and Gowri asked Seetharam Bhat (A□3) to help them in disposing of the dead body. When Seetharam (A□3) declined to help them, he was threatened by the appellant and Gowri. Accordingly, Seetharam Bhat (A□3) accompanied them and helped in removing the gold ornaments

from the body of the deceased and burying the body at the field of one Dinamani.

9. On 10.12.2010, H.T. Yogesh (PW 7) went to the Police Station and lodged a First Information Report for the offence of murder.

10. Upon registration of the First Information Report, the investigation had commenced. All the three accused persons came to be arrested. While the appellant herein and Gowri (A-2) were in custody of the Police they are said to have made statements that they would show the place where the dead body had been buried and also the place where the weapon of offence (club) had been concealed. The appellant is also said to have made a statement that he would also show the place where he had sold of the ornaments of the deceased.

11. Accordingly, a discovery panchnama Ex. P.3 was drawn under Section 27 of the Indian Evidence Act, 1872. The photographs of the exhumation of the body were also taken and admitted as Ex. P.4. The Inquest panchnama of the body of the deceased, Ex. P.14 was also drawn.

12. The ornaments said to have been sold by the appellant herein to a jeweller, Somashekhara Shetty (PW 9), were collected from his shop by drawing a panchnama Ex. P.1.

13. The clothes of the appellant herein are said to have been discovered at his instance from the place nearby the house of the deceased by drawing a panchnama Ex. P.6. The weapon of offence (club) was also discovered at the instance of the appellant herein by drawing a panchnama Ex. P.8. It appears that one more weapon in the form of a spade was discovered at the instance of the original accused No. 3 Seetharam by drawing a panchnama Ex. P.8.

14. The dead body of the deceased was sent for post-mortem at the General Hospital, Koppa.

15. The post-mortem report Ex. P.17 reveals that the cause of death was due to head injuries in the form of fractures.

16. At the end of the investigation, the Investigating Officer filed chargesheet against the appellant and the two co-accused for the offences enumerated above. Upon filing of the chargesheet, the case was committed by the Magistrate under Section 209 of the Cr.P.C. to the Sessions Court which came to be registered as the Sessions Case No. 59 of 2011 in the court of Principal Sessions Judge, Chikmagalur.

17. The trial court framed charge against all the accused persons vide order dated 20.12.2012. Appellant herein and the other two co-accused pleaded not guilty to the charge.

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

(1) PW 1 Sugandha, CW 7, daughter of the deceased.

(2) PW 2 Vishwa K. K., CW 9, panch□witness to the discovery of the ornaments from the shop of the jewellery and also the discovery of the dead body.

(3) PW 3 Nandi Purela, CW 11, panch□witness.

(4) PW 4 H.S. Sathyamurthi, CW 13, panch□witness.

(5) PW 5 T. Somaiah, CW18, panch□witness.

(6) PW 6 Sridhar Shetty, CW 20, panch□witness.

(7) PW 7 H. T. Yogesh, CW 1, son□in□law of the deceased before whom original accused No. 3 is said to have been made extra judicial confession.

(8) PW 8 H. M. Ravikanth, CW 4, panch□witness.

(9) PW 9 I. Somashekhara Shetty, CW 14, jeweler to whom the ornaments were sold.

(10) PW 10 Ravi Shetty, CW 22, panch□witness to the discovery of the mobile.

(11) PW 11 Dr. J. Neelakantappa Gowda, CW 29, panch□witness.

(12) PW 12 C.V. Harish, CW 26 panch□witness.

(13) PW 13 Thousif Ahmed, CW 32, panch□witness to the place of incident.

(14) PW 14 J.K. Shivakumar, CW 37, Revenue Officer.

(15) PW15 Dayanand Gowda, CW 28, Assistant Commissioner.

(16) PW 16 Meeranath Gowda, CW 24, Cook at Sharath Bar and Restaurant. The appellant used to assist the PW 16 at the restaurant.

(17) PW 17 Mahesh E.S., CW 41, Police Officer.

(18) PW 18 Manjeshwara Kalappa, CW 40, Police Officer.

(19) PW 19 T. Sanjeeva Naik, CW 42, Police Officer.

19. The prosecution also adduced documentary evidence in the form of FIR, Inquest panchnama, discovery panchnamas etc.

20. The trial court framed the following points of determination in its judgment:

"1) Whether the prosecution proves that Kamalamma, w/o late Manjappanaika died a homicidal death?

2) Whether the prosecution proves that on or about 23.8.2010, in Hirekudige village in Koppa Taluk, accused Nos. 1 and 2, in furtherance of their common intention or otherwise, agreed and conspired with each other to murder Kamalamma, w/o late Manjappanaika, and thereby committed an offence of criminal conspiracy, punishable under Section 120□B read with Section 34 of I.P.C?

3) Whether the prosecution proves that on the aforesaid date at about 9.00 PM, in the house of Kamalamma at Hirekudige village in Koppa Taluk, accused Nos.1 and 2, in furtherance of common intention, did commit murder by intentionally and knowingly causing the death of Kamalamma, by assaulting on her head and neck by means of club, and thereby committed an offence punishable under Section 302 read with Section 34 of I.P.C?

4) Whether the prosecution proves that on the aforesaid date, time and place, accused No.1, committed theft of a gold chain, a pair of earstuds, one gold ring and a mobile handset belonging to deceased Kamalamma and thereby committed an offence punishable under Section 379 of I.P.C?

5) Whether the prosecution proves that on or about the aforesaid date, in furtherance of common intention, accused Nos.1 and 3, knowing that the offence of murder, punishable with death or imprisonment for life, has been committed by accused Nos. 1 and 2, caused certain evidence to disappear, to wit, buried the dead body of Kamalamma, by the side of the Government channel at Horabylu, with an intention to screen the offenders (accused Nos.1 and 2) from legal punishment, and thereby committed an offence punishable under Section 201 read with Section 34 of I.P.C?

6) What order?"

21. The aforesaid points of determination came to be answered by the trial court as under:

"POINT No. 1: □In the affirmative;

POINT No.2: □In the negative;

POINT No.3: □In the negative;

POINT No.4: □In the negative;

POINT No.5: □In the negative;

POINT No.6: □As per final order, for the following:"

22. The prosecution in the course of the trial relied upon the following circumstances to prove its case against the accused persons:

(1) Motive to commit the crime. According to the prosecution, the appellant herein had illicit relationship with original accused No. 2, namely, Gowri and the deceased was coming in their way.

In such circumstances, the appellant herein and the original accused No. 2 had the motive to commit the crime. (2) Extra judicial confession alleged to have been made by the accused No. 3 Seetharam Bhat before the PW 7 Yogesh (son-in-law of the deceased) after four months of the date of incident. (3) Discovery of the dead body at the instance of the appellant herein by drawing a panchnama under Section 27 of the Evidence Act.

(4) Recovery of the ornaments from the shop of the Jeweller (PW 9) at the instance of the appellant herein by drawing a panchnama.

(5) The discovery of the weapon of offence, mobile of the deceased and the clothes of the appellant accused at the instance of the appellant herein under Section 27 of the Evidence Act.

23. We shall now look into the reasonings assigned by the trial court while not accepting any of the aforesaid circumstances, as incriminating circumstances, establishing the guilt of the accused persons. We quote as under:

> "34. The first circumstance which the prosecution is intending to rely upon is motive that A-1 was having illicit relation with A-2 and in that context, deceased Kamalamma used to abuse them and she was also making propaganda about the same and the accused persons were enraged by that and thinking that she is an obstacle for their relation, they conspired to get rid of her and murdered the deceased. In circumstantial evidence, motive plays important role and it must be strong and reliable. If prosecution fails to prove the motive, it will be beneficial to the accused. Even though P.Ws.1, 2 and 7 have deposed that the mother of P.W.1, the deceased used to tell her that A-1 and A-2 are having illicit relation and she used to scold them for having such illicit relation, but if we see the cross-examination of P.W. 1, it discloses that A-1 is distant brother to A-2 and that there was a panchayath before the division of the properties between the deceased and A-2. Even in the case of the prosecution, the prosecution has not proved by examining any witness to substantiate the said fact of illicit relation between A-1 and A-2, who have either seen them together or that they have advised them to give up the same. Even though P.W.1, the daughter and P.W.7, the son-in-law of the deceased have deposed about the illicit relation between A-1 and A-2, but they have deposed that the deceased used to tell about the illicit relations and they are not the direct witnesses to substantiate the said fact. Their evidence is only hearsay in nature. As such, the evidence regarding the illicit relation is not acceptable and reliable in law.
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> 35. The second circumstance which the prosecution is intending to rely upon is the confession made by A-3 before P.W.7, the son-in-law of the deceased. It is the specific case of the prosecution that on 9.12.2010 he had been to Gadikallu and at

about 9.30 PM, near the Circle, A□3 met him and there he told that about 3 or 3 1/2 months back he had been called by A□1 and told that he had murdered Kamalamma and in order to bury the dead body, asked his help by providing two bottles of brandy and he also told that if he is not going to obey, he will also kill him as done to his brother□in□law Srinivase Gowda. He also told that he helped him in carrying the dead body to the mound near the land of Dinamani and buried it. During the course of crossexamination, he has admitted that he is not going to ask any personal matters of A□3 nor he will tell his personal matters to him. He has further admitted that he is not having any confidence in him and vice versa, A□3 is also not having any confidence in him. A□3 is also not a friend or relative of P.W.7. In order to establish that A□3 made a confession before P.W.7, A□3 must have reposed confidence in him and he must have some faith with the person to whom he is making such a confession. When P.W.7 is neither a relative nor a friend, why A□3 is going to make such a confession before P.W.7 who is a close relative of the deceased, is a mystery. Under the facts and circumstances of the present case on hand, it is very difficult to believe that A□3 would make such a confession before P.W.7 about the crime committed by them. While considering the evidence of extra judicial confession, the Court must also verify whether the accused could repose confidence in such a person so as to disclose a secret aspect of his life. For this proposition of law, I want to rely upon the decision reported in AIR 1975 SUPREME COURT 258, [THE STATE OF PUNJAB v/s BHAJAN SINGH & OTHERS] wherein it is held as under: □"(C) Evidence Act (1872), S.24 □Extra judicial confession – Value of the evidence of extra judicial confession in the very nature of things is a weak piece of evidence. (The evidence adduced in this respect in the instant case, held, lacked plausibility and did not inspire confidence.) Para 15"

36. In another decision reported in [2011] ACR 704 in the case of SK. YUSUF v/s STATE OF WEST BENGAL, the Hon'ble Supreme Court of India has again held as under:

□"C. Evidence Act, 1872 □S.25 □Extra judicial confession – Extra judicial confession must be established to be true and made voluntarily and in a fit state of mind □Extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Para 22"

37. Leave apart this, as per the evidence of P.W.7, A□3 met him 3 1/2 months or 4 months after the incident.

Usually, if at all, a confession is going to be made by the offenders in respect of the commission of the offence, it will be made immediately after the incident which they have committed and not after a long gap and the confession is going to be made immediately before the person who come across with him and with whom he is having full faith. In this behalf also the evidence which has been produced before the court is not cogent and reliable and the prosecution has utterly failed to prove the said circumstance which it is intending to rely upon.

38. The third circumstance which the prosecution is intending to rely upon is that of accused showing the place of commission of offence and the place of burial of the dead body. As per the evidence of P.W.19, the Investigating Officer, on 10.12.2010, C.Ws.36 and 37 produced accused No.1 at about 9.00 PM; C.Ws.34 and 35 produced accused No.2 at the same time; and P.Ws.17 and C.W.38 produced accused No.3 at the same time. He has further deposed that thereafter he recorded their voluntary statements and on the basis of that, he traced the place of burial. If we see the voluntary statement of A□1 as per Ex.P.28, he has stated that he will show the place of burial. He has also volunteered that he has committed the murder of deceased Kamalamma and he will produce the club, mobile, spade and another club which has been used for the purpose of transportation of the dead body and he will also produce the ornaments which he has taken from the body and the same has been marked as Ex.P.28. Accused nos.2 and 3 have volunteered to show the place where they have buried the dead body. If we see the evidence of this witness with the evidence of the other witnesses, it is not accused nos.2 and 3 who took the IO and the panch witnesses and showed the place of burial. P.Ws.2 and 8 have deposed that about one year back, he saw the dead body of deceased near a halla situated at Dinamani land at a mound and there, the Dy.S.P. and the A.C., were also present. A□1 and A□3 showed the place of burial of the dead body. But, nowhere these witnesses have spoken that A□1 and A□3 led them and showed the place of burial. If already the said burial spot was known to the Dy.S.P, and the A.C., then under such circumstances, it cannot be held that it is at the instance of the accused that the said place has been discovered. If we see the evidence of P.W.8, he has deposed that the said body was fully decomposed and one blouse and one petticoat were found on the dead body and if we see the evidence of P. W.15, he has deposed that accused nos.1 and 3 led them to a mound in survey No.121 and showed the place where they had buried the dead body of deceased Kamalamma and he got it exhumed through A□1, A□3 and P.W.3. The said body was highly decomposed and an old type blouse and a petticoat were there over the said body. But if we see the cross□examination of this witness, he received the requisition on 10.12.2010 and thereafter on 11.12.2010 he fixed the timing to exhume the body and he went there at about 10.30 AM and when he was about to enter the village, police were also there along with A□1 and A□3 and other witnesses, Doctor and Videographer were also present. Then, under such circumstances, the evidence of P.W.15 that A□1 and A□3 led them and showed the place where they had buried the dead body is also not believable and reliable. It is not for the first time that he came to know about the dead body in that place. He has categorically deposed that the body was highly decomposed. But if we see the evidence of P.W.11, the Doctor, he found a semi decomposed, legs little semi flexed in position, head was covered with black and gray hairs measuring 12 inches in length, 2/3rd of the body was decomposed and breast was also semi□decomposed. If the alleged murder has taken place on 23.8.2010, with the above condition of the body, the exhumation of the body must have been done earlier to 11.12.2010 and not on 11.12.2010, 3 1/2 months later as contended by the prosecution, or else, the death must have taken place at a later date which is closer to the date of exhumation and examination. According to P.W.19, accused nos.2 and 3 volunteered to show the place where they have buried the dead body, but as per the case of the prosecution, accused nos.1 and 3 have showed the place. That also creates a doubt. In that behalf, there is no consistency in the evidence to show that it is at the instance of A□1 and A□3 by their voluntary statement, the fact about the place of burial has been discovered. Under such circumstances, this circumstance which the prosecution is intending to rely upon, cannot be said to be proved beyond reasonable doubt.

39. The next circumstance which the prosecution is intending to rely upon is that of recovery of the ornaments at the instance of accused No. 1. In this behalf, the prosecution is intending to rely upon the evidence of P.W.2 and P.W.9. P.W.2 in his evidence has deposed that after 2 or 3 days again police called him and along with C.W.13, A□1 was also present and that himself, C.W.13 and the PI were led by A□1 to Rippanpet. There, A□1 took them to Someshwara Jewellers shop and there A□1 asked to give the gold ornaments given by him and C.W.14 returned the said gold ornaments and the same were seized by drawing a Mahazar as per Ex.P.1. Admittedly, this witness is the nephew of the deceased and even though by the side of the Police Station and the jewellery shop there are so many shops and other persons were available, but why this particular person has been chosen as a witness is also not forthcoming.

40. P.W.9 is the owner of the jewellery shop. He has deposed that A□1 came and sold the gold articles prior to 3 1/2 months back by coming to his shop and he returned the said articles and they were seized by drawing a Mahazar as per Ex.P.1. During the course of cross□examination, he has deposed that they will not maintain any receipt book for having purchased the gold and he has also further deposed that when he purchased the gold articles, they were just like new and there will be wear and tear found on the gold articles even though they have been renewed with new coatings. When the said articles appear to be new one and even after 3 1/2 months of their purchase by P.W.9 who is a jeweller, they were in the same condition in which they have been recovered at the instance of A□1 is hard to believe and in this behalf also, the case of the prosecution is not worthy of acceptance.

41. The next circumstance which the prosecution is intending to rely upon is the recovery of the club, umbrella, mobile and spade and the seizure of the clothes of A□1 and A□3. Even though the recovery evidence has been given by P.Ws.8, 10,16 and P.Ws.4 and 5, but if we closely scrutinise their evidence, the club which has been recovered is also not having stains and it is a new one. Even it is not believable that the said clubs which have been thrown by the accused persons in that particular area will be available in the condition in which they have been thrown even after 3 1/2 months. By bare looking by this court, M.Os. 9 and 14 are just like new clubs. If they are exposed to rain, water and sun, definitely they would have changed their colour and shape. So also, the recovery of the clothes of the accused persons. In this behalf also, the recovery evidence of all these articles has not been proved by the prosecution beyond all reasonable doubt.

42. Even though the learned Public Prosecutor vehemently argued and contended that at the instance of the accused, the body has been exhumed and the recovery has been done and A□3 has also confessed before P.W.7 and the prosecution has also proved the motive that A□1 and A□2 were having illicit relation, the same is not acceptable under the above said circumstances.

43. The material witnesses in this case have not been examined by the prosecution for the reasons best known to it. It is the specific case of the prosecution that one Alok, son of accused No.2 informed P.W.7 about the missing of the deceased. But the said Alok has not been examined. The body of deceased is found buried in Survey No.121 of Dinamani and Narayanaswamy, and when the said body was found there in the said land belonging to them, then, under such circumstances, they are considered to be material witnesses. Non□examination of these material witnesses will also not

fill up the gap which the prosecution has to fill up to prove its case beyond all reasonable doubt. From what date that the deceased was missing and how nobody noticed about the missing of the deceased is also not brought on record by the prosecution, for the reasons best known to it. This particular doubt also goes to the benefit of the accused. Even though P.W. 1 was knowing that the deceased, her mother, was having a mobile and after coming to know about the missing of her mother on 24.8.2010, she will not make any efforts to make a call to the mobile of her mother which is an unnatural conduct on her part. No daughter, after coming to know that the mother is missing, will keep quiet, that too when she knows that her mother is having a mobile. Definitely she could have made a call. For what reasons P.W. 1 did not make any call to her mother's mobile is also a doubtful circumstance.

44. It is settled principle of law that when two views are possible from the prosecution evidence, the one which is favourable to the accused shall have to be taken and the benefit of doubt shall have to be given to the accused. Taking into consideration the above said facts and circumstances of the case, I answer point Nos.2 to 5 in the negative."

24. Thus, the trial court, upon appreciation of the oral as well as documentary evidence, came to the conclusion that the prosecution had failed to prove its case against the accused persons beyond reasonable doubt and accordingly, vide the judgment and order dated 20.12.2012, acquitted the appellant herein and the other two co□accused of all the charges.

25. The State of Karnataka being dissatisfied with the judgment and order of acquittal passed by the trial court challenged the same by filing the Criminal Appeal No. 473 of 2013 in the High Court of Karnataka. The High Court upon reappreciation of the entire oral as well as the documentary evidence on record dismissed the acquittal appeal so far as the original accused No. 2 Gowri alias Gowramma is concerned thereby affirming her acquittal. However, the appellant herein came to be convicted for the offence of murder punishable under Section 302 of the IPC and was sentenced to undergo life imprisonment with fine of Rs. 25,000/□ Appellant was also convicted for the offence punishable under Section 201 read with Section 34 of the IPC and was sentenced to undergo simple imprisonment for five years with fine of Rs. 5,000/□ The original accused No. 3 Seetharam Bhat came to be convicted for the offence punishable under Section 201 read with Section 34 of the IPC and was sentenced to undergo simple imprisonment for a period of three years with fine of Rs. 5,000/□and in case of default to undergo further simple imprisonment for a period of two months.

26. We are informed that the original accused No. 3 Seetharam Bhat accepted the conviction and has undergone the sentence. The original accused No. 3 thought fit not to file any appeal before this Court.

27. It is the appellant herein (original accused No. 1), who is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT CONVICT

28. Mr. Krishna Pal Singh, the learned counsel appearing for the appellant convict vehemently submitted that the High Court committed a serious error in passing the impugned judgment and order of conviction by reversing the well□reasoned judgment and order of acquittal passed by the trial court. According to the learned counsel, while sitting in judgment over an acquittal, the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained, in view of any of the above infirmities, it can then – and then only – reappraise the evidence to arrive at its own conclusions. The principal argument of the learned counsel appearing for the appellant convict is that in the case on hand, there is no finding recorded by the High Court that the judgment of the trial court is palpably wrong, manifestly erroneous or demonstrably unsustainable.

29. The learned counsel would further submit that the High Court committed a serious error in making the extra judicial confession alleged to have been made by the original accused No. 3 Seetharam Bhat before the PW 7 almost after four months from the date of the incident is the basis and thereafter, trying to search for corroboration. It was argued that even otherwise, an extra judicial confession is a weak piece of evidence. He would argue that in the case on hand, the High Court should not have relied upon the extra judicial confession alleged to have been made by the accused No. 3 Seetharam before the PW 7 Yogesh for the purpose of convicting the appellant herein.

30. The learned counsel also submitted that the High Court committed a serious error in relying upon the various discoveries like the weapon of offence, jewellery, mobile, clothes etc. under Section 27 of the Evidence Act.

31. In such circumstances referred to above, the learned counsel prays that there being merit in his appeal, the same may be allowed and the impugned judgment and order passed by the High Court may be set aside.

SUBMISSIONS ON BEHALF OF THE STATE

32. Mr. V.N. Raghupathy, the learned counsel appearing for the State of Karnataka, on the other hand, has vehemently opposed this appeal submitting that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order. He would submit that the circumstances are fully established pointing only towards the guilt of the appellant convict. In such circumstances referred to above, the learned counsel appearing for the State prayed that there being no merit in the present appeal, the same may be dismissed.

ANALYSIS

33. Having heard the learned counsel appearing for the parties and having gone through the material on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order of conviction.

34. The High Court should have been mindful of the fact that it was dealing with an acquittal appeal filed by the State under Section 378 of the Cr.PC. It would be useful to review the approach to be adopted while deciding an appeal against the acquittal by the trial court.

35. In one of the earliest cases on the powers of the High Court, in dealing with an appeal against an order of acquittal the Judicial Committee of the Privy Council, in Sheo Swarup v. King□Emperor, 1934 SCC OnLine PC 42 : (1933□34) 61 IA 398 : AIR 1934 PC 227 (2), considered the provisions relating to the power of an appellate court in dealing with an appeal against an order of acquittal and observed as under:

> ".....But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as: (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice." It was stated that the appellate court has full powers to review and to reverse the acquittal.

36. Following the Sheo Swarup (supra) this Court in Chandrappa and Others v. State of Karnataka reported in (2007) 4 SCC 415 held as under:

> "16. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court."

37. In Atley v. State of Uttar Pradesh, AIR 1955 SC 807, the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in Sanwat Singh and Others v. State of Rajasthan, AIR 1961 SC 715 in para 9 held as under:

> "9. The foregoing discussion yields the following results:
>
> (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup's case, 61 Ind App

> 398 : (AIR 1934 PC 227 (2)) afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

38. The need for the aforesaid observations arose on account of the observations of the majority in Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426, which stated that for the High Court to take a different view on the evidence "there must also be substantial and compelling reasons for holding that the trial court was wrong".

39. M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 :

> (1963) 1 Cri LJ 235, is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as his Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial".

40. In Shivaji Sahabrao Bobade and Another v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033, in para 6, Krishna Iyer, J., observed as follows:

> "6. .....In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents....."

41. This Court in Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972, in para 7 spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows:

> "7. .....While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own

conclusions.....” The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In other words, there should not be an acquittal of the guilty or a conviction of an innocent person.

42. In Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110 : 1997 SCC (Cri) 992, in para 16, this Court set out the following principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the trial court:

“16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under:

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness□box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.”

43. This Court in Chandrappa (supra) highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

44. In Nepal Singh v. State of Haryana, (2009) 12 SCC 351, this Court reversed the judgment in the State of Haryana v. Nepal Singh, CRA□D No. 99□DBA of 1993, order dated 21□7□1997 (P&H), of the High Court which had set aside the judgment of

acquittal pronounced by the trial court and restored the judgment of the trial court acquitting the accused on reappreciation of the evidence.

45. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarised as follows:

45.1.Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of Uttar Pradesh v. Sahai and Others, (1982) 1 SCC 352]. Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunachalam v. P.S.R. Sadhanantham and Another, (1979) 2 SCC 297]. An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana v. Lakhbir Singh and Another, 1991 Supp (1) SCC 35 : 1990 Cri LJ 2274].

45.2.However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:

45.2.1. Where the approach or reasoning of the High Court is perverse:

(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh and Others, (1983) 1 SCC 393]. For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. v. Shanker, 1980 Supp SCC 489 : 1981 SCC (Cri) 428].

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were “interested” witnesses. [State of U.P. v. Hakim Singh and Others, (1980) 3 SCC 55].

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh and Others, (1983) 1 SCC 393].

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam v. P.S.R. Sadhanantham and Another, (1979) 2 SCC 297].

(e) Where the High Court applied an unrealistic standard of "implicit proof" rather than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner.

[State of Uttar Pradesh v. Ranjha Ram and Others, (1986) 4 SCC 99].

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. [Gurbachan Singh v. Satpal Singh and Others, (1990) 1 SCC 445].

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish "motive". [State of Andhra Pradesh v. Bogam Chandraiah and Another, (1986) 3 SCC 637].

45.2.2. Where acquittal would result in gross miscarriage of justice:

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh and Others, 1989 Supp (1) SCC 288] or based on extenuating circumstances which were purely based in imagination and fantasy [State of Uttar Pradesh v. Pussu alias Ram Kishore, (1983) 3 SCC 502].

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610].

46. Having gone through the entire impugned judgment passed by the High Court, we do not find any satisfaction recorded therein that the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. In the absence of such satisfaction, the High Court, in our opinion, should not have disturbed a well□reasoned judgment of acquittal, passed by the trial court. We shall assign reasons hereafter why the High Court should not have disturbed the acquittal recorded by the trial court.

PRINCIPLES GOVERNING APPRECIATION OF CIRCUMSTANTIAL EVIDENCE

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

> "152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :
>
> It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.
>
> 153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047] Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of

the accused and must show that in all human probability the act must have been done by the accused.

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

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

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

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

50. It is the case of the prosecution that the original accused No. 3 Seetharam Bhat had made an extra judicial confession before the PW 7, H.T. Yogesh (son□in□law of the deceased). PW 7 in his

examination-in-chief, recorded by the trial court on 21.01.2012 has stated as under:

> "1. I know the accused persons who are present before the court. Deceased Kamalamma is my mother-in-law. C.W.8 is my wife. P.W.1 is my wife's sister. C.W.12 is the husband of P.W.1. C.W.5 and 6 are the brothers of the deceased. I know other witnesses. My mother-in-law died on 23.08.2010 due to murder. The son of A2 Gowramma by name Alok on 24.08.2010 came at about 6.30 a.m. and told that my mother-in-law Kamalamma is not found since yesterday night. A2 is the daughter of first wife of the husband of deceased Kamalamma.

Deceased used to reside Hosamane, Hirekudige village. By the side of the house of deceased A2 used to reside. Deceased alone used to stay there and A2 and their children used to stay by the side of the house of the deceased. Husband of A2 is no more. We also came. By telling to all we searched for my mother-in-law Kamalamma. As we could not trace at about 1 p.m. I went to Police Station and filed a missing complaint. I did not get any information about my mother-in-law even after giving the missing complaint.

2. On 09.12.2010 I had been to Gadikallu. At about 9.30 p.m. at Gadikallu circle A3 Seetharam Bhat met me and there he told that about 3 or 3 1/2 months back he had been called by A1 and told that he had murdered Kamalamma and in order to bury the dead body asked his help by providing two bottles of brandy and he also told that if he would not obey he will also kill him as done to his brother-in-law Srinivase Gowda. He also told that he helped him in carrying the dead body to Dhare near the land of Dinamani and there they have buried the body.

3.Deceased Kamalamma used to tell that A2 is having illicit relation and they are not liking her as she is telling to everybody.

4. Thereafter I went to Police Station on 10.12.2010 and filed the complaint. Now I see the said complaint. The same is now marked as Ex.P-1. Ex.P-1(a) is my signature.

5. Next day when police and Assistant Commissioner came to the spot I was also called there. C.W.2 to 4 were also called. There A1 and A3 showed the place where they had buried the body of Kamalamma to us and also to the police and Assistant Commissioner. Thereafter with the help of P.W.3 the dead body of Kamalamma was exhumed. The dead body was buried in survey No.121, the Govt. land by the side of a channel at Horabylu. When the body was exhumed it was fully decomposed. Over the body one petticoat, one blouse were there. There the Assistant Commissioner draw the body exhumed mahazar. Now I see the same. The same is already marked as Ex.P-3. Ex.P-3(b) is my signature. At that time photographs were also taken. Now the three photos have been marked as Ex P-4. Apart from me C.Ws. 2 to 4 and P.W.3 also signed.

6. On 14.12.2010 again police called me at about 2 p.m. to the Police Station. In the said police station A1 was also present. Police brought C.W.24 Meeranath and he produced a mobile. The said mobile was of the deceased Kamalamma. The same was seized in the presence of C.W.22 and 23 by drawing a mahazar. Now I see the same. The same is now marked as Ex.P-12. Ex.P-12(a) is my

signature. At that time photo was also taken. Now the said photo is marked as Ex.P-13. I can identify the mobile if shown to me. The same is already marked as M.O.4. I do not remember the cell number of my mother-in law. She has studied upto 4th standard.

7. My mother-in-law used to wear a chain with Ganapathi pendant which is already marked as M.O.1, one pair of ole with blue stone in the middle surrounded by white stones which is already marked as M.O.2, one gold ring with red stone which is already marked as M.O.3. I can identify the blouse and petticoat which were found on the body of the deceased. (Now one sealed cover is shown to the learned counsel for the accused. The seals are found intact. He has no objection to open the same. The same is now opened). It contains one blouse and one petticoat. Witness identifies the same. The same are now marked as M.O.11 and 12."

51. We need not refer to the cross-examination of the PW 7, as we are of the view that the plain reading of the examination-in-chief itself is sufficient to arrive at the conclusion that the extra judicial confession could not have been relied upon as an incriminating circumstance.

52. The date of the alleged crime is 23.08.2010. The so called extra judicial confession, said to have been made by Seetharam Bhat (accused No. 3) is dated 09.12.2010. We fail to understand why all of a sudden Seetharam (accused No. 3) after a period of almost four months, thought fit to make an extra judicial confession before the PW 7 H.T. Yogesh involving himself and the appellant herein in the alleged crime.

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

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

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

19) "19. An extra□judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made." The Court further expressed the view that: (SCC p. 192, para 19) "19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused...." x x x x 15.6. Accepting the admissibility of the extra□judicial confession, the Court in Sansar Chand v. State of Rajasthan [(2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79] held that: (SCC p. 611, paras 29□30) "29. There is no absolute rule that an extra□judicial confession can never be the basis of a conviction, although ordinarily an extra□judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore [(1970) 2 SCC 105 : 1970 SCC (Cri) 320] , Mulk Raj v. State of U.P. [AIR 1959 SC 902 : 1959 Cri LJ 1219] , Sivakumar v. State [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari v. State of Maharashtra [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320] and Mohd. Azad v. State of W.B.[(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082]]"" [Emphasis supplied]

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

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

58. This Court in Kashmira Singh v. The State of Madhya Pradesh reported in AIR 1952 SC 159, had observed as under:

> "The confession of an accused person is not evidence in the ordinary sense of the term as defined in Section 3. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept. [para 8, 10]"

59. In the case on hand, the High Court committed a serious error in making the confessional statement as the basis and thereafter going in search for corroboration. The High Court concluded that the confessional statement is corroborated in material particulars without first considering and marshalling the evidence against the appellant convict herein excluding the conviction altogether from consideration. As held in the decision, cited above, only if on such consideration on the evidence available, other than the confession a conviction can safely be based then only the confession could be used to support that belief or conclusion.

60. The trial court has assigned cogent reasons for not accepting the evidence of the PW 7, before whom the confession is alleged to have been made, and rightly so, the High Court has not given any convincing reasons as to why the PW 7 who was discarded by the trial court should be relied on.

61. The learned counsel appearing for the State, relied on Section 30 of the Evidence Act to make good his submission that, the extra judicial confession alleged to have been made by the original accused No. 3 Seetharam Bhat is admissible against the appellant convict herein. No doubt, the statement would be admissible but the question is not of mere admissibility or mere absence of bar under Section 25 of the Evidence Act, the real question relates to a proper interpretation of Section 30 of the Evidence Act.

62. Section 30 of the Evidence Act is quoted below in toto:

> "30. Consideration of proved confession affecting person making it and others jointly under trial for the same offence.— When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. [Explanation:—"Offence", as used in this section includes the abatement of, or attempt to commit the offence.]"

63. It was argued that this confession of a co-accused, even if proved, cannot be the basis of a conviction and although it is evidence in the generic sense, yet it is not evidence in the specific sense and it could afford corroboration to other evidence and cannot be the supporting point or the sole basis of the conviction. In this respect, reference could be made to a decision of this Court in the case of Haricharan Kurmi & Jogia Hajam v. State of Bihar, as reported in AIR 1964 SC 1184, as also to another decision of this Court reported in Ram Chandra and Another v. State of Uttar Pradesh, AIR 1957 SC 381 wherein it was held that confession of a co-accused can only be taken into consideration but it was not in itself a substantive evidence. The Privy Council also held that a confession of a co-accused was obviously evidence of a very weak type and it did not come within the definition of evidence contained in Section 3.

64. It is necessary to have the facts behind these decisions of the Supreme Court and the Privy Council. We may proceed chronologically.

65. In the case of Bhuboni Sahu v. The King reported in AIR 1949 PC 257, the Patna High Court had dismissed an appeal against a judgment and order of the Sessions Judge convicting the appellant for an offence of murder. The Privy Council, however, advised His Majesty that the appeal be allowed and the judgment was recorded giving the reasons for such advice. The evidence against the appellant consisted of, (a) the evidence of Kholli Behera who had taken part in the murder and had become an approver, (b) the confession of Trinath recorded under Section 164 Cr. P.C. which implicated both himself and the appellant in the murder, and (c) the recovery of a loin cloth identified as the one which the deceased was wearing when he was assaulted and an instrument for cutting grass. For the purpose of the instant case, the evidence in point (b) is relevant. The Privy Council quoted Section 30 of the Evidence Act and held in paragraph 9 of the judgment (as reported) that Section 30 was introduced for the first time in the Indian Evidence Act of 1872 and it was the departure from the common law of England. It was observed that this Section 30 applied to confessions and not to statements which do not admit the guilt of the confessing party. It was held that statement of Trinath was a confession. Their lordships further observed that Section 30 seemed to be based on the view that an admission of an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused, their lordships continued to observe, was obviously evidence of a weaker type. It did not indeed come within the definition of 'evidence' contained in Section 3 of the Evidence Act. Such statement was not required to be given on oath nor in the presence of the accused and it could not be tested by cross-examination. It was a much weaker type of evidence than the evidence of an approver which was not subject to any of those infirmities. Section 30, however, provided that the Court might take into consideration the confession and thereby no doubt made it evidence on which the Court could act, but the section did not say that the confession was to amount to proof. Clearly, there must be other evidence and confession was only one element in the consideration of all the facts proved in the case, which can be put into the scale and weighed with other evidence. Their lordships confirmed the view that the confession of a co-accused could be used only in support of the evidence and could not be made a foundation of a conviction.

66. The case of Ram Chandra (supra) before this Court, as reported in AIR 1957 SC 381 was also of murder. It was a case in which corpus delecti was not traceable and proof of murder solely depended

on a retracted confession of an accused. The Court was of the view that although corpus delecti was not found, yet there could be a conviction if reliable evidence, direct or circumstantial, of the commission of murder was available. However, a confession of a co□accused was not in itself a substantive evidence. The courts below had relied on a confession of accused Ram Chandra against a co□accused, Ram Bharosey, for holding him guilty of the offences charged against him. This Court held, "It is rightly urged that under Section 30, Evidence Act confession of a co□accused can only be taken into consideration but is not in itself substantive evidence." This Court, however, was satisfied that even excluding the confession as substantive evidence there was enough material against the appellant Ram Bharosey to find him guilty of offence of criminal conspiracy to commit offences charged. To come to the ratio, we find that the view was affirmed that confession of a co□accused could only be considered but could not be relied on as substantive evidence.

67. The case of Haricharan Kurmi (supra) was again from the Patna High Court. Here also a question arose as to the probative value of a confession of one accused against a co□accused. This Court dealt with the definition clause in Section 3 in the Evidence Act and Section 30 thereof, as also some earlier decisions of this Court. It was observed, in paragraph 15 of the judgment, as reported, "It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense, the rending of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however, grave, must not be allowed to take the place of proof. As we have already indicated, it has been a recognised principle of administration of criminal law in this country for over half a century that the confession of a co□accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trial, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co□accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals."

68. The case in hand is not one of a confession recorded under Section 15 of the TADA Act. On the language of sub□section (1) of Section 15, a confession of an accused is made admissible evidence as against all those tried jointly with him. So, it is implicit that the same can be considered against all those, tried together. In this view of the matter also, Section 30 of the Evidence Act need not be invoked for consideration of confession of an accused against the co□accused, abettor or conspirator charged and tried in the same case along with the accused. The accepted principle in law is that the confessional statement of an accused recorded under Section 15 of the TADA Act is a substantive piece of evidence against his co□accused, provided the accused concerned are tried together. This is the fine distinction between an extra judicial confession being a corroborative piece of evidence and a confession recorded under Section 15 of the TADA Act being treated as a substantive piece of

evidence.

DISCOVERY OF WEAPON OF OFFENCE, CLOTHES AND DEAD BODY

69. For the purpose of proving the discovery of clothes of the appellant herein at his instance by drawing a panchnama under Section 27 of the Evidence Act, the prosecution has relied upon the evidence of the PW 5 T. Somaiah. PW 5 in his examination-in-chief has deposed as under:

> "1. I know the accused persons who are present before the court. I know C.W.19. About one year back myself and C.W.19 were called by the police, at that time A1 Subramanya was also there. From there A1 led us near the house of Kamalamma. By the side of house of Kamalamma there is a house of A2. Police told me that A1 is going to give the cloths, we have to be there. By the side of house of Kamalamma from the place where the firewood has been stored A1 removed one pant and one shirt and produced before the police and thereafter the same were seized by drawing a mahazar. Now I see the said mahazar. The same is now marked as Ex.P-6. Ex.P-6(a) is my signature. The said mahazar was drawn between 9.30 a.m. to 10.30 a.m. (Now two covers are shown to the learned counsel for the accused. He has no objection to open the same. The same are now opened.) They contain red colour shirt and cement colour pant. The same are now marked as M.O.7 and 8 respectively. At the time of seizing M.O.7 and 8 photograph is also taken. Now I see the same. The same is now marked as Ex.P-7."

70. For the purpose of proving the discovery of the weapon of offence, the prosecution has relied upon the examination-in-chief at the instance of the appellant convict herein. The prosecution has relied upon the evidence of PW 6 Sridhar Shetty. Sridhar Shetty in his examination-in-chief has deposed as under:

> "1. I know the accused persons who are present before the court. I know C.W.21. On 14.12.2010 myself and C.W.21 were called by C.W.42. At that time A1 and A3 and the president of Panchayath and many other persons were also present. A1 and A3 led us to survey No.121 Government land by the side of the estate of Dinamani and there they told that they are going to produce the club which has been used for the purpose of commission of offence and which has been kept in a bush. Thereafter A1 took out a club from the bush and produced before the police. Now I see the said club which is before the court. The same is now marked as M.O.9. Thereafter A3 also went by the side of the bush and from there he produced a spade. Now I see the said spade. The same is now marked as M.O.10. Thereafter M.O.9 and 10 were seized by drawing a mahazar. Now I see the said mahazar. The same is now marked as Ex.P-8. Ex.P-8(a) is my signature. The said mahazar was drawn in between 11 a.m to 11.30 a.m. At the time of drawing the said proceedings photographs were also taken. Now the said two photographs are marked as Ex.P-9 and P-
>
> 10."

71. For the purpose of proving the discovery of the dead body of the deceased at the instance of the appellant herein and the acquitted co-accused (A-2), the prosecution has relied upon evidence of PW 7 H.T. Yogesh. PW 7 H.T. Yogesh in his examination-in-chief has deposed as under:

> "5. Next day when police and Assistant Commissioner came to the spot I was also called there. C.W.2 to 4 were also called. There A1 and A3 showed the place where they had buried the body of Kamalamma to us and also to the police and Assistant Commissioner. Thereafter with the help of P.W.3 the dead body of Kamalamma was exhumed. The dead body was buried in survey No.121, the Govt. land by the side of a channel at Horabylu. When the body was exhumed it was fully decomposed. Over the body one petticoat, one blouse were there. There the Assistant Commissioner draw the body exhumed mahazar. Now I see the same. The same is already marked as Ex.P-3. Ex.P-3(b) is my signature. At that time photographs were also taken. Now the three photos have been marked as Ex P-4. Apart from me C.Ws. 2 to 4 and P.W.3 also signed.
>
> 6. On 14.12.2010 again police called me at about 2 p.m. to the Police Station. In the said police station A1 was also present. Police brought C.W.24 Meeranath and he produced a mobile. The said mobile was of the deceased Kamalamma. The same was seized in the presence of C.W.22 and 23 by drawing a mahazar. Now I see the same. The same is now marked as Ex.P-12. Ex.P-12(a) is my signature. At that time photo was also taken. Now the said photo is marked as Ex.P-13. I can identify the mobile if shown to me. The same is already marked as M.O.4. I do not remember the cell number of my mother-in law. She has studied upto 4th standard.
>
> 7. My mother-in-law used to wear a chain with Ganapathi pendant which is already marked as M.O.1, one pair of ole with blue stone in the middle surrounded by white stones which is already marked as M.O.2, one gold ring with red stone which is already marked as M.O.3. I can identify the blouse and petticoat which were found on the body of the deceased. (Now one sealed cover is shown to the learned counsel for the accused.

The seals are found intact. He has no objection to open the same. The same is now opened). It contains one blouse and one petticoat. Witness identifies the same. The same are now marked as M.O.11 and 12."

72. PW 8 H. M. Ravikanth also as one of the panch-witnesses has deposed in his examination-in-chief as under:

> "2. On 11.12.2010 at about 10 a.m. C.P.I. called me, C.W.2 and 3. At that time Assistant Commissioner was also present and A1 Subramanya and A3 Seetharama Bhat were also present. From Gadikallu police officials, A.C., A1 and A3 alongwith me and C.W. 2 and 3 we went to the place where the body has been buried. A1 took us to the said place where they had buried the body. After showing the place where they

had buried the body of the deceased by A1 with the help of P.W.3 and A1 and A3 the body was exhumed and there we noticed that it is the dead body of Kamalamma. The said body was fully decomposed and one blouse and one petticoat were found on the dead body. For having exhumed the body a mahazar was drawn as per Ex.P□3. Ex.P□ 3(c) is my signature. There the photographs were also taken about the proceedings. The said photographs have been already marked as Ex.P□4. The proceedings was also videographed. Now the said C.D. is marked as M.O.13.

3. Thereafter the inquest mahazar was also drawn over the body of the deceased. Now I see the said mahazar.

The same is now marked as Ex.P□14. Ex.P□14(a) is my signature. At the time of drawing Ex.P□14 C.W.2 and 3 were also present.

4. Thereafter A1 led us to the house of deceased Kamalamma and took us to the backside door and at a distance of 3 to 4 feet he showed the place where he has murdered the deceased Kamalamma by assaulting. Thereafter A1 took us to a cattleshed at a distance of 5 to 6 feet and from there he produced a club. Now I see the said club. The club is marked as M.O.14. Thereafter accused told that he has kept the umbrella of deceased in Theerthahalli Kuppalli bus stand above the bus shelter. Thereafter A1 led us in a police jeep to Kuppalli and there after going near the bus stop A1 asked to stop the jeep. After alighting from the jeep A1 went and took out the umbrella kept on the roof of the shelter and produced the same. Now I see the said umbrella. The said umbrella is now marked as M.O.15. Now the spot cum seizure mahazar of club and umbrella is confronted to the witness. He admits his signature. The same is now marked as Ex.P□15. Ex.P□15(a) is my signature. The said mahazar has been drawn from 2 p.m. to 4 p.m. At that time A3 was also present. A1 who is present before the court is the same person who led us and produced M.O.14 and 15 and A1 and A3 showed the place where the dead body has been buried. At the time of mahazar photographs have been also taken. The said five photos are marked as Ex.P□16."

73. PW 9 Somashekhara (Jeweller) in his examination□in□chief has deposed as under:

"1. I know A1 when he came to my shop to sell the gold. I am having a jewellery works at Rippanpet on the road which leads to Theerthahalli. Police came alongwith A1 on 13.12.2010 at about 7 p.m. Alongwith police A1, C.W.15/Gururaj were also there. I told the police that A1 had come and sold the gold in my shop. I took the gold from A1 three and 1/2 months prior to police coming to my shop alongwith A1. A1 sold one gold chain with Ganapathi pendant, one pair of ole having blue stone in the middle surrounded by white stones and one gold ring with red stone. A1 while selling told that the said gold articles belong to him, as he is having financial difficulties in the family and he is also constructing a house, for that reason he is selling the same. I paid Rs.27,500/□to the accused for having purchased. Police asked me to return the said articles. Accordingly I returned and the same were seized by the police. C.W.15 appraised the gold articles and thereafter certified them. At the time when the gold articles were seized it was valuing Rs.47,000/□ Now I see the said mahazar. The

same is already marked as Ex.P□1. Ex.P□1(b) is my signature. Myself, C.W.l3, C.W.15 and P.W.2 have signed Ex.P□1. The said mahazar has been drawn from 7 p.m. to 8.30 p.m. I can identify the said gold articles which have been seized under Ex.P□1. They have been already marked as M.Os. 1 to 3. At the time of seizing M.Os. 1 to 3 police also took photographs. The same are already marked as Ex.P□2."

74. PW 10 Ravi Shetty (one of the panch□witnesses) to the recovery of mobile, in his examination□ in□chief has deposed as under:

"2. On 14.12.2010 myself, C.W.23 and 24 were called to the Police Station at about 1.30 p.m. P.W.7 was also present. C.W.24 produced the mobile which had been sold by A1 to him. The said mobile has been seized by drawing a mahazar as per Ex.P□12. Ex.P□12(b) is my signature. M.O.4 is the same mobile which was produced on that day. When the said proceedings took place photographs were also taken. Now I see the said photographs. They have been already marked as Ex.P□

13."

75. PW 19 T. Sanjeeva Naik is the Investigating Officer. In his examination□in□chief, he has deposed as under:

"2. On 10.12.2010 at about 1.30 p.m. I received the case file and took the further investigation of this case from P.W.17 and perused the investigation done by him. Immediately I deployed P.S.I. and other staff to trace about the accused. C.W. 36, 37 brought A1 and produced before me at about 9 p.m. with a report. Now I see the said report. The same is now marked as Ex.P□26. Ex.P□26(a) is my signature, C.w.34 and 35 also informed that they have apprehended A2 and secured and produced before me with a report at about 9 p.m. Now I see the said report. The same is now marked as Ex.P□27. Ex.P□27(a) is my signature. P.W.17 and C.W.38 apprehended A3 and produced before me at about 9 p.m. on the same day with a report. The report has been already marked as Ex.P□23. Ex.P□23(b) is my signature. Immediately I interrogated the accused persons and recorded their voluntary statement. A1 volunteered that he had committed the murder of deceased Kamalamma and to produce the club, mobile, spade, another club which had been used for transportation of dead body and the ornaments which were taken over from the dead body. Now the relevant portion the voluntary statement of A1 is marked as Ex.P□28. Ex.P□28(a) is my signature. A2 and A3 also volunteered to show the place where they had buried the dead body. The said voluntary statements have been recorded in the presence of C.W.2, 3 and P.W.8. I also sent immediately a requisition to P.w.15 to come as a Sub□ Divisional Magistrate to exhume the body of deceased Kamalamma.

3. On 11.12.2010 P.W. 15 in the presence of panch witnesses as shown by A1 and A3 he exhumed the body of deceased in the presence of P.W.7, P.W.8, P.W.3, C.W.2 and 3. For having exhumed the body a mahazar was also drawn as per Ex.P□3. Ex. P□3(e)

is my signature. There the photographs were taken as per Ex.P□4. In the presence of above said panch witnesses I also drew the inquest mahazar as per Ex.P□14. Ex.P□ 14(b) is my signature. At the time of inquest I recorded the statement of C.W.5, 6, P.W.1, C.W.8, P.W.2, C.W.10, P.W.3 and C.W.12. Thereafter through C.W.39 I sent the body to Govt. Hospital, Koppa for post□mortem with a requisition. I also requested to collect the material to send for D.N.A. test from the body. Subsequently A1 led us and showed the place where he has committed the offence and there in the presence of C.W. 2, 3 and P.W.8 I drew the spot cum seizure mahazar as per Ex.P□15.

ExP□15(b) is my signature. At the time of drawing Ex.P□15 he also produced M.O.14. Thereafter he led us to Kuppalli bus stop and there he produced the umbrella from the shelter of the said bus stand. The umbrella is already marked as M.O.15. I seized M.O.15 under Ex.P□

15. I also took the photographs of· the proceedings. The said five photographs have been marked as Ex.P□16. Thereafter I came back alongwith accused and seized articles and subjected the seized articles to P.F.No.73/2010. I also produced A1 and A3 before the court and took them to police custody. I produced A2 before the court with remand application.

4. On 13.12.2010 I secured P.W.2, C.W.13 and C.W.15. Thereafter A1 led us to Rippanpet to the Someshwara Jewellery works shop i.e., the shop of P.W.9. A1 asked P.W.9 to produce M.Os. 1 to 3. As per the request of the accused he produced M.Os. 1 to 3 which has been pledged with him. He produced M.Os. 1 to 3 and I seized them by drawing a mahazar as per Ex.P□1. Ex.P□1(c) is my signature. I also took the photographs as per Ex.P□2. I have also videographed the said proceedings. I came back to the Police Station with seized property and subjected the seized articles to P.F.No.74/2010. I also recorded the statement of P.W.9 and C.W.15. I also kept A1 in police custody.

5. On 14.12.2010 I secured P.W.4 and C.w.17 and thereafter A3 led us to his house at Kiranakere and there he produced the M.O. 5 and 6 and there I seized them by drawing a mahazar as per Ex.P□5. Ex.P□5(b) is my signature. I also took the photographs. Now I see the said two photographs. The same are now marked as Ex.P□29. There I secured P.W.5 and C.W.19 and thereafter A1 led us to the house of A2 and from the firestag he produced M.O.7 and 8 and there I seized them by drawing a mahazar as per Ex.P□6. Ex.P□6(b) is my signature. I also took the photographs as per Ex.P□7. Thereafter A1 and A3 led us to the place where they have hidden M.O.9 and 10 and they went near the side of bush at Government land Survey No.121 at Hirekodige village and by going inside the bush A1 produced M.O.9 and A3 produced M.O.10. The same were seized by drawing a mahazar as per Ex.P□8. Ex.P□8(b) is my signature. There I also took the photographs as per Ex.P□9 and P□10. Thereafter I came back to the Police Station alongwith A1 and A3 and seized articles and subjected the seized articles to P.F.No.75/2010 to 77/2010. On the same day, as per my direction my constable C.W.36 secured P.W.16 to the Police Station. I secured P.W.10 and C.W.23 and P.W.16 produced the mobile M.O.4 which is said to have been sold by A1 to him and the same was seized by drawing a mahazar as per Ex.P□12. Ex.P□12(d) is my signature. PW.16 also identified A1 by saying that he is the person who sold M.O.4 to him. At the time of proceedings P.W.7 was also present. I also took the photographs as per Ex.P□13. Thereafter I subjected M.O.4 to P.F.No.78/2010. I also recorded the statement of P.W.16, further statement of C.W.5, C.W.6, P.W.1, C.W.8 and C.W.25. I also produced

A1 and A3 before the court with remand application."

76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

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

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch□witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch□witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

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

> "34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the

panchas or the person concerned in the witness box.

……" [Emphasis supplied]

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

81. The conditions necessary for the applicability of Section 27 of the Act are broadly as under:□(1) Discovery of fact in consequence of an information received from accused;

(2) Discovery of such fact to be deposed to;

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

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

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

83. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kottaya and Others v.

Emperor, AIR 1947 PC 67, which have become locus classicus, in the following words:

"10. ….It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given

> must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

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

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

86. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama, the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.

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

> “18. .....It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily

> goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non□inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most□ quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

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

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

> "9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to

> the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (Delhi Admn.) [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . Even if we hold that the disclosure statement made by the accused□appellants (Exts. P□15 and P□16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8....." [Emphasis supplied]

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

MOTIVE

90. The High Court has relied upon the strong motive for the appellant convict to commit the crime as one of the incriminating circumstances.

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

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

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

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

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

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

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

94. Thus, in view of the aforesaid discussion, we have reached to the conclusion that the evidence of discovery of the weapon, clothes and dead body of the deceased at the instance of the appellant convict herein can hardly be treated as legal evidence, more particularly, considering the various legal infirmities in the same.

95. For all the foregoing reasons, we have reached to the conclusion that the High Court committed error in holding the appellant convict herein guilty of the offence of murder.

96. In the result, this appeal succeeds and is hereby allowed. The impugned judgment and order of conviction passed by the High Court is hereby set aside.

97. The appellant convict shall be set at liberty forthwith, if not required in any other case.

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

.....CJI.

(UDAY UMESH LALIT) .....J. (J.B. PARDIWALA) New Delhi;

Date: October 13, 2022.

ITEM NO.1504 COURT NO.9 SECTION II-C
(For Judgment)

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

SUBRAMANYA Appellant(s)

VERSUS

THE STATE OF KARNATAKA Respondent(s)

(IA No.17205/2022-CONDONATION OF DELAY IN FILING and IA No.17206/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.17207/2022-GRANT OF BAIL)
Date : 13-10-2022 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Krishna Pal Singh, AOR Mr. Seemab Qayyum, Adv.

Ms. Anvita Aprajita, Adv.

Mr. Madhavendra Singh, Adv.

Mr. Mohan Singh Bais, Adv.

For Respondent(s) Mr. V. N. Raghupathy, AOR Mr. Md. Apzal Ansari, Adv.

Mr. Parikshit P. Angadi, Adv.

Hon'ble Mr. Justice J. B. Pardiwala, pronounced the judgment of the Bench comprising Hon'ble the Chief Justice of India and His Lordship.

This appeal succeeds and is hereby allowed in terms of the signed reportable judgment.

The impugned judgment and order of conviction passed by the High Court is hereby set aside.

The appellant convict shall be set at liberty forthwith, if not required in any other case.

Pending application, if any, also stands disposed of.

(SNEHA DAS)	(RANJANA SHAILEY)
SENIOR PERSONAL ASSISTANT	COURT MASTER (NSH)

(Signed reportable judgment is placed on the file)