IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

207

CNR No: PHHC010029982026

2026:PHHC:194004-DB

MRC-1-2026 (O&M) with
CRA-D-40-2026 (O&M)
CRA-D-75-2026 (O&M)
CRA-D-109-2026 (O&M) and
CRA-AD-132-2026 (O&M)

Reserved on: 22.09.2026.
Pronounced on: 28.10.2026.
Uploaded on: 28.10.2026.

Whether only the operative part of the judgment is pronounced or the full judgment is pronounced.	**Operative part/full judgment**

(1)

MRC-1-2026 (O&M)

STATE OF HARYANA

...Prosecutor

VERSUS

SUNIL KUMAR AND OTHERS THROUGH DISTRICT AND SESSIONS JUDGE, KURUKSHETRA,

...Respondent(s)-accused-convict(s)

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(2)

CRA-D-40-2026 (O&M)

POONAM AND ANOTHER

...Appellant(s)

VERSUS

STATE OF HARYANA

...Respondent(s)

(3)

CRA-D-75-2026 (O&M)

SUNIL KUMAR @ SUNIL

...Appellant(s)

VERSUS

STATE OF HARYANA

...Respondent(s)

(4)

CRA-D-109-2026 (O&M)

VIKRAM @ VICKY AND ANOTHER

...Appellant(s)

VERSUS

STATE OF HARYANA

...Respondent(s)

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DR. ATUL ARORA

...Appellant(s)

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ
HON'BLE MR. JUSTICE RAVINDER MALIK

Present :- Mr. Paras Talwar, Sr. DAG, Haryana.

Mr. Aman Pal, Sr. Advocate;
Ms. Neha Rani, Advocate, Ms. Vidyotma Malik, Advocate,
Mr. Mansi, Advocate, Mr. Rajender Kumar, Advocate
Mr. Sanklap Dhanda, Advocate,
Mr. Sidharth Sehgal, Advocate, Mr. Jayditya, Advocate,
Mr. Rishabh Chaudhary, Advocate,
Mr. Vishal Sehgal, Advocate and
Mr. Balraj Sharma, Advocate
for the appellant/convicts in CRA-D-109-2026.

Mr. Gaurav Datta, Advocate,
for the appellant in CRA-D-75-2026.

Mr. Randeep S. Dhull, Advocate,
Mr. Sanjeev Majra, Advocate and
Mr. Navdeep Singh, Advocate,
for the appellant in CRA-D-40-2026.

Mr. P.S. Ahluwalia, Sr. Advocate (Amicus Curiae) with
Dr. (Ms.) Isha Mehta, Advocate,
Ms. Kadambari Bhan, Advocate,
Ms. Natasha, Advocate
Mr. Harkirat Randhawa, Advocate and
Mr. Bhavi Kapur, Advocate.

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Mr. Siddharth Sharma, Advocate
Ms. Ameesha Goyal, Advocate, and
Ms. Sanjana Garg, Advocate,
for the appellant in CRA-AD-132-2026 and
for the complainant in MRC-1-2026, CRA-D-40-2026,
CRA-D-75-2026 and CRA-D-109-2026.

VINOD S. BHARDWAJ, J.

Vide this common judgment, we decide MRC-1-2026 received through the District and Sessions Judge, Kurukshetra, titled as 'State of Haryana Vs. Sunil Kumar and others for confirmation of the death sentence awarded by the trial court along with other matters, i.e. CRA-D-40-2026, titled as 'Poonam and Another Vs. State of Haryana', CRA-D-75-2026, titled as 'Sunil Kumar @ Sunil Vs. State of Haryana' and CRA-D-109-2026, titled as 'Vikram @ Vicky and Another Vs. State of Haryana', preferred by the accused- convicts against the judgment of conviction dated 15.12.2025, passed in Sessions Case No.89 of 2023 dated 16.05.2023 by the Additional Sessions Judge (Fast Track Court Special Court to try the offences of rape and POCSO Act), Kurukshetra, in a case arising out of FIR No.09 dated 10.01.2023, registered under Sections 120-B, 302, 323, 396 397, and 460 of The Indian Penal Code, 1860 (for short 'IPC') and under Section 25 of The Arms Act 1959, at Police Station City Thanesar, Kurukshetra, whereby the respondent(s)-accused persons had been convicted for the commission of offence under Sections 120-B, 323 read with Section 120-B IPC, 396 read with Section 120-B IPC, 395 read with Section 397 and further read with

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section 120-B IPC, 201 read with Section 120-B IPC, 25(6) of the Arms Act, 1959, Section 27 of the Arms Act, 1959, Section 460 read with Section 120-B IPC, and Section 302 read with Section 120-B IPC and to the order of sentence dated 20.12.2025 whereby capital punishment has been imposed upon the convicts for the offences under Section 302 read with Section 120-B of the Indian Penal Code and while varied sentences have been awarded for the other offences for which the accused have been convicted.

2 Additionally, CRA-AD-132-2026 titled as 'Dr. Atul Arora Vs. State of Haryana and Another' has also been preferred by the complainant Dr. Atul Arora challenging the acquittal of accused- respondent No.2-Ket Ram son of Gori Shankar.

3 Hence, all the above five cases are being decided by a common judgment.

FACTS IN BRIEF

4 The above FIR was registered on the statement of Dr Atul Arora son of Sh. Ved Parkash, who runs a hospital on the ground floor while the upper portion of the premises is used by him for his residential purposes, where stays alongwith his parents and his wife Vanita Arora. The top floor was being used as the residence of his domestic help. On 09.01.2023, as per his routine, he went to his residential portion at about 9.20 P.M., and went straight to his parents' room. While he was talking with his father, he heard the shriek of his wife Vanita on which he came out of the room of his parents and as soon as he came out, two youngsters pointed a gun at his head, pushed

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him to a sofa in the drawing room and asked him about the money and the jewellery. He took out Rs.1 lakh from his pocket and gave it to one youngster. He however did not hear the voice of his wife and the youngsters kept beating him for about fifteen minutes and they also kept making enquiries about the location of cash and jewellery. Then they made a specific inquiry as to where was the temple room and they themselves disclosed that the jewellery was kept in the upper almirah in the temple room. Thereafter, they made the complainant sit in the kitchen and discussed about killing him. However, on the pretext of seeing his parents for the last time, the complainant pushed the youngsters aside and bolted the door of the room of his parents' from inside. He could not make any call as the wires of the phone had been snapped and the intercom was also disconnected by them. He opened the rear door and jumped into the open courtyard of the adjoining school situated in the back of his house, from the balcony of the house, and after scaling over the outer boundary wall of the school, he came on the road. Thereafter, he knocked at the door of House No. 109, i.e. one of his neighbours, and narrated the incident. His neighbour Ashok thereafter made a telephone call to the police, whereupon a PCR van reached at the spot. He accompanied the police officials to his residence and rushed towards the bakery of his wife in the residential portion of the house and found her lying dead on the floor. On checking the house as well as the almirah, he found that the jewellery belonging to his wife, as well as the jewellery prepared for the wedding of his daughter, was missing. He also observed that all three almirahs were open. His mother told him that

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the miscreants had also taken away her gold bangles and cash at gunpoint. He suspected that one Poonam, who had earlier been engaged with them as a domestic maid but was removed for being caught stealing valuables from the house, was aware as to where the cash and jewellery were kept. He suspected that Poonam had hatched a conspiracy with her friends and had given effect to the incident. It was further stated by him that the assailants had also taken away the DVR pertaining to CCTV Cameras installed on the upper floor along with them, after damaging the same. He further disclosed that upon hearing the shriek of his wife, his domestic helper Ket Ram along with his wife had also come downstairs, but they were also held hostage at gunpoint. The dacoits had committed dacoity of money, jewellery as well as his mobile phone and they also committed murder of his wife.

5 On recording of the aforesaid statement EX.P1, the FIR was registered, whereupon the investigation of the case was initiated. The police prepared the site plan of the place of occurrence and photographs of the dead body as well as the scene of crime were taken. Videography was also conducted. Inquest proceedings were also carried out under section 174 Cr. P. C. and statements were recorded under Section 175 Cr.P.C. Autopsy of the dead body of Vanita was conducted. As per the opinion of the doctor, she died as a result of the head injuries and the complications arising therefrom. It was further opined that the said head injury was sufficient in an ordinary course to cause her death. The medico-legal examination of the complainant, Dr. Atul Arora, was also conducted. Four simple blunt injuries were found on his

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person.

6 Vide supplementary statement, a list of jewellery articles found missing was also supplied by the complainant. Thereafter, the CCTV footage of the cameras installed on the ground floor was retrieved and the complainant identified one of the accused as Vikram and Vicky who picked up Poonam from the Hospital on three or four occasions.

7 On receipt of a secret information as to the whereabouts of the accused and in an attempt to arrest the accused persons, a nakabandi was done and the accused were intercepted. They were asked to stop but they opened fire upon the police party, for which incident a separate FIR no. 13, for offence under Section 307 of the Indian Penal Code as well as the Arms Act had been registered against them. During interrogation after their arrest, they confessed to their crime and suffered disclosure statements to the effect that they had concealed the jewellery, robbed from the complainant's house, at a house in Cheeka. Their separate disclosures were recorded. All the accused persons were taken to the place where the jewellery items had been concealed by them and the same were recovered at their instance. Additionally, one mobile phone was also recovered at the instance of Munish. The jewellery and other articles were identified by the complainant. The police obtained the Customer application Forms as well as the call detail records of the mobile phone that was used by the respondent-accused. The clothes worn by the respondent-accused at the time of commission of the offence were also seized and sent to the FSL for detecting any blood on the same.

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8 A chemical examination of the same was also conducted. As per the report of the chemical examiner, blood was detected on the clothes worn by the deceased at the time of occurrence and on the grey striped and blue towel collected from the scene of the crime. Further, blood was also detected on the swabs as well as gauze that was collected from the scene of the crime. All these samples carried human blood of B group, except the underwear of the deceased, on which the blood was inconclusive and the blood on the socks was disintegrated. Blood however could not be detected on the clothes of the accused persons.

9 After the arrest, a Test Identification Parade of the respondent accused was conducted in the presence of the Chief Judicial Magistrate, Kurukshetra, wherein the complainant identified all four accused persons namely Vikramjeet Singh @ Bittu, Vikram @ Vicky, Manish Kumar and Sunil.

10 The police were of the view that the aforesaid four accused persons had given effect to an armed dacoity and murder of Vanita wife of the complainant. A firearm was also alleged to have been used by the aforesaid four accused persons at the time of committing the offence. The said firearm had been seized in the other case viz FIR no. 13 registered under Section 307 of IPC and it was later taken in possession in the present case as well. Sketches of the weapons and cartridges were also prepared and taken on record.

11 A sanction order was obtained for prosecution of the respondent accused persons for commission of offence under the Arms Act. Currency

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notes worth Rs.1,50,000/- were recovered from the possession of Vikram Singh, Sunil Kumar, Vikramjeet and Manish Kumar. An inventory of the seized items was prepared and the same, on identification, was released in favour of the complainant. There were no third-party claims pertaining to the same.

12 A final report was filed under Section 173(2) Cr.P.C. and copies of the documents relied upon by the investigating agency were supplied to the accused free of cost for compliance of Section 207 Cr.P.C.

13 The offences being triable exclusively by the Court of Sessions, the Illaqa Magistrate committed the case to the Court of Sessions vide order dated 9th of May, 2023.

14 Since a prima facie case for commission of offence under Section 120-B, 323, 396, 395, 302, 201 and 460 IPC read with Sections 25(6), 25(7) and 27 of the Arms Act. 1959, was made out against the respondent accused persons, hence, a charge was framed against them to which they pleaded not guilty and claimed trial.

15 In order to bring home the guilt of the accused persons, the prosecution examined as many as 32 witnesses and also adduced documentary evidence. The details of the witnesses examined by the prosecution are as under: -

S. No.	**Name of Witness**	**Designation/Description**	**Relevance**
PW-1	Dr. Atul Arora	Complainant	

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PW-2	Amit Kumar	Relative of complainant	Son in law of complainant who provided CCTV Footage of place of occurence
PW-3	Dr. Randeep Kumar	Crime scene report	
PW-4	Dalbir Singh	Exemptee Head Constable	
PW-5	Dr. Naresh Kumar	Medical officer	Performed PMR
PW-6	Dr. Dinesh Sharda,	Medical Officer	
PW-7	Gaurav Kumar	Head Constable	
PW-8	Ms. Neha Rani	Reader to District Magistrate	
PW-9	Satyawan	Sub Inspector	
PW-10	Manoj Pal,	R.C. Clerk	
PW-11	Ms. Navjeet Klair,	Chief Judicial Magistrate	Conducted T.I.P
PW-12	Sh. Harish Sabbarwal	Judicial Magistrate 1st Class	
PW-13	Nar Singh	Sub Inspector	
PW-14	Jodha Ram	Head Constable	
PW-15	Jagdeep	Head Constable	
PW-16	Dalbir Singh	Head Constable	
PW-17	Virender Vikram	Assistant Sub Inspector	
PW-18	HC Pardeep Kumar	Head Constable	
PW-19	ASI Surender Kumar	Assistant Sub Inspector	Registered other FIR on secret

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			information
PW-20	Labh Singh	Head Constable	
PW-21	Devender Pal	Nodal Officer, Vodafone-Idea	
PW-22	Subash Chander	Exemptee Sub Inspector	
PW-23	Sudeep Kumar	Assistant Sub Inspector	
PW-24	Sher Singh	Assistant Sub Inspector	
PW-25	Mahender Singh	Retired Inspector	
PW-26	Joginder Singh	Assistant Sub Inspector	
PW-27	Jasbir Singh	Private witness	Hostile Witness-Conspirator Poonam Allegedly used his phone
PW-28	Adesh Chauhan	Nodal Officer, Reliance Jio	
PW-29	Rohit Kumar	Nodal Officer, Airtel	
PW-30	Satish Kumar	Inspector	Initial I.O
PW-31	Rishi Pal	Inspector	
PW-32	Parteek Kumar	Inspector	Second I.O – CIA Incharge

16 The details of the documentary evidence tendered by the prosecution is tabulated as under: -

Sr. No.	**Document(s)**	**Exhibited as**

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1	Complaint	Ex.P1
2	List of robbed articles	Ex.P2
3	Statement of Dr. Atul Arora U/s 175 Cr.P.C.	Ex.P3
4	Receipt of dead body	Ex.P4
5	Postmortem report of Ms. Vanita Arora	Ex.P5
6	MLR of Dr. Atul Arora	Ex.P6
7	Identification memo of jewellery items	Ex.P7
8	Application for superdari	Ex.P8
9	Superdarinama	Ex.P9
10	Photographs	Ex.P10
11	Photographs	Ex.P11
12	Photographs	Ex. P12
13	Photographs	Ex. P13
14	Photographs	Ex. P14
15	Photographs	Ex. P15
16	Photographs	Ex. P16
17	Photographs	Ex. P17
18	Photographs	Ex. P18
19	Photographs	Ex P19
20	Photographs	Ex. P20
21	Photographs	Ex. P21
22	Photographs	Ex. P22
23	Photographs	Ex. P23
24	Photographs	Ex. P24
25	Photographs	Ex. P25
26	Photographs	Ex. P26
27	Photographs	Ex. P27
28	Photographs	Ex P28
29	Photographs	Ex. P29
30	Photographs	Ex. P30
31	Photographs	Ex. P31
32	Certificate U/s 65-B Evidence Act	Ex. P32
33	Possession memo of pen drive	Ex. P33

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34	Crime scene visit report Possession memo of pen drive	Ex. P34 Ex. P34 (again)
35	Certificate U/s 65-B evidence Act	Ex. P35
36	Affidavit in evidence by Dr. Naresh Kumar (with PW5)	Ex. P36
37	Application to SMO LNJP Hospital, Kurukshetra	Ex. P37
38	Ruqa	Ex. P38
39	MLR of Manish	Ex. P39
40	FIR	Ex. P40
41	Endorsement on complaint Ex. P1	Ex. P41
42	Sanction Order	Ex. P42
43	Application to In-charge Registration Authority	Ex. P43
44	Vehicle Particulars of No. HR05AL-5459	Ex. P44
45	FSL Report	Ex. P45
46	FSL Report	Ex. P46
47	Application for Identification Parade	Ex. P47
48	Copy of order dated 11.01.2023	Ex. P48
49	Copy of order on Test Identification Report	Ex. P49
50	Copy of order dated 11.01.2023	Ex. P50
51	Application for taking certified copy of order dated 11.01.2023	Ex. P51
52	Copy of order dated 11.01.2023	Ex. P52
53	Application for transfer of case property	Ex. P53

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54	Copy of order dated 21.03.2023	Ex. P54
55	Application for Certified copy of order regarding transfer of case property	Ex. P55
56	Possession Memo of parcel	Ex. P56
57	Possession Memo of parcel	Ex. P57
58	Envelope	Ex. P58
59	Possession Memo of parcel	Ex. P59
60	Affidavit in evidence by HC Jodha Ram (with PW14)	Ex. P60
61	Possession Memo of parcel	Ex. P61
62	Possession Memo of parcel	Ex. P62
63	Possession Memo of parcel	Ex. P63
64	Possession Memo of parcel	Ex. P64
65	Demarcation Memo	Ex. P65
66	Memo regarding search of Hard Disk and Mobiles	Ex. P66
67	Disclosure statement of Vikram @ Vicky	Ex. P67
68	Disclosure Statement of Sunil Kumar	Ex. P68
69	Disclosure Statement of Vikramjit Singh	Ex. P69
70	Disclosure Statement of Manish Kumar	Ex. P70
71	Demarcation Memo	Ex. P71
72	Disclosure statement of Vikram @ Vicky	Ex P72
73	Disclosure Statement of Sunil Kumar	Ex. P73
74	Disclosure Statement of Vikramjit Singh	Ex. P74
75	Disclosure Statement of Manish Kumar	Ex. P75

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76	Disclosure statement of Umesh Kumar	Ex. P76
77	Inventory of Currency notes	Ex. P77
78	Possession Memo of currency notes	Ex. P78
79	Sketch of Pistol	Ex. P79
80	Sketch of Pistol	Ex. P80
81	Sketch of Pistol	Ex. P81
82	Sketch of Pistol	Ex. P82
83	Possession Memo	Ex. P83
84	Inventory of currency notes	Ex. P84
85	Possession Memo	Ex. P85
86	Disclosure Statement of Ket Ram	Ex. P86
87	Sample Seal (Case property)	Ex. P87
88	Affidavit in Evidence by HC Labh Singh (with PW20)	Ex. P88
89	Certificate U/s 65B of Evidence Act	Ex. P89
90	Customer Application Form of No. 80532-24069	Ex. P90
91	CDR of No. 80532-24069	Ex. P91
92	Customer Application Form of No. 99925-04355	Ex. P92
93	CDR of No. 99925-04355	Ex. P93
94	Letter by Nodal Officer VI to DSP Kurukshetra	Ex. P94
95	Affidavit in Evidence by ESI Subhash Chand (with PW-22)	Ex. P95
96	Scaled Site Plan	Ex. P96
97	Application to Armohar Kurukshetra	Ex. P97
98	Test Report	Ex. P98
99	Copy of register No.19	Ex. P99
100	Copy of register No.19	Ex P100
101	Possession memo	Ex. P101
102	Certificate U/s 65B of Evidence Act	Ex.P102
103	Customer Application Form of Mobile	Ex. P103

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	No.8168939863	
104	Customer Application Form of Mobile No.83076-74705	Ex. P104
105	Call details report of Mobile No.8168939863	Ex. P105
106	Call Details report of Mobile No.83076-74705	Ex. P106
107	Statement of HC Labh Singh u/S 161 Cr.P.C.	Ex. P107
108	Statement of HC Labh Singh u/S 161 Cr.P.C.	Ex. P108
109	Customer application Form of Mobile No.98962-48064	Ex. P109
110	Call details report of Mobile No.98962-48064	Ex. P110
111	Customer application Form of Mobile No.89300-09024	Ex. P111
112	Call detail report of Mobile No.89300-09024	Ex. P112
113	Customer application Form of Mobile No.8950036800	Ex. P113
114	Call details report of Mobile No.8950036800	Ex. P114
115	Customer application Form of Mobile No.90342-37639	Ex. P115
116	Call detail report of Mobile No.90342-37639	Ex. P116
117	Rough site plan	Ex. P117
118	Police Proceeding on complaint Ex.P1	Ex. P118
119	Inquest proceedings	Ex. P119
120	Application for scaled site plan	Ex. P120
121	Statement of Jasbir Singh	Ex. P121
122	Arrest form of Umesh	Ex. P122
123	Disclosure statement of accused Poona,	Ex. P123
124	Rough site plan	Ex. P124
125	Application to Incharge Police Control Room	Ex. P125
126	Application to Incharge Police Control Room	Ex. P126

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127	Copy of wireless Log	Ex. P127
128	Report of Emergency response support system	Ex. P128
129	Finger Print report	Ex. P129
130	Copy of order dated 21.02.2023 by CJM, Kurukshetra	Ex. P130
131	Endorsement on order dated 21.02.2023	Ex. P131
132	Detail of articles	Ex. P132
133	Rough site plan	Mark-A
134	Inquest Report	Mark-PA
135	FIR with Ex. P-40	Mark-PB
136	Copy of page from Modi's Medical Jurisprudence	Mark-A

17 Additionally, the case property proved during the trial is tabulated as under: -

Sr. No.	Document(s)	Exhibited as
1	Pen-drive	Ex.MO1
2	Pen Drive	Ex.MO2
3	X-ray films	Ex.MO3 to Ex.MO7
4	Clothes of the deceased	Ex.MO8 to Ex.MO14
5	Stripes towel	Ex.MO15
6	Gause Piece	Ex.MO16
7	Outer case of DVR	Ex.MO17
8	Clothes of accused Vikram @ Vicky	Ex.MO18 to Ex.MO21
9	Clothes of accused Manish	Ex.MO22 and Ex.MO23
10	Clothes of accused Sunil	Ex.MO24 to Ex.MO26
11	Cloths of accused Vikramjeet	Ex.MO27 to Ex.MO29
12	Currency notes	Ex.MO30 to Ex.MO36
13	Mobile Phone of accused Manish	Ex.MO37

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14	Country-made pistol recovered from accused Vikram alias Vicky	Ex.MO38
15	One live Cartridge recovered from accused Vikram alias Vicky	Ex.MO39
16	Country-made pistol recovered from accused Manish	Ex.MO40
17	One live Cartridge recovered from accused Manish	Ex.MO41
18	Empty cartridge from accused Manish	Ex.MO42
19	One lead from accused Manish	Ex.MO43
20	Country-made pistol recovered from accused Sunil	Ex.MO44
21	One live Cartridge recovered from accused Sunil	Ex.MO45
22	Country made pistol recovered from accused Vikramjeet Singh	Ex.MO46
23	One live Cartridge recovered from accused Vikramjeet Singh	Ex.MO47
24	Empty cartridge from accused Vikramjeet Singh	Ex.MO48
25	Country-made pistol recovered from Gian Singh, accused in another case	Ex.MO49
26	Missed cartridge recovered from Gian Singh, accused in another case	Ex.MO50

18 Prosecution gave up PW Dr. Ananya Arora, PW Neelam, Director RFSL Moginand, Panchkula, ASI Sanjeev Kumar, ASI Pardeep Kumar, Head Constable Dinesh and Head Constable Mahesh Kumar, SI

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Daljeet Singh, Head Constable Lalit Kumar, EHC Sanjay, Sudarshna, Ashok Kumar, Dr. Deepali Goyal, Head Constable Ram Kumar, ASI Randhir Singh, Lady Constable Sonia, Head Constable Sanjeev Kumar and Lady SI Sunita and closed the prosecution evidence after exhausting its list.

19 The entire incriminating evidence was put to the respondent-accused persons and their statements were recorded under Section 313 of Cr.P.C. They denied the entire incriminating material and pleaded false implication while claiming their innocence.

20 Despite availing a number of opportunities, no evidence was led in defence.

21 After hearing the parties and upon consideration of their respective submissions as well as the evidence brought on record, the Trial Court concluded that the prosecution succeeded in proving its case against the respondent-accused namely (1) Sunil Kumar, (2) Manish Kumar, (3) Vikramjeet @ Bittu, (4) Vikram @ Vicky and (5) Poonam for the commission of offences punishable under Sections 120-B and 323, 395, 396, 397, 302, 460 and 201 of Indian Penal Code beyond reasonable doubt. Accused Sunil Kumar, Manish Kumar, Vikramjeet @ Bittu and Vikram @ Vicky were also held guilty for the commission of offences punishable under Section 25 (6) of the Arms Act. Further, accused Vikram @ Vicky and Manish were also held guilty for the commission of offences punishable under Section 27 of the Arms Act. The other two accused, Ket Ram and Umesh Kumar, were, however, acquitted of the charges framed against them.

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22 The case was fixed for hearing the convicted accused on the quantum of sentence.

23 After granting an opportunity of hearing and considering all mitigating and aggravating circumstances, the trial court imposed the following sentence on the respondent accused persons: -

Sr. No.	Under Section	Punishment	Fine	Sentence in Default of Payment of Fine
1	Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for life.	Rs. 10,000/- each	Simple Imprisonment for six months
2	Section 323 read with Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for one year.	Rs. 1,000/- each	Simple Imprisonment for fifteen days
3	Section 396 read with Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for life.	Rs. 10,000/- each	Simple Imprisonment for six months
4	Section 395 read with Section 397 and further read with Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for life.	Rs. 10,000/- each	Simple Imprisonment for six months
5	Section 201 read with Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for three years.	Rs. 10,000/- each	Simple Imprisonment for six months
6	Section 25(6)	Convicts namely (1)	Rs.	Simple

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Sr. No.	Under Section	Punishment	Fine	Sentence in Default of Payment of Fine
	of Arms Act, 1959	Sunil Kumar, (2) Manish Kumar, (3) Vikramjeet @ Bittu, (4) Vikram @ Vicky are sentenced to undergo Rigorous Imprisonment for fourteen years.	10,000/- each	Imprisonment for six months
7	Section 27 of Arms Act, 1959	Convicts namely Vikram @ Vicky and Manish are sentenced to undergo Rigorous Imprisonment for five years.	Rs. 10,000/- each	Simple Imprisonment for six months
8	Section 460 of Indian Penal Code read with Section 120-B of Indian Penal Code	Convicts namely (1) Sunil Kumar, (2) Manish Kumar, (3) Vikramjeet @ Bittu, (4) Vikram @ Vicky are sentenced to undergo Rigorous Imprisonment for ten years.	Rs. 10,000/- each	Simple Imprisonment for six months
9	Section 302 of Indian Penal Code read with Section 120-B of Indian Penal Code	All the convicts: death penalty To be hanged by the neck till death	--	--

24 Hence, the reference was sent before this Court. While the convicted accused have preferred their separate appeals, the complainant has also preferred an appeal against the acquittal of Ket Ram bearing CRA-AD-

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132-2026 titled as Dr Atul Arora Vs. State of Haryana and another.

ARGUMENTS ON BEHALF OF THE ACCUSED

ABSENCE OF DIRECT EVIDENCE

25 Learned Senior Counsel appearing on behalf of the accused contends that the present case suffers from material inconsistencies, deficiencies and contradictions in the testimonies of the witnesses examined by the prosecution. He contends that the aforesaid contradictions and deficiencies are prime and raise grave apprehensions with respect to the quality and fairness of the investigation conducted by the respondent-State and establish that the prosecution has not been able to complete its chain of events against the accused persons. It is contended that the present case is not that of an eyewitness account and is rather based on circumstantial evidence. As per the judgment and the law laid down by the Supreme Court in the matter of ***Sharad Birdhichand Sarda v. State of Maharashtra reported as 1984(4) SCC 116,*** in a case based upon circumstantial evidence, the prosecution has to complete the chain of events in a manner as would lead to an inescapable conclusion against the accused persons for the commission of offence and by no one else. The relevant extract of the judgment reads thus: -

> *"152. 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: -*

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(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 Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made:

> *"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict. 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.

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> *153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

26 Referring to the above learned Senior counsel contends that the discrepancies and contradictions in the present case create serious doubts with respect to the completion of the chain of events. The link evidence leading to the solitary hypothesis of the involvement of only the accused persons in the commission of the offence is grossly amiss. The case of the prosecution is liable to fail on the said ground alone.

27 Learned Senior Counsel further contends that the prosecution case, being founded substantially upon circumstantial evidence, must be tested with greater care and that each circumstance relied upon by the prosecution must be proved independently and must form an unbroken chain pointing only towards the guilt of the accused. It is argued that the complainant neither witnessed the actual infliction of the fatal injury upon Vanita nor did he identify all the persons, who had entered the house, in circumstances free from doubt. The alleged recoveries, CCTV footage, call detail records and disclosure statements, according to learned counsel, do not independently establish the participation of each accused and cannot be aggregated to cure the deficiencies in one another. It is thus submitted that suspicion, however strong, cannot substitute proof beyond reasonable doubt and that any missing link in the chain should enure to the benefit of the accused.

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28 He submits that the entire case of the prosecution stands on three foundational pillars and none of them have been lawfully established. The foundational pillars of the prosecution case and evidence are: -

I Naming and identification of one of the suspects i.e. Vikram @ Vicky by the complainant and its corroboration by way of the identification of the accused in the Test Identification Parade;

II The disclosure of the accused leading to the recovery of the loot; and

III The electronic evidence i.e. the CCTV footage from the ground floor showing the 04 accused who entered the house and corroborated by the Call Data Records.

29 He contends that none of the above said evidence is credible or admissible as per law. The prosecution is thus relying solely on probability and possibility rather than the probative value of the evidence. He elaborates his arguments and the same are set out as under: -

TEST IDENTIFICATION PARADE

30 Learned Senior counsel contends that the complainant Dr. Atul Arora identified one Vikram Alias Vicky, who had visited the hospital a few time to pick up his domestic help (co-accused/conspirator) Poonam. He expressed an apprehension that since all four accused persons specifically inquired about the location of the almirah in the temple (where the jewellery

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and other articles had been kept) and as the said location was known only to a handful of persons including Poonam and Ket Ram, hence, their involvement in the offence could not be ruled out. It is submitted that only a suspicion was expressed and the accused were not previously known to the complainant, hence, the Test Identification Parade of the accused was required to be conducted. It is submitted that on the very next day, i.e. on 10th of January, 2023, the accused persons were arrested by the investigating agency after intercepting them on Kaithal/Cheeka Road by the police in staged encounter for which a separate FIR No.13 dated 10.01.2023 was also registered for commission of offences including under Section 307 IPC and Arms Act. He contends in respect of FIR No. 13 dated 10.01.2023 that the accused persons have already been acquitted and a finding was recorded against the investigating agency to the effect that the encounter had been staged and that the allegations of cross-firing against the respondent-accused persons were false, after noticing that the gunshot injury sustained by one of the accused, namely, Manish Kumar, was caused from point-blank range. He contends that in the said circumstances, the arrest of the accused in the present case and recovery of the arm alleged to have been used in the commission of the present offence also stand vitiated.

31 He further submits that out of the four persons who committed the offence, the person with a muffled face was identified as Vikram @ Vicky while the other three were complete strangers. Their identification has not been established as per law. He contends that in such circumstances, Test

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Identification Parade was a crucial piece of evidence to establish the identity but the same itself fails to satisfy the judicial satisfaction.

32 It is vehemently contended that the mandatory procedure required to be followed for a Test Identification Parade, so as to preserve its sanctity and evidentiary value, was not followed in the present case. Reference is made to the provisions as specified in the **High Court Rules and Orders** as well as the **Punjab Police Rules** as applicable to Haryana for conduct of Test Identification Parade.

33 The relevant extract of the Punjab and Haryana High Court Rules and Orders, Volume III, Chapter 11-C, Part C reads as under: -

> *"The following instructions have been issued by the Punjab Government for the guidance of Magistrates in their conduct of identification parades (Punjab Government circular letter No. 6091-J, 36/39829 (H. Judl.); dated the 19th December, 1936, to all District Magistrates in the Punjab): -*
>
> *(1) The Magistrate in charge of an identification parade should prepare a list of all persons, including the accused, who form part of the parade. This list should contain the parentage, address and occupation of each member of the parade.*
>
> *(2) When any witness identifies a member of the parade, the Magistrate should note in what connection he is identified. A note should also be made if the witness identifies a person wrongly; in such a case it is incorrect to note that the witness identified nobody. All persons identified must be mentioned, whether the*

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identification is right or wrong. If a witness, on being called for the purpose, states that he cannot make any identification, a note should be recorded by the Magistrate to this effect.

(3) Should the accused make any complaint or statement it should be recorded by the Magistrate. If, from his personal knowledge, the Magistrate is able to decide beyond doubt that the complaint is false or futile, a note to this effect should be made, but in other cases it is advisable to leave any decision as to the value to be attached to the objection to the court trying the case. The Magistrate should also record any statement made by a witness before making identification.

(4) The Magistrate should state-
(a) What precautions he has taken to ensure-

(i) that the witnesses do not see the person to be identified by them before the identification proceedings commence;

(ii) that no communication which would facilitate identification is made to any witness who is awaiting his turn to identify; and

(iii) that after making identification the witnesses do not communicate with other witnesses who have yet to do so;

(b) Whether the person to be identified is hand-cuffed or is wearing fetters; and if so, whether or not other persons taking part in the parade are handcuffed or are wearing fetters, and also whether or not they are inmates of the Jail.
(5) At the end of the Magistrate should append a certificate.

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2. The following further instructions have been issued by the Punjab Government on the subject. (Punjab Government circular letter No. 6546-J-43/33844 (H. Judl.), dated the 17th December, 1943, to all District Magistrates in the Punjab) :-

In cases where the identification of the accused is disputed and is a matter of importance, the request of an accused for an identification parade should not be refused. Such a request should not also be rejected merely because it is regarded as a measure to create delay, as it should be possible to arrange an identification parade without delay. Again a request to hold such a parade should not be refused on the ground that it is some considerable time since the witnesses last saw the accused and the accused may have changed in appearance in the meantime, and in such cases in his report on the parade the magistrate can record when the witnesses did see the accused last.

3. In districts in which the experiment of separation of judiciary from the executive is being tried, the work relating to the holding of identification parades should be done by the Judicial Magistrates.

(Punjab Government Letter No. 16848-G-55/ 11327, dated 16th February, 1956, to all Deputy Commissioners in Punjab."

34 The relevant extract of the Punjab Police Rules, 1934, (as applicable to Haryana) reads as under: -

Rule 26.32. Identification of suspects.-
(1) The following rules shall be strictly observed in confronting arrested suspects with the witnesses, who claim to be able to

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identify them.

(a) The suspect, who is to be subjected to an identification parade, shall be informed about it at the time of their arrest to enable them to take necessary precautions by way of keeping their faces covered and a request shall be made to the Magistrate to record a note in the remand papers regarding such precautions having been taken by them so as to eliminate any subsequent objection by the suspects that they had been shown to the witnesses before the identification parade was held. The proceedings shall be conducted by a Magistrate; if no Magistrate is available and the case is of great urgency then, by a Sarpanch who may summon one or two independent and literate, if possible, persons or reliable characters, not interested in the case, to assist him and to certify that the identification has been conduct under conditions precluding collusion. Such proceedings shall not be conducted by a Police Officer. The Police Officer concerned, before inviting a Sarpanch to conduct the proceedings must ensure that the Sarpanch is not biased or interested in or against accused or suspect and that he understands the rules of the proceedings. Every effort should be made to secure the presence of a Magistrate and services of Sarpanch only secures when absolutely necessary. In the absence of a Sarpanch, a Lambardar may be invited to do the needful.

b) Arrangements shall be made, whether the proceedings are being held inside a jail or elsewhere, to ensure that the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspect, or any of the persons concerned in the proceedings, until they are called up to make

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their identification.

(c) Identification shall be carried out as soon as possible after the arrest of the suspects.

(d) The suspects shall be placed among other persons similarly dressed and of the same religion and social status, in the proportion of 8 or 9 such person to one suspect. Each witness shall then be brought up separately to attempt his identification. Care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communications to pass between witnesses who have been called up and those who have not. If it is desired, through fear of revenge of for other adequate reasons, that witnesses shall not be seen by the suspects, arrangements shall be made for the former, when called up to stand being a screen or be otherwise placed so that can see clearly without being seen.

(e) The results of the tests shall be recorded by the Magistrate or other person conducting the test in Form 26.32(1)(e) as each witness views the suspect. On conclusion, the Magistrate or the Sarpanch or the Lambardar and the witnesses, if any, shall sign the form and certify that the test has been carried out correctly and that no collusion between the police and witnesses of among the witnesses themselves was possible. It is advisable that, whenever possible, an independent and reliable person, un-connected with the Police, should be present throughout the proceedings at the place where the witnesses are kept, and should be required to devote his attention to the prevention of collusion. It is important that once the arrangements for the proceedings have been undertaken, no police officer whatsoever shall have

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any access whatever either to the suspects or to the witnesses.]

(2) Proceedings of the nature described above are extra-judicial. It is not the duty of the officer conducting them or of the independent witnesses to record statements or cross examine either suspects or identifying witnesses, but they should be requested to question the latter as to the circumstances in which they saw the suspect whom they claim to identify, and to record the answer in column 4 of the form. While every precaution shall be taken to prevent collusion, the identifying witnesses must be given a fair chance, and conditions must not be imposed, which would make it impossible for a person honestly capable of making an identification to do so. In this connection attention is invited to paragraph 814 of the Punjab Jail Manual, which strictly prohibits the alteration in any way of the personal appearance of un-convicted prisoners, so as to make it difficult to recognize them."

35 Learned Senior Counsel contends that, as per the High Court Rules and Orders as well as the Police Rules applicable to the State, at the time of conducting a Test Identification Parade, it is mandatory to maintain a ratio of 8:1, and that all persons so assembled for identification must be of similar height and appearance. Apart therefrom, they are also required to be similarly dressed. Further, the investigating officer is also to maintain a detailed list of the persons who had been joined in the test identification parade in the presence of the Magistrate.

36 It is argued with vehemence that the aforesaid safeguards have

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been prescribed to maintain the sanctity of the test identification parade and to rule out any possibility of a wrong person being identified and tried for commission of the offence.

37 It is contended that even though four persons were to be identified, as per the deposition of PW11-the Chief Judicial Magistrate, Kurukshetra, there were only 8 persons who were joined in the Test Identification Parade. The accused persons were placed at even numbers, i.e. 2, 4, 6 and 8, and that even though it may not be disputed that all the persons were identified but the identification of Vikram alias Vicky could not be done in first attempt. He refers to the specific extracts of the deposition and cross-examination of the Chief Judicial Magistrate, Kurukshetra, wherein it is admitted by him that there is no detailed record maintained with respect to the identity and names and addresses of the persons who were joined in the test identification parade along with the accused persons and also that they were not similarly dressed.

38 It is vehemently contended that, in the aforesaid circumstances, the Test Identification Parade conducted by the prosecution was not in conformity with the mandatory procedure and safeguards prescribed under the statutory rules and reiterated through a catena of judicial pronouncements. Consequently, the Test Identification Parade deserves to be accorded no evidentiary weight.

39 Learned counsel contends that another aspect of the TIP which needs to be kept in mind is that after the arrest of the accused persons in FIR

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No.13 dated 10th January 2023, their photographs were printed in Newspaper. They were seen wearing the clothes which carried identifiable insignia logo and colour. He contends that the police took the clothes worn by the accused persons in their possession only on 16th January 2023 (corroborated from the deposition of the investigating officer to the effect that the accused were made to take off their clothes and were given other clothes on 16.01.2023). Hence, on the date of the test identification parade, they were wearing the clothes that had already been known to the general public after publication of the photographs of the accused persons. Learned Senior Counsel places reliance on the judgment of the Supreme Court in the matter of ***Rajesh @ Sarkari and another Vs. State of Haryana, reported as 2021(1) SCC 118***. The relevant extract of the judgment reads thus: -

> *"36. The prosecution has submitted that an adverse inference should be drawn against the appellants for refusing to submit themselves to a TIP. Before we deal with the circumstances in which the appellants declined a TIP, it becomes essential to scrutinize the precedent from this Court bearing on the subject. A line of precedent of this Court has dwelt on the purpose of conducting a TIP, the source of the authority of the investigator to do so, the manner in which these proceedings should be conducted, the weight to be ascribed to identification in the course of a TIP and the circumstances in which an adverse inference can be drawn against the accused who refuses to undergo the process. The principles which have emerged from the precedents of this Court can be summarized as follows:*

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(i) The purpose of conducting a TIP is that persons who claim to have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eye-witness to the crime;

(ii) There is no specific provision either in the CrPC or the Indian Evidence Act, 1872 which lends statutory authority to an identification parade. Identification parades belong to the stage of the investigation of crime and there is no provision which compels the investigating agency to hold or confers a right on the accused to claim a TIP:

(iii) Identification parades are governed in that context by the provision of section 162 of the CrPC, 1973;

(iv) A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held;

(v) The identification of the accused in court constitutes substantive evidence;

(vi) Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act;

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(vii) A TIP may lend corroboration to the identification of the witness in court, if so required;

(viii) As a rule of prudence, the court would, generally speaking, look for corroboration of the witness' identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration;

(ix) Since a TIP does not constitute substantive evidence, the failure to hold it does not ipso facto make the evidence of identification inadmissible;

(x) The weight that is attached to such identification is a matter to be determined by the court in the circumstances of that particular case;

(xi) Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence; and

(xii) The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused."

40 Reliance is also placed on the judgment of the Supreme Court in

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the matter of ***Gireesan Nair Vs. State of Kerala, 2022 SCC Online SC 1558***. The relevant part of the judgment is extracted as under: -

> *"26. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru alias Girish Chandra v. State of U.P.20; Mulla and Anr. v. State of U.P.21 and C. Muniappan and Ors. v. State of Tamil Nadu22). The evidence of a TIP is admissible under Section 9 of the Indian Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (State of H.P. v. Lekh Raj and Anr.23; and C. Muniappan and Ors v. State of T.N.24). 19 (2010) 3 SCC 508 (Paras 44, 45 and 55) 20 (1971) 2 SCC 75 (Para 17) 22 (2010) 9 SCC 567 (Para 42) 23 (2000) 1 SCC 247 (Para 3)*
>
> *xxx xxx xxx*
>
> *28. In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form, i.e., physically, through photographs or via media (newspapers,*

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television etc…), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh and Ors v. State of U.P.27).

29. If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (Shaikh Umar Ahmed Shaikh and Anr. v. State of Maharashtra 29). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (Chunthuram v. State of Chhattisgarh30 and Ramkishan Mithanlal Sharma v. State of Bombay31).

30. It is significant to maintain a healthy ratio between suspects and nonsuspects during a TIP. If rules to that effect are provided in Prison Manuals or if an appropriate authority has issued guidelines regarding the ratio to be maintained, then such rules/guidelines shall be followed. The officer conducting the TIP 28 (1989) 3 SCC 24 30 (2020) 10 SCC 733 31 (1955) 1 SCR 903 is under a compelling obligation to mandatorily maintain the prescribed ratio. While conducting a TIP, it is a sinequanon that the nonsuspects should be of the same agegroup and should also have similar physical features (size, weight, color, beard, scars, marks, bodily injuries etc.) to that of the suspects. The concerned officer overseeing the TIP should also record such physical features before commencing the TIP proceeding. This gives credibility to the TIP and ensures that the TIP is not just an empty formality (Rajesh Govind Jagesha v. State of Maharashtra32 and Ravi v. State33).

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> *31. It is for the prosecution to prove that a TIP was conducted in a fair manner and that all necessary measures and precautions were taken before conducting the TIP. Thus, the burden is not on the defence. Instead, it is on the prosecution (Rajesh Govind Jagesha v. State of Maharashtra34).”*

41 Adverting to the above, learned Senior counsel contends that in the present case, not only has the prescribed statutory ratio not been adhered to but also that the identification is not based upon recollection from the incident. Rather, it is based upon the earlier meeting/exposure. The complainant also does not give any specific instance as to when he had actually seen or met the accused Vikram @ Vicky. Besides, no specific questions as to identity had been put, in reference to the roles attributed to them such as who gave the beating, who held the gun, who asked for the almirah, who brought the jewellery, etc. Hence, it is not a complete Test Identification Parade. He further contends that the prosecution witness had the opportunity to hear the accused but yet, the voice recognition was not undertaken. Rather, the specific question was also disallowed by the Court. Apart therefrom, the complainant had also seen the CCTV footage. Hence, considering it from any angle, the Test Identification Parade does not inspire confidence and is liable to be disregarded.

ABSENCE OF DOCK IDENTIFICATION

42 Additionally, learned Senior Counsel for the accused submitted that at the time of recording of the evidence, the specific Dock identification

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had not been undertaken. He contends that since the complainant had levelled specific attributions against individuals, it was incumbent upon him to identify the named specific individual at the time of deposition in Court. In the absence thereof, it cannot be safely concluded that the persons facing trial were in fact the same persons who were charged with the commission of an offence. He places reliance on the judgment of the Supreme Court in the matter of ***P. Sasikumar Vs. State rep. by Inspector reported 2024 INSC 474,*** wherein the prosecution failed on account of absence of Dock identification. The relevant paragraph of the same are extracted as under: -

> *"10. The admitted position in this case is that the test identification parade (hereinafter referred to as 'TIP') was not conducted. All the prosecution witnesses who identified the accused in the Court such as PW-1 and PW-5 were not known to the present appellant i.e., accused no.2. They had not seen the present appellant prior to the said incident. He was a stranger to both of them. More importantly, both of them have seen the appellant/accused No. 2 on the date of the crime while he was wearing a "green colour monkey cap"*
>
> *11. Now, as one is familiar a monkey cap covers the entire face, chin and cheek of a person, leaving only his eyes and nose and part of forehead exposed. These two witnesses (PW-1 and PW-5), had seen the appellant wearing a monkey cap and that too from a distance. Under these circumstances, TIP had become necessary particularly when both the accused, who are alleged to have committed this murder were arrested within two days. The incident is of about 7:00 pm on 13.11.2014 and both of them*

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were arrested at around 10 pm on 15.11.2014. The case of the prosecution is that while they were being arrested, they received injuries as they tried to escape and consequently, they were taken to the Hospital for treatment. It was in the hospital, that PW-1 i.e. father of the deceased and the complainant and PW-5 were taken by the Investigating Officer who are said to have identified the two accused as the one who had committed the crime. No explanation whatsoever has been given by the prosecution as to why TIP was not conducted in this case before a Magistrate as it ought to have been done. In fact, the High Court has recorded this flaw in the investigation at more than one place in its judgment. It has again observed that the Investigating Officer (PW-24) was before the Court and in spite of being questioned as to what the reasons were for not holding TIP in this case, no satisfactory reply was given by him.

12. It is well settled that TIP is only a part of Police investigation*.*

The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in Court during trial. This identification has been made in Court by PW-1 and PW-5. The High Court rightly dismisses the identification made by PW-1 for the reason that the appellant i.e., accused no.2 was a stranger to PW-1 and PW-1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW-1 made for the first time in the Court was not proper. However, the High Court has believed the testimony of PW-5 who

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has identified accused no.2 under similar circumstances! The appellant was also stranger to PW-5 and PW-5 had also seen the accused i.e., the present appellant for the first time on that fateful day i.e. on 13.11.2014 while he was wearing a green colour monkey cap. The only reason assigned for believing the testimony of PW-5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant. This is the entire reasoning. We are afraid the High Court has gone completely wrong in believing the testimony of PW-5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (See: Kunjumon v. State of Kerala (2012) 13 SCC 750).

13. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt.

The relevance of a TIP, is well-settled. It depends on the fact of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in the case of Rajesh v. State of Haryana (2021) 1 SCC 118 and therefore TIP may not

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be necessary. It is the task of the investigation team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case.

14. The relevance of TIP has been explained by this Court in a number of cases (Please see: Ravi Kapur v. State of Rajasthan (2012) 9 SCC 2841, Malkhansingh and Ors. v. State of Madhya Pradesh (2003) 5 SCC 7462).

15. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP which has not been done. The emphasis of TIP in a given case is of vital importance as has been shown by this Court in recent two cases of Jayan v. State of Kerala (2021) 20 SCC 38 and Amrik Singh v. State of Punjab (2022) 9 SCC 402. In Jayan (supra), this Court disbelieved the dock identification of the accused therein by a witness and while doing so, this Court discussed the aspect of TIP in the following words:

> *"It is well settled that TI parade is a part of investigation and it is not a substantive evidence. The question of holding TI parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, TI parade may make the identification of the accused by the witness before the Court trustworthy…." (Para 18) 1 Para 35 2 Para 16"*

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DISCLOSURE STATEMENTS AND RECOVERIES

43 Learned counsel contends that the other piece of incriminating evidence relied upon by the prosecution pertains to the disclosure statements allegedly made by the accused persons and the consequential recoveries effected pursuant thereto.

44 It is vehemently contended that, at this stage, the said simultaneous disclosure statements and the consequential recoveries cannot be taken into consideration, as they prima facie do not appear to be in conformity with the mandate of law. It is submitted that as per Section 27 of the Indian Evidence Act, 1872, the disclosure statement is to be read only with respect to the discovery of a fact which emerges from the disclosure statement of an accused, recorded while in police custody. If the disclosure statement is joint or simultaneous and all statements are identical extracts of each other, it cannot be discerned as to whose's disclosure led to the discovery of the fact. In such an eventuality, only the first disclosure may be protected under Section 27 of the Indian Evidence Act, 1872. The other disclosures recorded later thus do not reveal any new fact that was not already known to the investigating agency. There being no separate recovery pursuant to the other disclosures, they would be nothing more than confessions of an accused, recorded by a Police Officer, whilst the accused is in his custody and it would thus be inadmissible in evidence.

45 In support of his contention, learned Senior Counsel places

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reliance on the judgment of the Supreme Court in the matter of ***Mohmed Inayatullah Vs. State of Maharashtra, reported as 1976(1) SCC 828***. The relevant part of the judgment is extracted as under: -

> *10. Although the interpretation and scope of sec. 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be remained of its requirements. The Section says:*
>
> > *"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."*
>
> *11. The expression "Provided that" together with phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Secs. 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Sec. 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The Second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the*

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information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the proveable information. The phrase "distinctly" relates to the fact thereby "discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

12. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Crown,(1) Rex v. Ganee) (2). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Palukuri Kotayya and ors. v. Emperor(3), Udai Bhan v. State of Uttar Pradesh.”

46 Reliance is also placed on the judgment of the Supreme Court in the matter of ***Nagamma @ Nagarathna and others, reported as 2025 SCC***

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Online SC 2038. The relevant extract of the same reads thus: -

> *"27. Disclosure statements taken from one or more persons in police custody do not go out of the purview of Section 27 altogether, as held in State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru and reiterated in Kishore Bhadke v. State of Maharashtra. While asserting that a joint or simultaneous disclosure would per se be not inadmissible under Section 27, it was observed that it is very difficult to place reliance on such an utterance in chorus; which was also held to be, in fact, a myth. Recognising that there would be practical difficulty in placing reliance on such evidence, it was declared that it is for the Courts to decide, on a proper evaluation of evidence, whether and to what extent such a simultaneous disclosure could be relied upon. In Kishor Bhadke, while affirming the above principles in Navjot Sandhu, the facts revealed were noticed, wherein the information given by one, after the other, was without any break, almost simultaneously and such information was followed up by pointing out the material thing by both the accused, in which circumstance it was held that there is no reason to eschew such evidence."*

47 Further reliance is also placed on the judgment of the Supreme Court in the matter of ***Anand Jakkappa Pujari @ Gaddaddar Vs. The State of Karnataka, reported as 2026 INSC 417***. The relevant part of the judgment reads as under: -

> *"58. Insofar as joint disclosure statement is concerned, the position of law is well settled as explained by this Court in the*

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case of Navjot Sandhu (supra). We quote the relevant paragraph as under:-

> *"145. Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures.[…]Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the section to more than one person. But, that is too narrow a view to be taken. Joint disclosures, to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. "A person accused" need not necessarily be a single person, but it could be plurality of the accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person or two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody*

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go out of the purview of Section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the standpoint of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr Gopal Subramanium. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel."

(Emphasis supplied)

xxx xxx xxx

62. Section 27 of the Evidence Act is in the nature of an exception to the general rules contained in the two preceding Sections 25 and 26, respectively. Section 25 makes inadmissible any confession by an accused person to a police officer. Under Section 26, no confession by any person while he is in the custody of a police officer shall be proved against such person unless it be made in the presence of a Magistrate. Section 27 says that

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such part of the information given by an accused person while in the custody of a police officer may be proved against him as distinctly relates to the fact which is thereby discovered. It therefore makes admissible a confession made while in police custody if the other conditions laid in it are fulfilled. Being an exception to the general rule it has to be strictly construed. Section 27 of the Evidence Act does not permit the admission in evidence of the whole of the confession, but of such portion only of it as can be said to relate distinctly to the fact discovered.

xxx xxx xxx

65. We can, of course, envisage a situation wherein more than one accused makes an oral statement giving the same type of information one after the other in quick succession. But even in such a case, unless the guarantee of the truth and voluntary nature of such statements is obtained by the discovery of a distinct fact, the provisions of Section 27 would not, in any manner, help the prosecution. Take for instance, two or three accused persons make statements in quick succession giving an information of some or similar nature, and then proceed to discover different facts from different places. In such a case even though the statements made by them is treated as "joint" yet the discovery is not joint because it is the discovery of different facts from different places. Such discoveries guarantee the protection contemplated by Section 27 and therefore can be of good use to the prosecution. In our opinion, the cases of Lachhaman Singh (supra) and Chhotelal Mohanlal (supra) referred above were the cases of this type.

66. It is important to note that in Lachhman Singh (supra) this Court had doubted the correctness of some High Courts'

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decisions on the question of joint and simultaneous statements. Referring to the facts of that case, this Court clearly observed that even if several accused gave information to the police that dead bodies could be recovered in the "Sakinala" the said information was indefinite, and could not have led to any discovery unless the accused followed it up by leading the police to the actual spot from where the parts of the dead bodies were recovered. In the Chhotelal Mohanlal (supra), different facts were discovered from different places by different accused. Thus, in both these cases discovery evidence was accepted only because it could be said that the statement made by each accused related to the facts thereby discovered "distinctly".

67. At one stage of the hearing of these appeals, the learned AAG appearing for the State tried to read some of the contents of the panchanama and confessional statements of the appellants as well. We are afraid this is something impermissible in law. The contents of the panchanama are not substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the persons concerned in the witness box. [See: Murli v. State of Rajasthan, (2009) 9 SCC 417]

68. In the case before us, the evidence is purely of a joint discovery of the same mental fact said to have been made by all the four accused simultaneously with the result that it is not possible to say which statement of a particular accused relates distinctly to the discovery of a particular mental fact. Thus, in the present case, the safeguards contemplated by Section 27 are not evident, and in the absence of these safeguards, the discovery evidence of two particular places i.e., the place where the

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deceased was killed and the place where her dead body was burnt cannot be utilized against the appellants."

48 Referring to the above, learned Senior counsel submits that the ratio of the above judgments would be applicable to the facts of the present case as well. The recovery having been effected from only one spot, hence, it cannot be said with precision as to statement of which accused relates distinctly to the discovery of a particular fact. Hence, the safeguards of Section 27 of the Indian Evidence Act, 1872, are not evident.

49 It is further contended that although the respondent-accused persons disclosed that the jewellery articles were concealed in a room situated in Subhash Nagar, Guhla, PW.19-ASI Surinder Kumar, on the other hand, has stated that the said house was situated at village Salempur, Cheeka. It is contended that the testimony of the prosecution witness thus disclose material discrepancies with regard to the location of the place wherefrom the alleged recovery was effected.

50 It is further contended with vehemence that, apart from the aforesaid discrepancy, the prosecution did not even take pains to identify as to who was the owner of the property in question. The statement of the landlord had also not been recorded, hence, the exclusive possession of the accused over the property wherefrom recovery was effected does not stand established. Besides, no explanation has also been offered by the prosecution as to why the said person had not been associated with the investigation. The

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possession of the house/place wherefrom recovery had been effected could be linked to the accused persons only upon such a statement and in absence thereof the recovery cannot be fastened against the accused persons.

51 It is further argued that disclosure statements are identical and verbatim reproductions of each other. The same cannot thus be perceived as a voluntary disclosure. Besides, that the recovery in question was joint, since all the accused persons were taken together to the place from where the alleged recovery was effected.

52 He contends that in such circumstances, the disclosure would not be a safe piece of evidence to be relied upon and that the recovery so effected pursuant to such joint disclosures or sequential disclosures would have no bearing. An investigating officer, in such circumstances, is required to give detailed elaboration of the sequence in which the disclosures were made and as to how the same were recorded. Once the needful has not been done, the recovery should not be accepted.

53 Reliance is also placed on the judgment of the Rajasthan High Court in the matter of ***Mohan Vs. State, passed in S.B. Criminal Revision No.173 of 1956 decided on 02.01.1957***, and the Nagpur High Court in the matter of ***State Govt. M.P. Vs. Chhotelal Mohanlal and another, reported as 1955 AIR Nagpur 71***. The relevant paragraph of the above reads thus: -

> *"**9. Point No. (ii)**:*
>
> *The next question is whether the simultaneous statements can be used against either of the accused. The learned Counsel for the*

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respondents contends that such a joint statement cannot be used against any of the accused. Reliance is placed on cases reported In 'Kudaon v. Emperor' AIR 1925 Nag 407 (A); 'Emperor v. Yeshaba' AIR 1938 Bom 463 (B); 'Puttu v. Emperor' AIR 1945 Oudh 235 (C) and 'Poshaia V, State' .

20. It is not possible to accept this contention of the counsel for the respondents. We are of the view that the joint or simultaneous statements of the accused persons are not inadmissible in evidence. In our opinion, the scheme of Section 27 Evidence Act, is, to put it in the words ot their Lordships of the Privy Council in a case reported in 'Pulukuri Kottaya v. Emperor' AIR 1947 PO 67 (E).

The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police Officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence.

That is to say, the information received from the first source i5 admissible in evidence if it leads to a discovery consequent upon that information against that source when by the fact discovered some guarantee is afforded that the information supplied by the accused is true. Once that information is in the possession of a Police Officer and the fact is discovered by police thereby any

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subsequent similar information received by the police officer cannot be said to be such information as leading to the discovery of the same fact. There cannot be rediscovery of the same fact."

54 Reliance in also placed on the judgments in the matter of ***Faqira Vs. Emperor, 1929 AIR Lahore 665, Durlav Namasudra Vs. Emperor 1932 AIR Calcutta, 297, Rafiqueuddin Ahmad Vs. Emperor, 1935, AIR Calcutta 184, and Putta Vs. Emperor, 1945, AIR Audh, 235*** in support of the contentions.

TEST IDENTIFICATION OF STOLEN JEWELLERY

55 Learned Senior Counsel appearing on behalf of the accused also contends that not only that the recovered articles of Jewellery are in no way related to the accused persons but also that the identity of the recovered articles or the ownership of the complainant has also not been proved. There was no special knowledge with the complainant or ability with him to identify the said jewellery articles. Merely because there was no third party objections raised, the same would not amount to proving ownership of the articles. Thus, the recovery evidence is unsafe for drawing any adverse inference against the appellant-accused herein.

ADMISSIBILITY OF ELECTRONIC EVIDENCE

56 Learned Senior Counsel for the accused contends that the prosecution has placed reliance upon the CCTV footage and the certificate **Ex.P32** issued under section 65-B of the Indian Evidence Act, 1872, by Amit

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Kumar, who is the son-in-law of Dr. Atul Kumar Arora. It is contended that the CCTV footage retrieved from the DVR of the Camera installed on the ground floor would be inadmissible in evidence for the following reasons: -

(i) That the aforesaid certificate has been issued by Amit Kumar PW.2 who was neither the owner nor in management, control or supervision of the aforesaid CCTV footage. Hence, he was not competent to issue a certificate under Section 65 B of the Indian Evidence Act, 1872. The said evidence thus becomes inadmissible in evidence on account of being non-compliant with the mandate of Section 65 B of the Indian Evidence Act, 1872. Reliance is placed by the counsel for the accused on the judgment of the Supreme Court in the matter of **Arjun Pandit Rao Khotkar Vs. Kailash Kushanrao Gorantyal reported as AIR 2020 SC 4908**, to contend that the conditions as outlined in section 65B(4) of the Indian Evidence Act, 1872, have been held to be satisfied in their entirety. The expression “any” used in section 65B(4) has been interpreted to mean “all.” Hence, all the conditions set forth, including the conditions as prescribed in section 65B (2) of the Indian Evidence Act, 1872, had to be satisfied, before the CCTV footage could be relied upon.

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(ii) That the certificate (Ex.P32) issued by PW.2 Amit Kumar is, however, deficient on the said account and does not conform to the norms as specified. The only declaration made is that at the time of copying, there was no tampering of the evidence, whereas the original DVR has not been produced. On the functionality of the CCTV footage or that there was no tampering in and with the original recording device having not been certified, the certificate is non-compliant of the statutory mandate and hence inadmissible in evidence.

Reliance is placed on the judgment in the matter of ***Anvar P. V. Vs. P.K. Basheer and others, reported as 2014 (10) SCC 473***. The relevant extract of the same reads thus: -

Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be

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deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

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Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration,

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transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A – opinion of examiner of electronic evidence.

The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

It is relevant to note that Section 69 of the Police and Criminal Evidence Act, 1984 (PACE) dealing with evidence on computer records in the United Kingdom was repealed by Section 60 of the Youth Justice and Criminal Evidence Act, 1999. Computer evidence hence must follow the common law rule, where a presumption exists that the computer producing the evidential output was recording properly at the material time. The presumption can be rebutted if evidence to the contrary is adduced. In the United States of America, under Federal Rule of Evidence, reliability of records normally go to the weight of evidence and not to admissibility.

Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65A of the Evidence Act, read with Sections 59 and 65B is sufficient to hold that the special provisions on evidence

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relating to electronic record shall be governed by the procedure prescribed under Section 65B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.

In State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru[1], a two-Judge Bench of this Court had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerized records of the calls pertaining to the cellphones, it was held at Paragraph-150 as follows:

> *"150. According to Section 63, secondary evidence means and includes, among other things, "copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies". Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements*

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> *of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65." It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed under Section 65B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, under Sections 63 and 65, of an electronic record.*

The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility

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of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

(iii) Learned Senior Counsel has further contended that for the sake of argument and without conceding to the same, even if the said CCTV footage is seen in its entirety, the same does not establish the presence of the accused persons at the time of the commission of the offence. The images therein are blurred and the visuals do not establish the identity of the persons who entered into the house. He contends that in the above circumstances, the Test Identification Parade assumed much significance and that in the absence of a proven Test Identification Parade, the participation of the accused in the commission of the

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offence remains an issue which was required to be proved by the prosecution by leading cogent, convincing and trustworthy evidence.

(iv) Counsel further contends that PW.2-Amit Arora gave a contradictory evidence. He initially stated that the Camera and DVR were managed by him and he had the password but admitted in his cross-examination that he did not hold any managerial position and that the CCTV Cameras, DVR and the LED Screens were not in his sole custody. Even his father-in-law (PW.1) also had the same. Since there was no exclusively of the possession and control, it materially weakens the evidentiary value of the document as it raises doubts as to the sanctity of the evidence and raises an issue regarding integrity of the evidence and possibility of an alteration.

(v) It is further argued that the evidence is further impeached since PW.2 as he gave a contradictory answer regarding whether the timelines shown in the CCTV footage could be edited. He initially admitted to such possibility but later denied such suggestion. It is argued that there was admittedly a timeline discrepancy of half an hour in the footage supplied.

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(vi) As a repetitive upshoot of the argument noticed earlier, it is submitted that since the exclusive control over CCTV system has not been established, the evidence being non-responsive as to who extracted the footage, when and from which device it was extracted, whether the pen drive was an exact copy of original DVR recording or not, creates a substantial gap in an unbroken chain of custody.

(vii) Further, a parting argument has been raised that there is discrepancy in the testimony of the prosecution witnesses in as much as, the complainant initially mentioned only about three persons, however, later, in the complaint he mentioned about the presence of four persons. However, the prosecution nominated as many as seven persons. As per the case of the prosecution, accused persons entered into the house after being signalled by Ket Ram, however, Ket Ram has been found innocent along with Umesh Kumar (who allegedly supplied the fire arm).

(viii) It is further submitted that so far as the participation of Poonam in the commission of the offence is concerned, the same has also not been established. The only role attributed to her is that she made a phone call from the mobile number of Jasbir (PW.27) to Vikram @ Vicky, however, the above witness did not support the case of the

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prosecution. Hence, even the allegation of the prosecution about the involvement of Poonam in the commission of the offence remains unestablished as neither the phone number belonged to her nor there is any evidence to the effect that she made any phone call to Vikram @ Vicky on or soon before or after the day of the incident.

(ix) Learned Senior counsel further contends that there is also no evidence that any signal was given by Ket Ram to any person and hence, there would have been no occasion for giving a safe passage to the accused. In the said circumstances, the testimony of the prosecution loses its credibility.

DISCREPANCIES IN MEDICAL EVIDENCE

57 Learned Senior counsel further argues with vehemence that at this juncture, the prosecution story seems incorrect in as much as the case of the prosecution is that the complainant was given beatings by the accused persons and that he later pushed the assailants and entered into the room of their parents, which he bolted from inside and then jumped from the house onto the adjacent school compound and after finding a ladder, he scaled the wall so as to reach the house of the neighbour. It is contented that the site plan does not establish any of the said circumstances. The ladder which were used by the complainant for scaling the school's wall have not been taken into

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possession. There is complete absence of any specific particulars about the height from which the complainant jumped from his house onto the roof of the adjacent school building and corroboration of the subsequent statement. The said version thus cannot be accepted as gospel truth.

58 It is argued that apart from the medical of the complainant not corroborating the prosecution version, even the injuries on the deceased have not been explained. Medical evidence reflects material contradictions and discrepancies. While the inquest report reflects of an injury mark on the left side of the head, corroborated by PW.5, post-mortem report shows the injury to exist on the right temporal occipital region. Similarly, the inquest does not mention about the blood stains on the clothes of the deceased but while appearing as PW.5, he stated of blood on sweater, shirt and blazer, which is also mentioned in the post-mortem report (EX.P36).

59 Referring to the above, counsel contends that the said discrepancies are vital missing links which render the prosecution case doubtful and suspect. The judgment of conviction thus deserves to be set aside.

NON-EXAMINATION OF MATERIAL WITNESSES

60 Learned Senior counsel further contends that there were other witnesses i.e., Nurse Neelam and Gudiya wife of Ket Ram, who were present at the place of occurrence, but have not been examined as witnesses. Apart from that, the other witnesses, namely the parents of the complainant, have

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also not been examined in the present case. It is submitted that after the complainant Dr. Atul Arora scaled down and jumped over to the roof of the adjacent school building and escaped, none of the proceedings which transpired in the house was known to him and said deposition by him would only be hearsay evidence at best. He went to his neighbour and a phone call was made but even the said neighbour was not examined.

ARREST OF THE ACCUSED IS SHROUDED IN DOUBT

61 The arrest of the accused persons is shrouded in suspicious circumstances. As per the case of the prosecution, the accused were arrested after an encounter. Another FIR No.13 was registered separately qua the above incident. The accused however have been acquitted in the same. Thus, the manner in which the appellants have been arrested is itself without merit.

62 It is further argued that as per the undisputed case of the prosecution and as per the details which are reflected through FIR No.13 dated 10th of January, 2023, one of the accused, Viz Manish Kumar, had sustained a bullet injury on his leg. The same was thus a fresh injury and hence, he would have sustained a limp in his body and it was clearly identifiable; hence, the identity of the accused was compromised at the time when the Test Identification Parade was conducted.

OFFENCE OF DACOITY NOT MADE OUT

63 It is argued that the evidence is found to be severely deficient qua involvement of accused Poonam in the commission of the offence; the number

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of participants in the present case, thus, reduces to less than five, hence, the offence of dacoity would not be attracted in the present case. It is submitted that the prosecution case itself alleged that only four persons were present at the spot. Accused Poonam was undisputedly not present at the spot. In the absence of five or more persons conjointly having committed or attempted to commit the robbery, the offence of dacoity is not made out. Since there is absolutely no evidence, leave apart any credible material, hence, the foundational circumstances to make out the offence remain unproved. The CDR has also not established the location of Poonam and there is no circumstantial evidence as to her participation in the offence or being a part of the conspiracy.

OFFENCE OF MURDER NOT MADE OUT

64 Learned Senior Counsel further contends that none of the witnesses has levelled any attribution against any accused of having caused any injury to Vanita. Hence, the charge for commission of offence under Section 302 IPC has not been established. It is submitted that even though there is no dispute that Vanita wife of Dr. Arul Arora, died on 9th of January 2023, however, unless there is a specific attribution or explanation offered by the prosecution that the said injuries were sustained as a result of any act of omission on the part of the accused persons, the conviction for commission of offence under Section 302 IPC cannot be fastened against them.

65 He contends that in this regard, there is no evidence other than an alleged disclosure of accused Vikram which was recorded by the police. It is

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contended that the same has not led to any discovery of fact and as such, the aforesaid statement remains nothing more than a confession of the accused, recorded while in custody, and thus would be inadmissible in evidence in view of Section 26 of the Indian Evidence Act, 1872.

66 Further, even though the accused are stated to be armed with pistol but no firearm was used either against the deceased or any other person. Thus, there was no intent to cause death. The surrounding circumstances are crucial for deriving the intent of the assailants. There is no instance or evidence of any multiple blows or cruelty or even of causing of any injury.

67 Learned Senior counsel contends that the capital punishment has been awarded for the offence under Section 302 IPC and in the absence of any evidence to establish any injury having been caused by any of the persons, the said offence would not be attracted.

68 Learned Senior counsel contends that even though it is not in dispute that there was a blood mark on the wall and the body was found in the bakery room of the deceased, the sole explanation offered by the prosecution is that when Vanita tried to shriek and attract attention, she was pushed by Vikram, as a result whereof, she sustained injuries. It is contended that the door of the bakery, however opened outwards towards the lobby; hence, in an event any person would have pushed, the door would have shut, and there was no occasion in which she could have sustained an injury by striking of the head against the wall. Needless to mention that in case the push would have been straight, the injury and blood stains on a side wall would not have been

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sustained and she would have fallen straight. Thus, the explanation offered, although an afterthought, is not established when the said explanation is seen in light of the contemporaneous evidence and the circumstances as well as the site plan prepared by the police.

OFFENCE OF LURKING HOUSE TRESPASS

69. Learned Senior Counsel submits that the ingredients of Section 460 IPC have not been established merely because the accused are alleged to have entered the complainant's residence and an offence occurred therein. It is argued that the prosecution must first prove the foundational requirement of lurking house-trespass by night or house-breaking by night, including the requisite concealment or other statutory ingredients, and must further establish that the accused were jointly concerted in the commission of that particular offence. The evidence, according to the defence, does not establish the manner of entry, any precaution taken to conceal the trespass, or the individual participation of each accused in such entry. It is further contended that Section 460 IPC cannot be invoked as a substitute for proof of murder and merely because death has taken place within the premises, does not automatically fasten constructive liability upon every person alleged to have participated in the robbery. The conviction under the said provision is, therefore, stated to be unsustainable.

OFFENCE UNDER SECTION 395 AND 397 OF IPC AND ARMS ACT

70 Learned Senior Counsel contends that the conviction for dacoity

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cannot be sustained unless the prosecution proves that five or more persons conjointly committed or attempted to commit robbery, or that the number of persons committing or attempting the robbery together with those present and aiding it was five or more. It is submitted that the prosecution itself attributes the physical entry to four persons, while the alleged role of Poonam as a conspirator or facilitator is not supported by reliable evidence; the acquittal of Ket Ram and Umesh, according to the defence, further weakens the prosecution theory as to the number and identity of the participants. It is further argued that Section 397 IPC requires proof of the use of a deadly weapon, the causing of grievous hurt, or an attempt to cause death or grievous hurt at the time of robbery or dacoity, and that the mere allegation that an accused was armed does not dispense with proof of the statutory ingredients. As regards the Arms Act, the defence challenges the reliability and legal effect of the alleged firearm recoveries, particularly in view of their seizure and treatment in the separate FIR, and submits that the prosecution has not established beyond reasonable doubt the requisite possession, use and nexus of the weapons with the occurrence in question.

ARGUMENTS ON BEHALF OF COUNSEL FOR THE STATE, COMPLAINANT AS WELL AS AMICUS CURIAE

TEST IDENTIFICATION PARADE

71 Learned counsel for the State, counsel for the complainant as well as Mr. P.S. Ahluwalia, Sr. Advocate-Amicus Curiae, however, contend that the arguments advanced on behalf of the accused-appellant are misplaced. It

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is contended that the prosecution has successfully established its case beyond reasonable doubt against the accused persons and that the settled position in the law fully covers the exigencies and the circumstances in hand. They are thus not in the nature of any discrepancy or contradiction.

72 While responding to the specific arguments raised by the counsel for the accused-appellant in relation to the non-compliance of the procedure for Test Identification Parade as per the mandate of Rule 26.32 (d) of the Punjab Police Rules as applicable to Haryana as well as the High Court Rules and Orders, learned Senior Counsel contends that the submission is bereft of merit. He contends that the reference to Volume 3 Chapter XI-C, Part C of the High Court Rules and Orders is based upon the instructions issued by the Government of Punjab vide Circular letter No. 6091/J/36/39829 dated 19th of December 1936 to all District Magistrates. There was no provision in the Criminal Procedure code then, however, an amendment was carried out in the Criminal Procedure Code, incorporating Section 54A w.e.f. 23.06.2006. The same reads thus: -

> ***"54A. Identification of person arrested.***—
> *Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:*

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[Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:]

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed."

73 Referring to the above, it is submitted that the Court having jurisdiction in this regard may, on the request of the officer in charge of a Police Station, direct the person arrested to subject himself to identification in such manner as the Court may deem fit. It is argued that after the arrest of the accused persons in the present case on 10th of January 2023, at about 10:00 P.M., they were required to be immediately presented before the Chief Judicial Magistrate lest their identity is exposed.

74 An application Ex.P47 was moved by the investigating officer for carrying out a Test Identification Parade on 11.01.2023, before lunch, and the same was allowed by the Chief Judicial Magistrate vide his order dated 11.01.2023 (EX.P48). It is submitted that the Test Identification Parade was conducted in the presence of the Chief Judicial Magistrate himself and that, as the law prescribes that the Test Identification Parade may be conducted in such manner as the Court may deem fit, hence, the presence of the Chief Judicial Magistrate at the time of the Test Identification Parade itself

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obliterates all apprehensions as may be expressed by the counsel for the accused. He contends that the judgments relied upon by the counsel for the accused do not take into consideration the statutory provision and provided in Cr.P.C. and the impact thereof once the TIP has been conducted in the presence of the Chief Judicial Magistrate himself. No abnormality was pointed out by the Chief Judicial Magistrate. Had there been any breach of the rules of prudence, such an aberration or anomaly would have been noticed. Hence, the procedure adopted by the Chief Judicial Magistrate with respect to a Test Identification Parade carried out in his presence should not be tested on the touchstone of the non statutory instructions that had been issued in 1936. The provision as prescribed in the Cr.P.C. shall supersede the instructions issued by the Government on an executive side.

75 Learned counsel contends that the Chief Judicial Magistrate has recorded a finding that the persons joined in the TIP were similar in their appearance and gait with the accused and that no other hypothesis, founded merely upon conjectural apprehensions expressed by the accused-appellant can be taken into consideration to impeach the validity of the Test Identification Parade. He refers to the judgment in the matter of ***State of Maharashtra Vs. Suresh reported as 2000 (1) RCR (Crl.P) 149***, and contends that the Supreme Court observed that no test identification period can escape from one or two lapses. A scrutiny cannot be made from that angle alone and the Test Identification Parade cannot be treated as having been vitiated on such lapses, as in such circumstances, every TIP would become unusable. He

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contends that the Test Identification Parades are not primarily meant for the Court, rather, they are meant for investigation purposes. The object behind conducting a Test Identification Parade is twofold, i.e. first to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime and secondly to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So, the Test Identification Parade is required to be carried out keeping the aforesaid object in mind. The judge keeps the guidelines in mind and the only requirement is that any relaxation should not impair the purpose for which the Test Identification Parade is held. The relevant extract of the judgment reads thus: -

> *"20. The last reasoning of the Division Bench is based on a criticism of the modes adopted by the Executive Magistrate who held the test identification parade. The aforesaid criticism was based on the evidence of two witnesses who said that the accused were taken on foot from police station to the place where the parade was conducted and that their faces were not covered during such transit.*
>
> *xxx xxx xxx*
>
> *22. If potholes were to be ferreted out from the proceedings of the magistrates holding such parades possibly no test identification parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every test identification parade would become*

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> *unusable. We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes; The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held, vide Budhsen v. State of Uttar Pradesh, [1970] 2 SCO 128 and Ramanathan V. State of Tamil Nadu, [1978] 3 SCC 86."*

76 It is also argued by him that the substantive evidence in a criminal prosecution is the evidence of identification in Court and the Test Identification Parade merely provides a corroboration to the identification of the witnesses in Court. The relevant extract of the judgment reported as ***Malkhana Singh and others Vs. State of Madhya Pradesh, 2003 (3) RCR (Crl.) 550***, and relied in support thereof reads thus: -

> *"15. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine.*

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In the instant case the courts below have concurrently found the evidence of the prosecutrix to be reliable and, therefore, there was no need for the corroboration of her evidence in court as she was found to be implicitly reliable. We find no error in the reasoning of the courts below. From the facts of the case it is quite apparent that the prosecutrix did not even know the appellants and did not make any effort to falsely implicate them by naming them at any stage. The crime was perpetrated in broad daylight. The prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other. Before the rape was committed, she was threatened and intimidated by the appellants. After the rape was committed, she was again threatened and intimidated by them. All this must have taken time. This is not a case where the identifying witness had only a fleeting glimpse of the appellants on a dark night. She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features. In fact on account of her traumatic and tragic experience, the faces of the appellants must have got imprinted in her memory, and there was no chance of her making a mistake about their identity. The occurrence took place on March 4, 1992 and she deposed in Court on August 27, 1992. The prosecutrix appears to be a witness on whom implicit reliance can be placed and there is no reason why she should falsely identify the appellants as the perpetrators of the crime if they had not actually committed the offence. In these circumstances if the courts below have concurrently held that the identification of the appellants by the prosecutrix in court does not require further corroboration, we find no reason to interfere with the finding recorded by the courts below after an

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appreciation of the evidence on record."

77 Reliance is also placed on the judgment of the Supreme Court in the matter of ***Anil Kumar v. State of UP, reported as 2003 (1) RCR (Crl.) 820*** wherein the Supreme Court dealt with an issue as to whether a delay in the Test Identification Parade would be a sufficient reason to discard the identification. It was held that when an incident is gruesome, it is likely to lead to an etched memory which would help a witness to recall the identity of the person who committed the offence. In the above-said case, the Supreme Court noticed that such identification can also be conducted after 7½ years. The Supreme Court reiterated that the identification of an accused in the Court is the substantive evidence and that if the same is found to be reliable, then even the absence of corroboration by the test identification is not material. The relevant extract of the judgment reads thus: -

"9. xxx xxxx xxx

It is to be seen that apart from stating that delay throws a doubt on the genuineness of the identification parade and observing that after lapse of such a long time it would be difficult for the witnesses to remember the facial expressions, no other reasoning is given why such a small delay would be fatal.

. xxx xxxx xxx

12. We are unable to accept these submissions. In the case of Brij Mohan v. State of Rajasthan reported in AIR (1994) SC 739 the test identification parade was held after 3 months. The argument was that it was not possible for the witnesses to remember, after

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a lapse of such time, the facial expressions of the accused. It was held that generally with lapse of time memory of witnesses would get dimmer and therefore the earlier the test identification parade is held it inspires more faith. It is held that no time limit could be fixed for holding a test identification parade. It is held that sometimes the crime itself is such that it would create a deep impression on the minds of the witnesses who had an occasion to see the culprits. It was held that this impression would include the facial impression of the culprits. It was held that such a deep impression would not be erased within a period of 3 months.

13. In the case of Daya Singh vs. State of Haryana reported in AIR 2001 SC 1188 the test identification parade was held after a period of almost 8 years inasmuch as the accused could not be arrested for a period of 7-1/2 years and after the arrest the test identification parade was held after a period of 6 months. The cases of Hari Nath (supra) as well as Soni (supra) were relied upon on behalf of the accused in that case. Both these cases were considered by this Court. The injured witnesses had lost their son and daughter-in-law in the incident. It was pointed out that the purpose of test identification parade is to have the corroboration to the evidence of the eye witnesses in the form of earlier identification. It was held that the substantive evidence is the evidence given by the witness in the Court. It was held that if that evidence is found to be reliable then the absence of corroboration by the test identification is not material. It was further held that the fact that the injured witnesses had lost their son and daughter-in-law showed that there were reasons for an enduring impression of the identity on the mind and memory of the witnesses. Reliance was also placed upon the following

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paragraph in the case of State of Maharashtra v. Suresh reported in (2000) 1 SCC 471:

> *"We remind ourselves that identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that he prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence."*

This Court therefore concurred with the High Court that the categorical evidence of the witnesses received corroboration from the test identification parade even though it was held late. The conviction of the Appellants in that case was upheld."

78 He submits that in the matter of ***Pargan Singh Vs. State of Punjab and another, reported as 2014 (14) SCC 619***, the Supreme Court examined the aspect of Test Identification Parade and held that depending upon the nature of the offence, even a small exposure for a brief duration of 90 seconds may also leave a lasting impression in the minds of the witnesses and that he may still identify the accused.

79 Referring to the above, counsel contends that in the present case, the TIP was got conducted without any delay and as per law, even though the exposure of the complainant to the accused persons may be of short duration,

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where the victim/complaint was staring in the face of death and is recalling horrors of an offence which not only resulted in loss of his wife, but also of an offence of dacoity, the identification of the accused by the complainant should not be doubted. Relevant extract of the judgment reads thus: -

> *"14. Let us first discuss the testimonies of PW-2 and PW-3 who are stated to be the eye-witnesses. Both of them have narrated the incident in unison and their version is almost the same. PW-2, who is the injured witness, has even in his cross-examination, narrated that deceased was attacked first by the accused and after firing the shot at him, the accused fired PW- 2 when they were flee with the bag of money. The occurrence lasted for 1½ minutes. He has further stated that few seconds after the receipt of injury, he became unconscious and regain consciousness after 4 days of receipt of the injury. The testimony of this witness is sought to be discredited by arguing that when the incident lasted for only 90 seconds, it was difficult to remember the faces of the accused persons after 7½ years of the incident, particularly in the absence of previous acquaintance.*
>
> *15. Before entering upon the discussion on this aspect specific to this case, we would like to make some general observations on the theory of "memory". Scientific understanding of how memory works is described by Geoffrey R. Loftus while commenting upon the judgment dated January 16, 2002 rendered in the case of Javier Suarez Medina v. Janie Cockrell by United States Court of Appeals, Fifth Circuit in Case No.01-10763. He has explained that a generally accepted theory of this process*

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was first explicated in detail by Neisser (1967) and has been continually refined over the intervening quarter-century. The basic tenets of the theory are as follows: First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires fragments of information from the environment. These fragments are then integrated with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen, and information-both information from external sources, and information generated internally in the form of inferences- that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not "cast in concrete." Rather, a memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event-revisits his or her memory of it-the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g., when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event. Memory researchers study how memory works using a

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variety of techniques. A common technique is to try to identify circumstances under which memory is inaccurate versus circumstances under which memory is accurate. These efforts have revealed four major sets of circumstances under which memory tends to be inaccurate. The first two sets of circumstances involve what is happening at the time the to-be-remembered event is originally experienced, while the second two sets of circumstances involve things that happen after the event has ended. The first set of circumstances involves the state of the environment at the time the event is experienced. Examples of poor environmental conditions include poor lighting, obscured or interrupted vision, and long viewing distance. To the degree that environmental conditions are poor, there is relatively poor information on which to base an initial perception and the memory that it engenders to begin with. This will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted. The second set of circumstances involves the state of the observer at the time the event is experienced. Examples of suboptimal observer states include high stress, perceived or directly inflicted violence, viewing members of different races, and diverted attention. As with poor environmental factors, this will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted. The third set of circumstances involves what occurs during the retention interval that intervenes between the to-be-remembered event and the time the person tries to remember aspects of the event. Examples of memory-distorting problems include a lengthy retention interval, which leads to forgetting, and inaccurate information learned by the person during the

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retention interval that can get incorporated into the person's memory for the original event. The fourth set of circumstances involves errors introduced at the time of retrieval, i.e., at the time the person is trying to remember what he or she experienced. Such problems include biased tests and leading questions. They can lead to a biased report of the person's memory and can also potentially change and bias the memory itself.

16. While discussing the present case, it is to be borne in mind that the manner in which the incident occurred and description thereof as narrated by PW-2, has not been questioned on the ground that narration should not be believed because of lapse of time. Instead, the appellants have joined issue on a very limited aspects viz. their identification on the ground that faces of the culprits could not have been remembered after 7½ years of the occurrence as memory fades by that time.

17. We are of the opinion that under the given circumstances and keeping in view the nature of incident, 90 seconds was too long a period which could enable the eye-witness (PW-2) to watch the accused persons and such a horrible experience would not be easily forgotten. Death of a friend and near death experience by the witness himself would be etched in the memory for long. Therefore, faces of accused persons would not have been forgotten even after 7½ years.

18. Whether a particular event or the faces of a person could be remembered would depend upon the circumstances under which those faces are seen. One cannot lose sight of the fact that here is a case where the two accused persons are the assailants who

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had shot dead Varun Kumar, companion of PW-2. Thereafter, they had fired at PW-2 as well. For PW-2, it was clearly a horror scene resulting into traumatic experience. In a case like this, even when these two assailants had remained before his face for 90 seconds, these 90 seconds was sufficiently long time to observe them closely and the person encountering such an event would not forget those faces even for a life time, what to talk for 7½ years that have elapsed in between. We would like to support our hypothesis with an anecdote. Once a friend of Einstein, the renowned scientist who invented the theory of relativity, asked him to explain that theory. Mr. Newton explained it in a simple manner for common man's understanding as under: If a boy is sitting with his girlfriend/lover, he would feel the time fly away and 60 minutes would seem as 60 seconds. On the other hand, if a person puts his finger in a hot boiling water, 60 seconds would feel like 60 minutes. This is the theory of relativity.

19. In the present case, the circumstances on which the PW-2 seen the accused persons even for 90 seconds, that was sufficient to absorb their faces. In contrast, things would be different if it is a case of some large get together where two unknown persons have a chance meeting for 90 seconds. Therefore, we reject the argument of learned counsel for the appellants that PW-2 could not recollect the face of the appellants after 7½ years and thus, he was not telling the truth. We have to keep in mind that PW-2 suffered serious injury because of the shot fired at him by the assailants and seriousness of the injury has resulted into conviction under Section 307 IPC as well. The testimony of an injured witness requires a higher degree of credibility and there have to be strong reasons to describe the same. The appellants

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> *have not been able to demonstrate that the courts below unreasonably reached the conclusion as to the admissibility of the testimony of PW-2. Apart from a very feeble submission that this witness identified the appellants 7½ years after the incident, their arguments do not address the issue of whether testimony of PW-2 was false. We are, thus, not at all impresses by this argument of the learned counsel for the appellants. Except that PW-3 is not an injured eye- witness, he has also seen the occurrence and the reasons given in support of attaching credibility to the statement of PW-2 would apply in his case as well.*

80 Learned counsel contends that the Supreme Court has placed a heavier reliance on the Test Identification Parade conducted in the presence of a Magistrate and has kept it at a high pedestal. He submits that in the matter of ***Ram Nath Mahto Vs. State of Bihar, reported as 1997(1) RCR (Crl.), 54,*** the Supreme Court has even placed reliance on the deposition of identification of the accused by the Magistrate, against the accused persons, notwithstanding that the victim did not identify the accused person in Court. The Supreme Court held that once the identification of the witnesses was done during the Test Identification Parade and in the presence of the Magistrate, if on account of intervening circumstances, he does not support his statement at the time of deposition before the Court, yet the Test Identification Parade conducted in the presence of the Magistrate, where the accused were identified, would be sufficient unto itself to record a finding of conviction. Hence, there is no reason to doubt the TIP witnessed by the Magistrate. The relevant extract of

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the judgment reads thus: -

> *"2. It was a night robbery in a running train. The appellant was allegedly one of the dacoits. A person was killed during the course of commission of dacoity and the dacoits caused hurts to others and looted their property. P.W.6, Diwakar Yadav, was one such person who was robbed. The Train Ticket Examiner, P.W.3, was also one of the occupants in the train who was injured. The occurrence took place shortly after the train left Keshar station for its onward journey to Calcutta. This incident happened in the State of Bihar. The matter was reported to the police by P.W.3. The appellant, was later arrested as one of the culprits. He was put to identification parade conducted by Judicial Magistrate. Bharatji Misra, P.W.7. Thereat, P.W.6 was able to identify the appellant as one of the dacoits besides others, with whom we are presently not concerned with, and claimed that he was the one who had a revolver with him which he employed during the course of the occurrence.*
>
> *3. At the trial P.W.7 fully supported the prosecution case, deposing that P.W.6 had before him identified the appellant as the dacoit carrying a revolver. P.W.6, however, chose not to identify the appellant at the trial and rather said that he could not recognize the accused whom he had identified at the identification parade. When his pointed attention was drawn towards the appellant, he did not identify him. At that juncture, the trial judge recorded his remarks as to his demeanor that the witness perhaps was afraid of the accused. It thus became evident that the witness was frightened to accord recognition to the appellant at the trial. Despite such bend in the prosecution case,*

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the trial court as also the High Court relied on the statement of the Magistrate, P.W.7 as to P.W.6 having identified the appellant before him at the identification parade and held the prosecution case proved beyond doubt. Added thereto was the remark of the trial court about the demeanor of the witness P.W.6.

4. As was done before the courts below, learned counsel for the appellant has relied upon a decision of this Court in Budhsen & Anr. vs. State of U.P. - AIR 1970 SC 1321 to contend that the evidence of identification parade does not constitute by itself substantive evidence which is governed essentially by the provisions of Section 162 of the Code of Criminal Procedure. In that case, this Court took the view that on the facts established, the Test Identification Parade could not be considered to provide safe and trustworthy evidence on which conviction could be sustained. That case was distinguished by the courts below and in our view rightly, by taking into account the substantive evidence of the Magistrate, P.W.7, supported by the remarks of the trial court regarding demeanor of P.W.6 there can be no dispute to the proposition that oral evidence led at the trial may by itself be substantive evidence whereas evidence of Test Identification Parade may per se be not. In that situation, the Court would certainly be entitled to rely upon such evidence as that would be relevant under Section of the Evidence Act. Here have, as said before, the evidence of the Magistrate, P.W.7 to support the prosecution evidence to that he conducted the identification parade and before him P.W.6 had correctly identified Ram Nath to be one of the dacoits. And the word of P.W.7 In the context has been believed by the courts below."

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81 Learned counsel contends that in the present case, not only was the Test Identification Parade conducted in the presence of the Chief Judicial Magistrate, the victim also identified all the four accused persons. The very fact that all four accused, who had entered the house, had been identified during the Test Identification Parade and were also identified in the Court, there would be no reason to suspect the validity of the Test Identification Parade or to extend any benefit to the accused persons on an assumption of the identity being compromised. He submits that the judgment of ***Budhsen Vs. State of U.P. AIR 1970 Supreme Court 1321*** referred to by the counsel for the accused rather supports the prosecution since it reiterates that Test Identification Parade is merely corroborative.

82 It is submitted that the reference to the judgment in the matter ***Rajesh @ Sarkari and another Vs. State of Haryana, reported as 2021(1) SCC 118,*** wherein the law in relation to Test Identification Parade has been summarized in Clause 36 also does not support the case of the accused as the position in law is not disputed. He contends that it is not the suggestive case of the accused persons that their identity had been revealed or had been disclosed to the victim. Rather, an assumption is being drawn on the basis of the alleged photographs published in the Newspaper and that the clothes worn in the same were taken in possession later to inferring that the said newspaper photo would have inevitably been seen by the witnesses. He submits that it is highly unlikely that a victim who has faced the trauma of dacoity and murder of his wife on a preceding night would actually be having time to go through

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the newspapers as well. Besides, there is nothing on record even to corroborate that the complainant also subscribed the newspaper in which the photo had been allegedly published.

83 It is thus argued with vehemence that the primary evidence having remained unimpeachable and the accused having been identified by the complainant-prosecution witnesses, the argument based on assumptions to impeach the identity of the accused is liable to be rejected.

84 He further argues that merely because the ratio of 8 is to 1 as prescribed in the Government instructions or the Punjab Police Rules as applicable to the State of Haryana has not been complied with, the same would not in any manner render the Test Identification Parade conducted in the presence of a Magistrate liable to be declined. He contends that a reading of the High Court Rules and Orders pertaining to the Test Identification Parade makes it clear that while certain aspects of the Test Identification Parade need to be strictly adhered to, the other aspects are flexible. He contends that the maintaining of ratio is one such feature which is not mandatory. The mandatory provisions had been encapsulated in Clause IV of the said Rules. He contends that so far as the aforesaid mandatory precautions and safeguards are concerned, the same have been duly adhered to by the Magistrate and they have not been compromised in any manner whatsoever. Consequently, a mere failure to maintain a ratio would in no way render the identification conducted in the presence of a Magistrate liable to be rejected. It is argued that even otherwise such a mandate may not easily be given effect to since the present

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case reflects the presence of 04 accused persons and maintaining the said ratio would require 32 persons to be collected immediately and without any further delay. It would be highly unlikely for any investigating officer to bring 32 persons of similar shapes and sizes. Thus, the guidelines have to be applied with prudence and pragmatism.

85 Learned counsel argues that the other contentions raised by the counsel for the accused pertaining to voice identification as well, are in the nature of prescribing new conditions for TIP and such an argument cannot be given any legal weightage. He contends that, so far as the contention of the counsel for the accused that the complainant had seen the CCTV footage much before the Test Identification Parade, it is contended that the complainant had physically seen the accused at the time of the commission of the incident and that as per the CCTV footage, 03 of the 04 persons who entered the building were without masks. Invariably, once the CCTV footage was being screened through by the investigating agency, the complainant may have seen the CCTV footage, but the same cannot ipso facto be held as a circumstance against the complainant to dislodge the identification which is otherwise compliant with the legal requirements. More so, the argument is self contradictory since the counsel for the accused has himself argued that the video footage was blurred.

DISCLOSURE STATEMENTS AND RECOVERIES

86 While adverting to the above, learned amicus contends that the

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position in law on the argument that joint disclosure or simultaneous disclosure could not have been recorded and the same would be inadmissible in evidence and not protected under Section 27 of the Indian Evidence Act, 1872, does not support the accused. He submits that the Supreme Court has dealt with the said aspect in numerous judgments, including in the judgment in the matter of ***State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru, reported as AIR 2005 SC 3820.*** The relevant extract of the judgment reads thus: -

> *"14.* ***Joint disclosures.***
>
> *Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs. 10 lacs from the truck in which they were found at Srinagar is in issue. Learned senior counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the Ken of Section 27, whereas it is the contention of Mr. Gopal Subramanium that there is no taboo against the admission of such information as incriminating evidence against both the informants/accused. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the Section to more than one person. But, that*

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is too narrow a view to be taken. Joint disclosures to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. 'A person accused' need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be

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exposed to criticism from the stand point of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr. Gopal Subramanium. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefaratory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel.

In Mohd. Abdul Hafeez vs. State of Andhra Pradesh [AIR 1983 SC 367], the prosecution sought to rely on the evidence that the appellant along with the other two accused gave information to the IO that the ring (MO 1) was sold to the jewellerPW3 in whose possession the ring was. PW3 deposed that four accused persons whom he identified in the Court came to his shop and they sold the ring for Rs.325/- and some days later, the Police Inspector accompanied by accused 1, 2 and 3 came to his shop and the said accused asked PW3 to produce the ring which they had sold. Then, he took out the ring from the showcase and it was seized by the Police Inspector. The difficulty in accepting such evidence was projected in the following words by D.A. Desai, J. speaking for the Court:

> *"Does this evidence make any sense? He says that accused 1 to 4 sold him the ring. He does not say who had the ring and to whom he paid the money. Similarly, he stated that accused 1 to 3 asked him to produce the ring. It is impossible to believe that all spoke simultaneously. This way of recording evidence is most unsatisfactory and we record our disapproval of the same. If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the*

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> *Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against the person".*

There is nothing in this judgment which suggests that simultaneous disclosures by more than one accused do not at all enter into the arena of Section 27, as a proposition of law.

Another case which needs to be noticed is the case of Ramkishan vs. Bombay State [AIR 1955 SC 104]. The admissibility or otherwise of joint disclosures did not directly come up for consideration in that case. However, while distinguishing the case of Gokuldas Dwarkadas decided by Bombay High Court, a passing observation was made that in the said case the High Court "had rightly held that a joint statement by more than one accused was not contemplated by Section 27". We cannot understand this observation as laying down the law that information almost simultaneously furnished by two accused in regard to a fact discovered cannot be received in evidence under Section 27. It may be relevant to mention that in the case of Lachhman Singh vs. The State [1952 SCR 839] this Court expressed certain reservations on the correctness of the view taken by some of the High Courts discountenancing the joint disclosures.

87 Referring to the above, counsel contends that the legal position as regards the joint disclosure and protection under Section 27 of the Indian

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Evidence Act, 1872, has been minutely examined by the Supreme Court and it has been held that there would be numerous practical difficulties in applying the suggestive argument that simultaneous disclosure/joint disclosure should not be admissible as the recoveries pursuant to the disclosure cannot be linked to any specific accused. The Court held that such a view would be too narrow. The expression "a person accused" need not necessarily refer to a single individual and may encompass a plurality of accused persons. Where such information is furnished one after another, without any intervening break and almost simultaneously, and is thereafter followed by the accused persons jointly pointing out the material object or to the place leading to its recovery, there is no justification for excluding such evidence from the purview of Section 27 of the Indian Evidence Act, 1872.

88 Referring to the above, counsel contends that in the present case, the investigation has been quick-paced. The incident in question took place on 09.01.2023. It was followed by the incident of the encounter and arrest of accused on 10.01.2023 at about 10:00 P.M. and the consequent recovery on 11.01.2023 upon a disclosure made by the accused appellants. It cannot thus be held that the recovery made pursuant to the simultaneous disclosure would not be protected under Section 27 of the Indian Evidence Act, 1872. He also places reliance on the judgment of the Supreme Court in the matter of ***Kishore Bhadke Vs. State of Maharashtra, reported as 2017 INSC 14.*** The relevant extract thereof reads thus: -

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"19. It was contended by the counsel for the accused No.3 that the evidence regarding discovery of the dead body of Raman cannot be used against accused No.3. Inasmuch as, when accused No.3 gave his statement and recorded in the form of Memorandum under Section 27 of the Evidence Act, the Police already knew about the spot where the dead body was thrown as it was disclosed by accused No.2. It was contended that the statement made by accused No.2 can be used only against accused No.2. This argument has been negatived by the Trial Court after analyzing the decisions which were brought to its notice, as can be discerned from para 46 to para 53 of the judgment. The Trial Court found that in the present case the accused Nos.2 and 3 made disclosure (about the spot where dead body of Raman was thrown by them) one after another in quick succession and that their statement came to be recorded separately. The only thing that had happened was a joint discovery made at the instance of both the accused Nos.2 and 3, on proceeding to the spot along with the police. Section 27 of the Evidence Act is an exception to Section 25 of the Act. Section 25 mandates that no confession to a Police Officer while in police custody shall be proved as against a person accused of any offence. Section 27, however, provides that any fact deposed to and 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. The fact where the dead body of deceased Raman was disposed, was disclosed by both the accused Nos.2 and 3 to the Investigating Officer in the presence of SK Idris (PW 2) one after

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> *another on 12th May 2003 at 3.05 hrs and 3.25 hrs. respectively. The discovery was made only after accused Nos.2 and 3 were taken together by the police to the spot in the neighbouring State (Madhya Pradesh), where the recovery Panchnama was recorded bearing Exh.76A. In other words, the disclosure of the relevant fact by accused No.3 to the Investigating Officer preceeded the discovery of dead body from the disclosed spot at the instance of both the accused Nos. 2 and 3. It was not a case of recording of statement of accused No.3 after discovery nor a joint statement of accused Nos.2 and 3, but disclosure made by them separately in quick succession to the Investigating Officer, preceding the discovery of the fact so stated. The fact disclosed by them, therefore, and the discovery made at their instance, was admissible against both the accused in terms of Section 27 of the Evidence Act."*

89 It is contended that in the aforesaid judgment, a three-judge Bench of the Supreme Court dealt with the earlier law and held that joint discovery made at the instance of more than one accused, on proceeding to the spot along with the police, would not vitiate the recovery. He submits that it being a case where the disclosures had been recorded separately and in quick succession by the investigating officer preceding the discovery of the fact and the recovery made immediately at the instance of all the accused together from one place would become admissible against all the accused.

90 Counsel contends that 'disclosure' may fall in a category where it is neither wholly reliable nor wholly unreliable. The Court thus has to look

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into the totality of the circumstances and if the Court is satisfied that the evidence is free of taint, it becomes the duty of the Court to act on such testimony.

91 Reference is made to the judgment in the matter of ***Nagamma @ Nagarathna Vs. State of Karnataka, 2025 INSC 1135*** wherein the position in law as stated in the matter of ***Navjot Sandhu @ Afsan Guru,*** (supra) and reiterated in ***Kishore Bhadke*** (supra), was followed yet again.

92 Referring to the above, it is argued that the position in law has thus remained consistent on the aspect of the simultaneous disclosures followed by discovery and that it would not be impeached solely because at one point in time, all the accused got their disclosures recorded one after the other. A specific link of a respective recovery is thus not a statutory mandate and where a recovery has been made jointly on the disclosure of all the accused persons, the same would be a protected and be admissible in evidence. As a matter of fact, all the accused went to the spot together and the recovery was effected in their presence. Further, there is no suggestion or argument that complainant/victim had any ill intention, motive or enmity against the accused persons to falsely implicate the accused. He argues that similarity of words or expressions used, or the statement having used identical words and language, would not in any manner discredit the acts undertaken by the investigating agency for effecting the recovery.

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TEST IDENTIFICATION OF STOLEN JEWELLERY

93 Adverting to the argument raised by the counsel for the accused on the issue of identification of the stolen articles, counsel contends that the victim had identified the gold articles/ornaments and that there is no third party objection raised to the said identification and no counter claim has ever been raised. Besides accused have also not brought any evidence as would show as to how and under what circumstances, they were in possession of the articles. He contends that the identification by the family members has been repeatedly accepted by the Supreme Court as valid and admissible.

94 He contends that a detailed reference to the law on the subject already finds mention in the matter of ***Earabhadrappa alias Krishnappa*** (supra) which has been referred to and extracted in the later paras wherein the Supreme Court has accepted identification of personal belongings by the owner as a satisfactory standard of proof.

95 He contends that even otherwise considering the nature of the stolen articles i.e. the jewellery articles, it is highly unlikely for the investigating officer to arrange for gold articles which are similar in design and weight and that too in large numbers to enable the complainant party to identify the same. He contends that such a test having not been prescribed in law, should not be prescribed for the present case and that the identification of the stolen articles by the owner, as accepted by the courts to be a valid proof be, be accepted as a valid identification.

96 It is contended that the absence of any third party claim or failure

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by the accused to offer a valid and satisfactory explanation as to the circumstances in which they were in possession of the gold articles, is a material circumstance that has to be taken into consideration by this Court.

97 Counsel contends that identification by the owners/family members has been upheld by different High Courts. He refers to Division Bench judgment of the Delhi High Court in the matter of ***Ganesh Kumar Vs. State, in CRl.A. 1440 of 2022, decided on 28.08.2014***, which reads thus: -

> *"12. The next round of attack is the alleged recoveries of the clothes and other articles of deceased at the instance of Ganesh. It is stated that no TIP of the recoveries has been done. Further, no public witness or local police has been associated for recovery pursuant to the alleged disclosure statement. Moreover, the recovery of the clothes etc. has already been disbelieved by the learned Trial Court. The fact that the recovery of these clothes of the deceased and camera accessories at the instance of Ganesh has been disbelieved by the learned Trial Court is not binding on this Court and this Court is required to appreciate the facts and the law involved in the present case independently. The learned Trial Court has disbelieved the recoveries of the clothes of the deceased and the camera accessories at the instance of the appellant on the ground that no proper identification of the same were got conducted and they were first time identified in the Court. Test identification Parade is only an aid in investigation. Rakesh Kumar has deposed that in the month of February 2007 he was called by the Police and he was shown the photograph and clothes of the deceased and camera accessories which he identified. Though TIP of camera and camera stand was done,*

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however the bag containing the clothes of the deceased and the accessories of the camera were not got identified in the judicial TIP. The deceased was a cousin brother of Rakesh Kumar and was working with him. Thus, the two being too close and intimate he would obviously know about each other's clothes and the camera accessories which were taken from the shop of Rakesh Kumar itself. Hence he was in a condition to duly identify the same. Even in the absence of Test Identification of these articles we are inclined to rely upon these recoveries.

xxx xxx xxx

14. The second ground to assail the recoveries is that no public witness or Police official of the local Police Station was associated with the recovery pursuant to the alleged disclosure by Ganesh. Mere non-association of a public witness at the time of recovery pursuant to disclosure under Section 27 of the Indian Evidence Act does not vitiate the recoveries made and can still be relied upon. While dealing with this issue the Supreme Court in (2001) 1 SCC 652 State Govt. of NCT of Delhi Vs. Sunil and Anr. laid down the distinction between recovery pursuant to disclosure statement under Section 27 Indian Evidence Act and search under Section 100 Cr.P.C. It was held:

> *"18. Recovery of the knicker is evidenced by the seizure memo Ext. PW 10/G. It was signed by PW 10 Sharda besides its author PW 17 Investigating Officer. The Division Bench of the High Court declined to place any weight on the said circumstance purely on the ground that no other independent witness had signed the memo but it was signed only by "highly interested persons". The observation of the Division Bench in that regard is extracted below:*

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> *"It need hardly be said that in order to lend assurance that the investigation has been proceeding in a fair and honest manner, it would be necessary for the investigating officer to take independent witnesses to the discovery under Section 27 of the Indian Evidence Act; and without taking independent witnesses and taking highly interested persons and the police officers as the witnesses to the discovery would render the discovery, at least, not free from doubt."*

19. In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that a search is made to find out a thing or document about which the searching officer has no prior idea as to where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the

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search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in the Transport Commr., A.P., Hyderabad v.S. Sardar Ali [(1983) 4 SCC 245 : 1983 SCC (Cri) 827 : AIR 1983 SC 1225] . Following observations of Chinnappa Reddy, J. can be used to support the said legal proposition: (SCC p. 254, para 8) "Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself.""

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16. Further after the prosecution has proved its case, the onus shifted on Ganesh under Section 114 Illustration (a) and Section 106 of the Evidence Act to explain as to how he came in

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> *possession of the articles of the deceased. This onus has not been discharged by the accused who has taken the plea in the statement under Section 313* Cr.P.C. that he has been falsely implicated.

ADMISSIBILITY OF ELECTRONIC EVIDENCE

98 While adverting to the argument advanced by the counsel for the accused as regards the validity of Section 65B of the Indian Evidence Act, 1872, and its admissibility, learned counsel contends that undisputedly the certificate under Section 65-B has been issued by Amit Arora, who is the son-in-law of the victim. He contends that the said witnesses specifically deposed that he had the password and access to the CCTV cameras and DVRs, thus, he was the person who was in management/supervisory capacity of the CCTV links. It is argued that even otherwise, a hierarchy of control and management, as ordinarily understood in a structured organisation could not have been applied to family relations and that all persons who stand in fiduciary relationships would be deemed to be in supervision, management and control of the same. In the present case, the fact that the son-in-law Dr. Amit Arora (PW.2) had the password and access to the entire thing and would frequently check the CCTV footage clearly shows that he exercised supervision over the cameras and DVRs. Thus, the certificate under Section 65-B could have been validly issued by him.

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99 Counsel further contends that while the ratio of law laid down by the Supreme Court in the precedent judgments i.e. ***Anvar P. V. Vs. P.K. Basheer (supra) as well as* Arjun Pandit Rao Khotkar (supra)**, is not disputed, however, the Supreme Court has visited the provisions at different times and it has been held through a catena of judgments that where an objection is not raised to the mode of proof of the certificate or the footage, at the time when they were exhibited before the trial Court, such an objection cannot be taken at an appellate stage.

100 It is submitted that while the Supreme Court did mandate that all the conditions as specified under Section 65B (4) of the Indian Evidence Act, 1872, are required to be fulfilled, it would be significant to refer to the aforesaid legal position, as has been applied in previous and subsequent judgments.

101 In the above judgment(s) of Anwar P.V. (supra) and Arjun Panditrao Khotekar supra, the Supreme Court dealt with the earlier judicial pronouncements in the matter of ***State (NCT of Delhi) Vs. Navjot Sandhu (2005) 11 SCC 600, Tomaso Bruno and another Vs. State of U.P. (2015) 7 SCC 178, as well as Shafhi Mohammad Vs. State of Himachal Pradesh (2018) 2 SCC 801***.While the judgment in the matter of **Tomaso Bruno** (supra) was held to be per incuriam, the judgment in the matter of **Navjot Sandhu and Shafhi Mohamma**d (supra) has been specifically overruled.

102 The Bench although also took judicial notice of the judgment in the matter of ***Sonu @ Amar Vs. State of Haryana, (2017) 8 SCC 570***, but did

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not overrule the position in law as expounded in the aforesaid judgment.

103 While dealing with the issue of admissibility of electronic record under Section 65B of the Indian Evidence Act, 1872, in the matter of ***Sonu @ Amar*** (supra), the Supreme Court referred to the judgment in the matter of ***Anvar P.V. Vs. P.K. Basheer and others, (2014) 10 SCC 473***, and held that notwithstanding the aforesaid requirement, in case no objection with respect to the mode and manner of proof is raised at the time when the document is exhibited, such an objection cannot be taken at an appellate Stage. The relevant extract of the judgment reads thus: -

> "24. Mr. Luthra contended that the CDRs are not admissible under *Section 65B* of the Indian Evidence Act, 1872 as admittedly they were not certified in accordance with sub-section (4) thereof. He *placed reliance upon* the judgment of this Court in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 by which the judgment of this Court in *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 was overruled. In *Navjot Sandhu* (supra) this court held as follows:
>
> > *"Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions,*

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namely, Sections 63 and 65".

*25. In **Anvar**'s case, this Court held as under:*

"22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

23. The appellant admittedly has not produced any certificate in terms of Section 65-B in respect of the CDs, Exts. P-4, P-8, P-9, P-10, P-12, P-13, P-15, P-20 and P-22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up

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regarding the corrupt practice using songs, announcements and speeches fall to the ground."

In view of the law laid down in the case of Anvar, Mr. Luthra submitted that the CDRs are liable to be eschewed from consideration.

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27 Refuting the contentions of the learned senior counsel for the State, Mr. Luthra submitted that the objection raised by him pertains to inadmissibility of the document and not the mode of proof. He urged that the CDRs are inadmissible without the certificate which is clear from the judgment of this Court in Anvar's case. He refers to the judgment of *RVE Venkatachala Gounder v. Arulmigu Visweswaraswami*, (2003) 8 SCC 752 relied upon by the prosecution to contend that an objection relating to admissibility can be raised even at the appellate stage. Mr. Luthra also argued that proof required in a criminal case cannot be waived by the accused. He relied upon a judgment of the Privy Council in *Chainchal Singh v. King Emperor*, AIR 1946 PC 1 in which it was held as under:

> "In a civil case, a party can, if he chooses, waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence"

28. He further relied upon the judgment of a Full Bench of the Bombay High Court in *Shaikh Farid v. State of Maharashtra*, 1983 CrLJ 487. He also submitted that Section 294 Cr. P.C. which is an exception to the rule as to mode of proof has no application to the facts of the present case.

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32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65B (4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 of the Cr. P.C. 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65 B (4) cannot be permitted to

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be raised at this stage as the objection relates to the mode or method of proof."

104 The said issue came up before the Supreme Court yet again in the matter of ***State by Karnataka Lokayukta Police Station, Bengaluru, Vs. M.R. Hiremath, (2019) 7 SCC 515***. The relevant extract of the said judgment reads thus: -

"16 The same view has been reiterated by a two judge Bench of this Court in *Union of India and Others v CDR Ravindra V Desai* (2018) 16 SCC 272. The Court emphasised that non-production of a certificate under Section 65B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in Sonu alias *Amar v State of Haryana*, in which it was held:-

"32. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency." (emphasis supplied)

17. Having regard to the above principle of law, the High Court erred in coming to the conclusion that the failure to produce a certificate under Section 65B(4) of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise."

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105 Significantly, the judgment of ***M.R. Hiremath*** (supra) was also noticed by the Supreme Court in the matter of ***Arjun Panditrao Khotkar*** (supra) in para No.53 thereof and at no point of time, the said judgments have been over ruled or distinguished or held *per incuriam*. A reference with respect to the judgment in the matter of ***M.R. Hiremath*** (supra) by the Supreme Court in the matter of ***Arjun Panditrao Khotkar*** (supra) in paras No.53 and 54 thereof, reads as under: -

> *"53.* In a recent judgment, a Division Bench of this Court in *State of Karnataka v. M.R. Hiremath* (2019) 7 SCC 515, after referring to *Anvar P.V.* (supra) held:
>
> > "16. The same view has been reiterated by a two- Judge Bench of this Court in *Union of India v. Ravindra V. Desai.*
>
> *54. It is pertinent to recollect that the stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet. When a criminal court summons the accused to stand trial, copies of all documents which are entered in the charge-sheet/final report have to be given to the accused. Section 207 of the CrPC, which reads as follows, is mandatory. Therefore, the electronic evidence, i.e. the computer output, has to be furnished at the latest before the trial begins. The reason is not far to seek; this gives the accused a fair chance to prepare and defend the charges levelled against him during the trial. The general principle in criminal proceedings, therefore, is to supply to the accused all documents that the prosecution seeks to rely*

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> *upon before the commencement of the trial. The requirement of such full disclosure is an extremely valuable right and an essential feature of the right to a fair trial as it enables the accused to prepare for the trial before its commencement."*

106 Stil further, after the aforesaid judicial declaration of law in the judgment of ***Arjun Panditrao Khotkar*** (supra), the issue of Certificate under Section 65B of the Indian Evidence Act, 1872, was under consideration of the Supreme Court in the matter of ***Sundar @ Sundarrajan Vs. State by Inspector of Police, (2024) 12 SCC 764***. The relevant extract thereof reads thus: -

> *"43. While the Court in Arjun Panditrao Khotkar did not directly deal with the issue of allowing objections against CDRs, due to a violation of the procedure under Section 65B, being raised at a belated stage, it kept it open for trial courts, in exceptional cases, to allow the prosecution to provide such certificate at a later stage. It held that:*
>
> > *54. Therefore, in terms of general procedure, the prosecution "is obligated to supply all documents upon which reliance may be placed to an Accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the Accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution Under Sections 91 or 311 of the Code of Criminal Procedure or Section 165 of the Evidence Act. Depending*

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> *on the facts of each case, and the Court exercising discretion after seeing that the Accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the Accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case-discretion to be exercised by the Court in accordance with law."*
>
> *(emphasis supplied)*

107 It is thus apparent from the perusal of the above that the ratio and legal principle in the matter of ***Sonu @ Amar*** (supra) was reiterated by the Supreme Court in the above said judgment.

108 Still further, in the matter of ***Rahil Vs. State (Govt. of NCT of Delhi), 2025 SCC OnLine SC 1481***, the legal principles, as above were relied upon yet again. The relevant extract thereof reads thus: -

> *"*35. Be that as it may, it is relevant to note the larger bench in *Khotkar* (supra) while reiterating PV Anvar (supra) did not hold that its ratio shall apply prospectively. Furthermore, in *Mohd. Arif @ Ashfaq v. State (NCT of Delhi*), this Court while hearing a review petition in a death penalty case retrospectively applied the ratio in Anvar PV to cases decided earlier and eschewed secondary electronic evidence dehors certificate under section 65-B(4).
>
> *36. Though the present case does not involve death penalty, it is undeniable that appellants were facing a criminal trial and the prosecutor was required to prove a fact beyond reasonable doubt*

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strictly in accordance with law. Appellants during trial raised objections to admissibility of the secondary electronic evidence relating to Rahil which was marked as exhibit PW23/B-D. Thereby the prosecutor was put on due notice and had opportunity to fill the lacuna by producing the requisite certificate under Section 65-B(4) but did not do so.

In Sonu (supra), this court held if an objection is taken to CDRs being marked without a certificate and the same was not cured by the prosecutor at relevant stage the document shall be inadmissible in law. In these circumstances we are inclined to apply the ratio in PV Anvar and Khotkar to the case and hold that the exhibits are inadmissible in law being secondary evidence without certification."

(emphasis supplied)

109 It has thus been reiterated as a legal position that when an objection is not taken at the stage of producing the electronic document, with respect to the mode or manner in which it has been exhibited, the same being a curable defect, such an objection cannot be taken at the appellate stage.

110 From the perusal of the deposition of PW.2-Amit Arora son-in-law of the complainant, the prosecution witness who proved the certificate issued under Section 65B of the Indian Evidence Act, 1872, it is evident that no suggestion or objection with respect to the mode or manner of proof had been taken by the defence at any stage. The argument is being taken now at the appellate stage only. Consequently, the argument raised by the counsel for the accused about the admissibility and acceptance of the electronic evidence,

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in view of the purported defect in the certificate, is liable to be rejected.

111 He further argued that in the present case there were two sets of CCTV cameras that have been installed, with their separate DVRs. While the accused persons had taken out the DVR installed on the first floor, damaged the same, burnt it and had also taken the same along with them, the DVR pertaining to the CCTV Camera installed on the ground floor escaped their notice. The said CCTV footage clearly shows the faces of the accused person. He argues that the accused entered in two groups of two persons each and only one person is wearing a mask. Further, all four of them are empty handed and that one of said persons is also seen talking on phone as well. Counsel argues that at the time when the CCTV footage captures them, while making an exit out of the hospital, it is evident that while one of them is carrying a bag, the other person is carrying a cake box. He contends that said bag had the jewellery items whereas the other box contained the cake that had been ordered by the respondents-accused for gaining entry to the first floor. It is argued that burden lay upon the respondent accused to explain as to what was held by them in the said bag.

112 Counsel contends that merely because there was some discrepancy in the time as mentioned in the CCTV footage, which was half an hour behind the actual time, it would not amount to any tampering. He contends that the tampering would necessarily entail alteration with the actual time of footage. He contends that if the digital clock in the CCTV footage had been wrongly set, the same would not be a case of tampering and it would

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only be an error, without effecting its evidentiary value.

113 Counsel contends that the attempt made by the counsel for the accused to discredit the CCTV footage by raising imaginative apprehensions and doubts are misplaced. There being no evidence that the CCTV footage had been tampered with, such an inference cannot be drawn. A satisfactory explanation having been offered by the prosecution about the timeline and the visible faces in the said CCTV footage rests all other doubts to rest. He contends that an empty suggestion about possibility of manipulation, without any evidence to corroborate the suggestion, is meaningless.

114 Additionally, the sanctity of the chain of possession has also been duly maintained not only about the source but also after the extraction of the footage till the time of its production before a Court of law. There would be thus no reason to discard the CCTV footage which is a valid and admissible piece of evidence and corroborates the involvement of the accused persons in the commission of the offence.

ABSENCE OF DIRECT EVIDENCE

115 Adverting to Section 114 of the Indian Evidence Act, 1872, counsel contends that in matters pertaining to criminal conspiracy, there would seldom be a direct evidence which might be readily available and that it is only from the totality of circumstances that inferences are required to be judicially drawn. He contends that the conspiracies are born in pitch darkness and are executed by night, hence, there would be scant chance for an investigating agency to find a complete chain of events to establish individual

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participation and action. He contends that the legislature was cognizant of the said aspect and it was for the said purpose that Section 114 was incorporated in the Indian Evidence Act, 1872 which reads thus: -

> ***"114. Court may presume existence of certain facts.***
>
> *The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*
>
> *Illustrations:*
> *The Court may presume -(a) that a man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."*

116 He contends that it is evident from a perusal of the above that the Court may presume existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct etc. Reference is made to illustration A. It is stated that the aforesaid illustration throws much light on the presumption which may legitimately flow on account of the recovery having been effected. It is submitted that when a person is found to be in possession of stolen goods, soon after theft he is either the thief or has received the goods known by him them to be stolen unless he can account for his possession.

117 He contends that the jewelry articles belonging to the

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complainant had been recovered at the disclosure of the respondent-accused. Undisputedly, the identification of the said jewellery articles was carried out by the complainant party and no objection or third party claim was ever raised about the said jewellery articles. It was open to the respondent-accused persons to offer a valid explanation as to how and under what circumstances the accused persons would have been in possession of the articles which were robbed from the house of the complainant. They having failed to offer any explanation, a statutory inference thus flows against them. It is further contended that the recoveries were effected shortly after the occurrence of the dacoity and murder and immediately following the arrest of the respondent-accused persons. The close proximity between the occurrence, the arrests and the recoveries materially reduces the possibility of any intervening possibility to fabricate the recoveries or plant the recovered articles upon the respondent-accused. The circumstances, therefore, render the suggestion of a subsequently planted recovery inherently implausible. He makes a reference to the judgment of the Supreme Court in the matter of ***Earabhadrappa alias Krishnappa Vs. State of Karnataka, reported as 1983(1) RCR (Crl) 292***. The Supreme Court set aside the conviction under Section 411 IPC and convicted for an offence of robbery and murder. The relevant extract thereof reads thus:

-

> *"7. There is no controversy that the statement made by the appellant Ex. P-35 is admissible under s. 27 of the Evidence Act. Under s. 27 only so much of the information as distinctly relates*

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to the facts really thereby discovered is admissible. The word 'fact' means some concrete or material fact to which the information directly relates. As explained by Sir John Beaumont in Pulukuri Kottaya v. Emperor (1): -

> *"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".*

For the applicability of s. 27 therefore two conditions are prerequisite, namely (1) the information must be such as has caused discovery of the fact; and (2) the information must 'relate distinctly' to the fact discovered. In the present case, there was a suggestion during the trial that P.W. 26 had prior knowledge from other sources that the incriminating articles were concealed at certain places and that statement Ex. P-35 was prepared after the recoveries had been made and therefore there was no 'fact discovered' within the meaning of s. 27 of the Evidence Act. We need not dilate on the question because there was no suggestion made to P.W. 26 during his cross- examination that he had known the places where the incriminating articles were kept. That being so, the statement made by the appellant Ex. P-35 is clearly admissible in evidence.

*8. In **Jaffer Hussein Dastgir v. State of Maharasetra**, the portion of the statement with reference to which this question arose read as follows:*

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> *"I will point out one Gaddi alias Ramsingh of Delhi at Bombay Central Railway Station at III Class Waiting Hall to whom I have given a Packet containing diamonds of different sizes more than 200 in number."*

The only question for decision in that case before the Court was whether the aforesaid statement made by the accused was admissible in evidence by virtue of s. 27 of the Evidence Act, the diamonds having been found with the person named. In the facts of that case the Court came to the conclusion that the police had already known that the diamonds were with the person named by the accused with the result that there was no fact discovered by the police as a result of the statement made by the accused. However, it was held clearly that, but for such knowledge of the police, the aforesaid statement of the accused would have been admissible in evidence.

9. Apart from the question of sentence, two other contentions are raised, namely: (1) There is no proper identification that the seized ornaments belonged to the deceased Smt. Bachamma; and (2) the presumption arising under illustration (a) to s. 114 of the Evidence Act, looking to the long lapse of time between the commission of murder and robbery and the discovery of the stolen articles, should be that the appellant was merely a receiver of the stolen articles and therefore guilty of an offence punishable under s. 411 of the Indian Penal Code and not that he was guilty of culpable homicide amounting to murder punishable under s. 302 as well. We are afraid, none of these contentions can prevail.

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10. Our attention was drawn to the testimony of P.W. 13 Narayanareddy who, during his cross-examination, stated that ornaments similar to the gold rope chain and the pair of gold bangles were available everywhere and that other ornaments were also in his house. From this it is sought to be argued that the seized ornaments cannot be treated to be stolen property as they are ordinary ornaments in common use. Nothing really turns on this because P.W. 2 Smt. Bayamma, mother-in-law of the deceased, her husband P.W. 13 Makarappa and son P.W. 4 G.M. Prakash have categorically stated that the seized ornaments belonged to the deceased Smt. Bachamma. There is no reason why the testimony of these witnesses should not be relied upon particularly when P.W. 2 Smt. Baymma was not cross-examined at all as regards her identification of the seized ornaments and clothes as belonging to the deceased. Even if the seized ornaments could be treated to be ornaments in common use, this witness could never make a mistake in identifying the seized six silk sarees (M.Os. 10 to 15). It is a matter of common knowledge that ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family. That apart, the description of the silk sarees in question shows that they were expensive sarees with distinctive designs. There is no merit in the contention that the testimony of these witnesses as regards the identity of the seized articles to be stolen property cannot be relied upon for want of prior test identification. There is no such legal requirement.

11. This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under illustration (a) to s. 114 of the

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Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction. The prosecution has led sufficient evidence to connect the appellant with the commission of the crime. The sudden disappearance of the appellant from the house of P.W.3 on the morning of March 22, 1979 when it was discovered that the deceased had been strangulated to death and relieved of her gold ornaments, coupled with the circumstance that he was absconding for a period of over one year till he was apprehended by P.W. 26 at village Hosahally on March 29, 1980, taken with the circumstance that he made the statement Ex. P-35 immediately upon his arrest leading to the discovery of the stolen articles, must necessarily raise the inference that the appellant alone and no one else was guilty of having committed the murder of the deceased and robbery of her gold ornaments. The appellant had no satisfactory explanation to offer for his possession of the stolen property. On the contrary, he denied that the stolen property was recovered from him. The false denial by itself is an incriminating circumstance. The nature of presumption under illustration (a) to s. 114 must depend upon the nature of the evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that

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> *period. There was no lapse of time between the date of his arrest and the recovery of the stolen property."*
>
> (emphasis supplied)

118 Referring to the above, counsel contends that there was proper identification of the jewellery articles belonging to the complainant party and that the time gap between the offence of murder and dacoity as well as the discovery of articles was also not long. Besides, the death also took place at the same time when the accused persons were at the house of the complainant. Hence, the Court would be well justified in law to assume not only the offence having been committed by the respondent-accused persons but also to the effect that they had committed the murder of Vanita-wife of the complainant.

119 Learned counsel also refers to the judgment of the Supreme Court in the matter of ***Limbaji Vs. State of Maharashtra, reported as 2002(1) RCR (Crl.) 266***, which was based entirely on the recovery of articles. The relevant part of the judgment reads thus: -

> *The learned Sessions Judge acquitted the accused of the charges under Sections 302 and 392 but found them guilty under Section 411 IPC and sentenced each of them to rigorous imprisonment for two years. On appeal by the State as well as by the accused, the High Court of Bombay (Aurangabad Bench) having found the accused guilty of offences punishable under Section 302 read with Section 34 and Section 392 read with Section 34, set aside the judgment of the Sessions Judge. The High Court sentenced them to life imprisonment for the offence of murder and five years*

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rigorous imprisonment for the offence of robbery with the direction that both the sentences should run concurrently. The appeal of the State was allowed and the appeal filed by the accused was dismissed. Questioning the said judgment, the present appeals are filed. Leave to appeal was granted by this Court on 11.12.2000.

The case rests on circumstantial evidence of recovery of ornaments worn by the deceased, pursuant to the information furnished by the accused to the police. The High Court pressed into service the presumption under Section 114 (a) of the Evidence Act in support of its conclusion. It is the correctness of that view that falls for our consideration in this appeal.

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We are now left with the evidence of recovery of the ornaments of the deceased on the basis of the confessional statement of accused under Section 27 of Evidence Act, leaving apart for the time being the aspect concerning injuries inflicted on the deceased. The question then is whether there was discovery of incriminating articles in consequence of information received from the accused in custody and whether such discovery warrants a presumption to be drawn under Section 114 and if so, to what extent that presumption has to be drawn.

III. As the presumption under Section 114 of Evidence Act looms large in this case, a brief discussion on the basic postulates and evidentiary implications of presumption of fact may not be out of place. A presumption of fact is a type of circumstantial evidence which in the absence of direct evidence becomes a valuable tool

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in the hands of the Court to reach the truth without unduly diluting the presumption in favour of the innocence of the accused which is the foundation of our Criminal Law. It is an inference of fact drawn from another proved fact taking due note of common experience and common course of events. Holmes J. in Greer Vs. US [245 USR 559] remarked " a presumption upon a matter of fact, when it is not merely a disguise for some other principle, means that common experience shows the fact to be so generally true that courts may notice the truth". Section 114 of the Evidence Act shows the way to the Court in its endeavour to discern the truth and to arrive at a finding with reasonable certainty. Under the Indian Evidence Act, the guiding rules for drawing the presumption are set out broadly in the Section. Section 114 enjoins: "the Court may presume the existance of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case." Having due regard to the germane considerations set out in the Section, certain presumptions which the Court can draw are illustratively set out. It is obvious that they are not exhaustive or comprehensive. The presumption under Section 114 is, of course, rebuttable. When once the presumption is drawn, the duty of producing evidence to the contra so as to rebut the presumption is cast on the party who is subjected to the rigour of that presumption. Before drawing the presumption as to the existence of a fact on which there is no direct evidence, the facts of the particular case should remain uppermost in the mind of the Judge. These facts should be looked into from the angle of common sense, common experience of men and matters and then

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a conscious decision has to be arrived at whether to draw the presumption or not.

Among the illustrations appended to Section 114 of the Evidence Act, the very first one is what concerns us in the present case:

> *"The Court may presume - that a man who is in possession of stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."*

Taylor in his treatise on The Law of Evidence has this to say on the nature and scope of the presumption similar to the one contained in Section 114 (a) :

> *"The possession of stolen property recently after the commission of a theft, is prima facie evidence that the possessor was either the thief, or the receiver, according to the other circumstances of the case, and this presumption, when unexplained, either by direct evidence, or by the character and habits of the possessor, or otherwise, is usually regarded by the jury as conclusive. The question of what amounts to recent possession varies according to whether the stolen article is or is not calculated to pass readily from hand to hand.*
>
> *This presumption which in all cases is one of fact rather than of law, is occasionally so strong as to render unnecessary any direct proof of what is called the corpus delicti. Thus, to borrow an apt illustration from Maule J., if a man were to go into the London Docks quite sober, and shortly afterwards were found very drunk, staggering out*

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of one of the cellars, in which above a million gallons of wine are stored, "I think," says the learned Judge and most persons will probably agree with him "that this would be reasonable evidence that the man had stolen some of the wine in the cellar, though no proof were given that any particular vat had been broached, and that any wine had actually been missed."

xxx xxx xxx

V.(a) In the light of the above discussion, in the instant case the presumption under Section 114 illustration (a) could be safely drawn and the circumstance of recovery of the incriminating articles within a reasonable time after the incident at the places shown by the accused unerringly points to the involvement of the accused. Be it noted that the appellants who were in a position to explain as to how they could lay their hands on the stolen articles or how they had the knowledge of concealment of the stolen property, did nothing to explain; on the other hand, they denied knowledge of recoveries which in the light of the evidence adduced by the prosecution must be considered to be false. By omitting to explain, it must be inferred that either they intended to suppress the truth or invited the risk of presumption being drawn. Thus, the presumption as to the commission of offence envisaged by illustration (a) of Section 114 is the minimum that could be drawn and that is what the trial court did.

V (b). The question then is, applying illustration (a) to Section 114, whether the presumption should be that the accused stole the goods or later on received them knowing them to be stolen. Though the trial court observed that the accused "might have

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robbed" the ornaments of the deceased after he was murdered by someone else, it found them guilty of the offence under Section 411 IPC only which is apparently self-contradictory. On an overall consideration of the circumstances established, it is reasonable to presume that the accused committed the theft of the articles from the person of the deceased after causing bodily harm to the deceased. The fact that within a short time after the murder of the deceased, the appellants came into possession of the ornaments removed from the person of the deceased and the 1st accused offered one of the stolen articles for sale on that very day and the further fact that the other articles were found secreted to the knowledge of appellants coupled with non-accountal of the possession of the articles and the failure to give even a plausible explanation vis-à-vis the incriminating circumstances would go to show that they were not merely the receivers of stolen articles from another source but they themselves removed them from the person of the deceased. Thus, the presumption to be drawn under illustration (a) to Section 114 should not be confined to their involvement in the offence of receiving the stolen property under Section 411 but on the facts of the case, it can safely go beyond that. In this context, the three-Judge Bench decision of this Court in ***Sanwath Khan Vs. State of Rajasthan****, is quite apposite. While holding that from the solitary circumstance of unexplained recovery of the articles belonging to the deceased from the houses of the accused, the presumption of commission of offence of murder cannot be raised, the Court nevertheless held that they can be convicted of theft under Section 380 I.P.C. which was one of the charges against the accused. Another decision of relevance is* ***Shivappa Vs. State of Mysore*** *[1970 (1) SCC 487]. That was a case in*

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which bundles of cloth being carried in carts were looted by twenty persons and the accused were charged for dacoity. Searches which took place within a few days after the incident led to the recovery of large quantities of stolen clothes from their houses. On these facts the Court drew the presumption that the persons with whom the items of clothes were found were the dacoits themselves and the conviction was sustained. Hidayatullah, C.J. speaking for the three Judge Bench observed that "It is only when accused cannot be connected with the crime except by reason of possession of the fruits of crime that the presumption may be drawn." Drawing support from these decisions too, we are of the view that by invoking the presumption under Section 114 read with Illustration (a) thereto, the appellants must, as a first step, be held to have committed theft of ornaments which were removed from the person of the deceased and that they are not mere receivers of stolen property. Theft is a component of the offence of robbery and theft becomes robbery, if, in order to the committing of theft, the offender causes or attempts to cause death, hurt or wrongful restraint or instils fear thereof. Whether, on the facts, they shall be convicted for robbery is yet another aspect which we shall advert to a little later. We are only pointing out presently that if we stop at applying illustration (a) to Section 114, the accused can be safely convicted for the offence of theft rather than for the offence under S.411. What is the position if we look beyond illustration (a) is another aspect.

VI. (a) The above discussion paves the way for consideration of a more important question whether, having regard to the facts of this case, the presumption should be extended to the perpetration

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of the offence of robbery or murder or both? Presumption envisaged by illustration (a) to Section 114 has been stretched in decided cases to make a similar presumption as the basis for conviction for graver offences of robbery and murder, if they are part of the same transaction. Strictly speaking, such presumption does not come within the sweep of illustration (a), though in some cases illustration (a) has been referred to while upholding the conviction for robbery and murder. Extending the presumption beyond the parameters of illustration (a) could only be under the main part of the Section. The illustration only provides an analogy in such a case. With this clarification, let us examine whether there is scope to presume that the appellants committed robbery and murder sharing the common intention. While on this point, we have come across divergent approaches by this Court in various cases. In some cases, the extended presumption was drawn while in some cases the Court considered it unsafe to draw the presumption merely on the basis of recovery of incriminating articles from the possession of the accused soon after the crime. The decisions of this Court in Union Territory of Goa Vs. Beaventura D'Souza [1993 Supp. (3) SCC 304], Surjit Singh Vs. State of Punjab [AIR 1994 SC 110] and Sanwath Khan Vs. State of Rajasthan [AIR 1956 SC 54] fall in one line, whereas the decision in Gulab Chand Vs. State of M.P. [1995 (3) SCC 574) falls on the other side of the line. In the mid way we find certain decisions wherein the presumption was invoked as an additional reason to support the conclusion based on circumstantial evidence. We shall briefly refer to these decisions.

In Union Territory of Goa Vs. B. D'Souza (supra) a two-Judge Bench of this Court held that discovery of incriminating articles

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including gold ornaments of the deceased and the absence of explanation for the possession of stolen articles does not by itself justify a presumption that the accused committed murder. Suspicion however strong cannot take the place of proof. The finding of the Sessions Judge based on the presumption "does not stand scrutiny in the eye of law". Unless there is something else to show that the accused alone were in the company of the deceased, the presumption cannot be drawn. It was held that there were no circumstances connecting the accused with the murder. The Court however convicted the accused under Section 411 IPC. In a more recent case, namely, Ronny Vs. State of Maharashtra [1998 (3) SCC 625], the above decision was referred to and distinguished and the raison d'etre for not drawing the presumption was said to be that the injured witness did not implicate the accused and the recovery was after one month. However, on a perusal of the judgment in D'Souza case, it is not apparent that the injured witness was in a position to see and identify the accused at all. As regards the time factor, there was no categorical observation in D'Souza's case that the lapse of one month's time would weaken the presumption. Another judgment rendered by the same Bench was in the case of Surjit Singh Vs. State of Punjab (supra). It was held therein that recovery of watch belonging to the deceased from a pawn broker after 15 days of the date of occurrence on the basis of the information furnished by the accused was held to be insufficient to connect him with murder by invoking Section 114 of the Evidence Act. At the most, it was held that he can be convicted under Section 411 and accordingly he was convicted and sentenced. Another case which broadly falls within first category

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is that of Sanwath Khan (supra). As it is a three-Judge Bench decision, we may refer to it in some detail.

Two persons who were living in a temple were found lying dead in the temple premises. They succumbed to axe injuries. The house was found ransacked and almirahs etc. opened. One of the accused who was arrested 12 days later produced a gold kanthi which it was lying buried in his premises. Another accused who was arrested 17 days later produced a silver plate from his house where it lay buried in the ground. Both these articles belonged to the deceased. The High Court upheld the conviction by relying on the solitary circumstance of the recovery of two articles at the instance of the accused and the absence of explanation about their possession. On further appeal, the three-Judge Bench of the Supreme Court set aside the conviction under Section 302 and found the appellants guilty under Section 380 IPC. Mahajan, J. speaking for the Bench observed as under: -

> *"In the absence of any evidence whatsoever of the circumstances in which the murders or the robbery took place, it could easily be envisaged that the accused at some time or other seeing the Mahant and Ganpatia murdered, removed the articles produced by them from the temple or received them from the person or persons who had committed the murder."*

The Court, after having referred to the possibility of someone else murdering the deceased observed thus :

> *"Be that as it may, in the absence of any direct or*

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circumstantial evidence whatsoever, from the solitary circumstance of the unexplained recovery of the two articles from the houses of the two appellants the only inference that can be raised in view of illustration (a) to S.114 of the Evidence Act is that they are either receivers of stolen property or were the persons who committed the theft, but it does not necessarily indicate that the theft and the murders took place at one and the same time.

The accused produced these articles about a fortnight after the theft and the maximum that can be said against them is that they received these goods knowing them to be stolen or that they themselves stole them; but in the absence of any other evidence, it is not possible to hold that they are guilty of murder as well."

Having referred to the decisions of various High Courts, the Court concluded as follows: -

"In our judgment no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof."

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Now, it is time we refer to Gulab Chand Vs. State of M.P. [1995 (3) SCC 574] case, where presumption under Section 114 of the Evidence Act was carried to the utmost extent. In that case the accused were charged under Sections 120-B, 302, 394 and 397 for having committed the murder and robbery. The appellants were convicted under Section 380. On appeal by the State, the High Court reversed the order of acquittal and convicted the appellant Gulab Chand under Sections 302, 394 and 397. The conviction of the other accused was modified to one under Section 411. In that case, within a few days after the incident, on the search of the appellant's house, various articles were found including ornaments belonging to the deceased. Some of the ornaments were also recovered from a shop on the basis of the information given by the accused. The Court started the discussion with the preface: "it is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But, culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced." After referring to the test of time factor for drawing the presumption under S. 114 (a) as laid down in Tulsiram Kanu Vs. State (AIR 1954 SC 1), the Court observed, if the ornaments of the deceased were found in possession of a person soon after the murder, a presumption of guilt can follow. But if several months have expired, the presumption may not be permitted to be drawn. Having regard to the close proximity of the time of recovery and lack of credible explanation for the possession thereof and on account of dealing with the ornaments immediately after the crime, it was held that a reasonable

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inference of commission of offence could be drawn against the accused. In conclusion, the learned Judges observed:

In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (a) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments."

The above decision was cited with approval in the case of ***Mukund vs. State of M.P.*** *(1997 (10) SCC 130). The Court, having negatived the contention of the appellant's counsel that mere recovery of stolen articles from the house pointed out by the accused could only lead to the presumption that the offence was committed under Section 411 but not the offences under Sections 302 and 394, observed thus: -*

> *"If in a given case as the present one the prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered, a court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder. In drawing the above conclusion we have drawn sustenance from the judgment of this Court in Gulab Chand Vs. State of M.P.".*
>
> *At the same time, the Court was cautious enough to say that the other incriminating circumstances detailed earlier reinforced the ultimate conclusion. Various others*

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incriminating circumstances were referred to in the judgment.

Gulab Chand's case was also referred to in Ronney Vs. State of Maharahstra [1998 (3) SCC 625] and Sanjay Vs. State (NCT of Delhi) [2001 (3) SCC 193]. But it is to be noted that in all the three cases decided subsequent to Gulab Chand's case, there were additional circumstances which shed light on the involvement of the accused. So also in the case of Earabhadrappa Vs. State of Karnataka [AIR 1983 SC 446], presumption was raised that the accused who pointed out the places at which the ornaments and sarees of the victim were kept committed robbery and murder. Here again, quite a number of additional circumstances were noticed, apart from the recovery of stolen articles. Thus, as far as the factual matrix goes, only Gulab Chand's case stands apart. The recovery of the articles of victim soon after the crime at the instance of the accused and incredible explanation given by the accused for possession of the articles were held to be sufficient to raise the presumption of having committed robbery and murder, if they were otherwise part of the same transaction.

VI.(c) Whether the presumption could be further stretched to find the appellants guilty of gravest offence of murder is what remains to be considered. It is in this arena, we find divergent views of this Court, as already noticed. In Sanwath Khan's case, the three-Judge Bench of this Court did not consider it proper to extend the presumption beyond theft (of which the accused were charged) in the absence of any other incriminating circumstances excepting possession of the articles belonging to

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the deceased soon after the crime. However, we need not dilate further on this aspect as we are of the view that in the peculiar circumstances of the case, it would be unsafe to hold the accused guilty of murder, assuming that murder and robbery had taken place as a part of the same transaction. The reason is this. Going by the prosecution case, the deceased Baburao was hit by a heavy stone lying on the spot. The medical evidence also confirmed that the fatal injuries would have been inflicted by a heavy stone like article No.1. It is not the case of the prosecution that the appellants carried any weapon with them or that the injuries were inflicted with that weapon. There is every possibility that one of the accused picked up the stone at that moment and decided to hit the deceased in order to silence or immobilise the victim. If the idea was to murder him and take away the ornaments from his person, there was really no need to forcibly snatching the ear-rings before putting an end to the victim. It seems to us that there was no pre-mediated plan to kill the deceased. True, common intention could spring up any moment and all the three accused might have decided to kill him instantaneously, for whatever reason it be. While that possibility cannot be ruled out, the possibility of one of the accused suddenly getting the idea of killing the deceased and in furtherance thereof picking up the stone lying at the spot and hitting the deceased cannot also be ruled out. Thus two possibilities confront us. When there is reasonable scope for two possibilities and the Court is not in a position to know the actual details of the occurrence it is not safe to extend the presumption under Section 114 so as to find the appellants guilty of the offence of murder with the aid of S.34 IPC. While drawing the presumption under Section 114 on the basis of recent possession of belongings of the

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> *victim with the accused, the Court must adopt a cautious approach and have an assurance from all angles that the accused not merely committed theft or robbery but also killed the victim.*
>
> *VII In the result, we set aside the conviction of the accused under Section 302 IPC. We find the accused guilty of the offence punishable under Section 394 read with Section 34 IPC and accordingly convict the accused under Section 394 and sentence them to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/- each and in default to undergo further imprisonment for a period of three months. The appeals are thus partly allowed."*
>
> (emphasis supplied)

120 It is contended that the facts and circumstances of the case and the quick succession of events lead to no other possible inference but for the commission of the offence by the accused persons themselves. He also refers to the judgment in the matter of ***Sonu @ Sunil Vs. State of Maharashtra, reported as 2002 (2) RCR (Crl.) 631***.

121 Referring to the above, counsel contends that in these cases the inference with respect to commission of the other offences by the accused persons had been drawn with the aid of Section 114 of the Indian Evidence Act, 1872, solely based upon recovery of the material from the accused persons.

122 Counsel further refers to the judgment of the Supreme Court in the matter of ***Baiju Vs. State of Madhya Pradesh, reported as 1978 (1) RCR (Crl.) 588; Mukund @ Kundu Mishra Vs. State of Madhya Pradesh,***

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reported as 1997(3) RCR (Crl.) 79, as well as Dakkata Balaram Reddy and another Vs. State of Andhra Pradesh and another, reported as 2023 INSC, 411 wherein the Supreme Court had drawn a presumption to the extent of commission of offence under Section 302 IPC against the accused based upon the circumstantial evidence.

123 The relevant extract of judgment in case ***Baiju Vs. State of Madhya Pradesh*** reads as under: -

> *"13. We find that the High Court has made a mention of the circumstantial evidence which led it to conclude that the murders were committed by the appellant, including the evidence bearing on his repeated visits to the house of the deceased, his promise to beget a child to the family, by sorcery, his winning their confidence to the extent of persuading them to do whatever he liked, his ruse to get rid of Smt. Lakhpatiya by sending her to her parents' house at Narainpur after leaving her husband and her ornaments behind on promise of meeting her there on January 21, 1975, his failure to fulfil that promise, the death of Smt Lakhpatiya's husband Ramdayal and his and his other wife Smt. Fulkunwar at the "nala" where the appellant used to take them and Smt. Lakhpatiya on the pretext of practising sorcery, the death of Ramdayals mother Smt. Bhagwanti and his nephew Rambakas in the house the same night, the ransacking of the house and the commission of theft of several articles of Ramdayal including the transistor, the watch, the gold "addhis", the torch and ornaments etc., and the recovery of those articles either from the house of the appellant or at his instance. His counsel have not been able to point out how it could be said that any part of*

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this circumstantial evidence has been misread or that any error of law has been committed in taking the view that it was quite sufficient to prove the guilt of the appellant. As has been held by this Court in Wasim Khan v. The State of Uttar Pradesh 1956 SCR 191, recent and unexplained possession of stolen articles can well be taken to be presumptive evidence of the charge of murder as well.A similar view has been taken in Alisher v. State of Uttar Pradesh, (1974)4 SCC 254.

14. As has been stated, the prosecution has succeeded in proving beyond any doubt that the commission of the murders and the robbery formed part of one transaction, and the recent and unexplained possession of the stolen property by the appellant justified the presumption that it was he, and no one else, who had committed the murders and the robbery. It will be recalled that the offences were committed on the night intervening January 20 and 21, 1975, and the stolen property was recovered from the house of the appellant or at his instance on January 28, 1975. The appellant was given an opportunity to explain his possession, as well as his conduct in decoying Smt. Lakhpatiya and the other persons who died at his hand, but he was unable to do so. The question whether a presumption should be drawn under illustration (a) of Section 114 of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. Thus the nature of the stolen article, the manner of its acquisition by the owner, the nature of the evidence about its identification, the manner in which it was dealt with by the appellant, the place and the circumstances of its recovery, the length of the intervening period. the ability or otherwise of the appellant to explain his possession, are factors which have to be

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taken into consideration in arriving at a decision. We have made a mention of the facts and circumstances bearing on these points and we have no doubt that there was ample justification for reaching the inevitable conclusion that it was the appellant and no one else who had committed the four murders and the robbery. In the face of the overwhelming evidence on which reliance has been placed by the High Court it is futile to argue that the murders could not have been committed by a single person. As has been stated there is satisfactory evidence on the record to show that the dead bodies of Ramdayal and Smt. Fulkunwar were found at two different places."

124 The relevant extract of ***Mukund @ Kundu Mishra Vs. State of Madhya Pradesh***, reads as under: -

9. Mr. Jain, appearing for the appellants, firstly contended that the prosecution failed to establish that any incriminating article was recovered from the respective houses of the appellants, far less, that it was stolen at the time of the murders. We are not impressed by this contention of Mr. Jain for on perusal of the record we find that both the Courts below have discussed in details the entire evidence adduced by the prosecution and given cogent and convincing reasons for accepting the same. Having gone through the evidence we are constrained to say that no other reasonable view of it could have been taken. Mr. Jain next submitted that even if it was assumed that the articles stolen from the house of Dubeys were recovered from the appellants it could at best be said that they committed the offence under Section 411 Indian Penal Code but not the offences for which they stood

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convicted. We do not find any substance in this submission of Mr. Jain also. If in a given case as the present one the prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered, a Court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder. In drawing the above conclusion we have drawn sustenance from the judgment of this Court in Gulab Chand v. State of M.P. 1995(3) RCR 134: 1995(3) SCC 574, We hasten to add that the other incriminating circumstances detailed earlier reinforce the above conclusions, rightly drawn by the Courts below. We therefore find no hesitation in upholding the convictions as recorded by the trial Court and affirmed by the High Court."

125 The relevant extract of the judgment in the matter of **Dakkata Balaram Reddy and another Vs. State of Andhra Pradesh and another**, reads as under: -

"23. In this regard, it may also be noted that A2 was found in possession of a bag carrying some of the stolen ornaments and, therefore, such possession itself speaks against him, in terms of Section 114 (a) of the Indian Evidence Act, 1872. Being a fact especially within his knowledge, it was for A2 to explain as to how he came to be in possession of those stolen ornaments, under Section 106 of the Indian Evidence Act, 1872. However, no explanation was offered by him. As regards A1, it is the prosecution's case that he confessed to commission of the crime

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> *and upon being questioned as to the stolen gold ornaments, he himself went into the other room in his house and brought out a bag containing the gold ornaments. This part of his confession would, therefore, be admissible under Section 27 of the Indian Evidence Act, 1872, as it led to the recovery of the stolen gold ornaments.*
>
> *xxx xxx xxx*
>
> *25. Given the totality of the case, which demonstrates that the sequence of events unfolded in quick succession during the intervening night of 21.08.2008 and 22.08.2008, leading to not only identification of the accused by the witnesses present but also their apprehension and arrest, apart from seizure of the stolen gold ornaments and cash from their possession, it is amply clear that there was no time or possibility for the police to hoist a false case upon them. Minor discrepancies and shortcomings in the statements made by witnesses after passage of a few years would necessarily have to be discounted in such a scenario."*

126 Referring to the above, counsel contends that there is overwhelming evidence – primary, secondary, circumstantial as well as corroborative in the form of electronic evidence and Test Identification Parade followed by recovery. The evidence of dacoity and murder were in quick succession, hence, the tests as prescribed by the Supreme Court through catena of judgments stand fully satisfied.

DISCREPANCIES IN THE MEDICAL EVIDENCE

127 Learned counsel for the State and the complainant submit that the discrepancies pointed out by the defence in the medical evidence are neither

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material nor sufficient to discredit the prosecution case. It is contended that the post-mortem evidence establishes that Vanita sustained a serious head injury which was sufficient in the ordinary course of nature to cause death, and that the medical opinion is to be read with the ocular account of the complainant and the other surrounding circumstances. The difference in the description of the side or location of the injury in the inquest papers and the post-mortem record, as also the reference to blood on the clothes, is submitted to be a matter of description and not a contradiction going to the root of the case. It is further argued that the absence of corresponding injuries on the complainant does not negate the occurrence, particularly when the prosecution case is that the complainant was restrained and assaulted while the deceased was separately subjected to the fatal impact. The medical evidence, according to the prosecution, lends assurance to the circumstances proved on record and does not create a reasonable alternative hypothesis.

NON-EXAMINATION OF MATERIAL WITNESSES

128 It is argued by the counsel that all the circumstances of the case clearly lead to one unescapable legal inference that the accused persons were the only ones who were involved in the commission of the offence and there would be no reason to extend any benefit of doubt to the respondents-accused herein on account of the failure of the prosecution to examine the father and mother of the complainant Dr. Atul Arora. He contends that the aforesaid failure is not fatal, rather, it was inconsequential. Dr. Atul Arora specifically deposed to the effect that after the clinic hours were over, he had come over

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on the first floor i.e. the residential portion of the house and that he was sitting in the room along with his parents when he heard the shrieks of his wife and that upon hearing such a shriek, he came outside where he noticed the accused persons. They made him a hostage and that, on the pretext of meeting his parents for the last time, he made good his escape from the room of his parents in the face of imminent death and bolted the door from inside. It is thus not the case set up by the prosecution that the parents had been called out or had been assembled by the accused persons at the place where they committed the offence or they removed the gold ornaments. Thus, merely because they happen to be at the place of incident does not in any manner lead to an assumption that they are witnesses of significance. It not being the case of the prosecution that the occurrence in question had been seen by the said witnesses, their non-examination would be immaterial and would have no bearing on the case of the prosecution. A similar argument has also been raised with respect to the non-examination of Neelam, the nurse employed at the clinic. It is argued with vehemence that it is not the number of witnesses but the quality of evidence which determines the guilt. Once the deposition of the complainant Dr.Atul Arora, i.e the eyewitness of the incident, had been found satisfactory to establish the case of the prosecution, merely because the prosecution has not examined the other witnesses would not by itself render the case of the prosecution suspicious or doubtful.

129 Learned counsel contends that the argument advanced by the counsel for the accused that Gudiya i.e. wife of Ket Ram, had not been

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examined even though she had also been called to the place where all persons were held hostage is misconceived. Undisputedly, Ket Ram i.e. husband of Gudiya, was one of the suspects in the present case and it would be naïve to cite his wife as a witness to the incident as she was most unlikely witness to depose the truth and would instead make attempts to save her husband Ket Ram. It is contended that there was, however, no bar on the defence to not lead its evidence and they, having chosen not to examine any evidence in defence, cannot seek to build up their case on the non-examination of certain witnesses, whose testimonies would at best have only been corroborative.

130 Similarly, the non-examination of the neighbour, from whose's house the telephone call was made, is also inconsequential and has no bearing on the quality of the evidence or the credit, i.e. the testimony of the injured witness, i.e. the complainant Dr. Atul Arora.

131 Learned counsel further contends that for the same reasons, it would be immaterial that the landlord/owner of the house or the room from which the recovery had been effected was not examined. The prosecution is not required to establish the chain of ownership of the place from where the recovery was effected, rather, it was only to be seen as to whether the accused had exclusive knowledge with respect to the concealment of the proceeds of the crime. He submits that the recoveries may be effected even from open spaces or places not under the dominion of any specific individual. Thus, the ownership of the place wherefrom the recovery was effected is immaterial and is not crucial for the case of the prosecution and that merely on account of

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non-examination of the owner, the recovery would not be vitiated.

ARREST OF THE ACCUSED SHROUDED IN DOUBT

132 Adverting to the submission by the counsel with respect to the arrest of the accused being shrouded in doubt and that the encounter itself having been disbelieved by the Court which acquitted the accused persons in FIR No.13 registered for offence under Section 307 IPC, vide judgment dated 09.10.2025, it is contended that merely because there is a discrepancy about the mode and manner in which the accused, would not render the case false.

133 Learned counsel contends that in a worst scenario, the instances of the police going beyond board, more in an anxiety to restore confidence of the people, should not be viewed as a suspicious circumstance sufficient to impeach the entire investigation. An illegal arrest may only give rise to bail but the same does not lead to a conclusion that the entire investigation out to be discarded.

OFFENCE OF DACOITY NOT MADE OUT

134 Adverting to the argument raised by the counsel for the accused that the offence of dacoity is not made out, counsel contends that the totality of circumstances clearly shows that Poonam was involved in the offence. The law does not postulate presence of all persons to be physically present at the time of the offence for making out an offence of dacoity. Even when one of the persons is operating behind the scenes or have shared the information, the offence of dacoity may still be made out.

135 He contends that evidence in the case in hand clearly shows that

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the accused persons had distinct knowledge as to where the ornaments had been kept. As per the deposition of the witnesses, there were only three outsiders who were aware of the said items which included Khet Ram and his wife Gudiya and the third person was Poonam. Ket Ram and Gudiya were at the house at that point in time whereas Poonam was removed after she was found removing things of the complainant party.

136 One of the accused Vikram @ Vicky was an acquaintance of said Poonam and he used to often come to the clinic to pick up Poonam. Their acquaintance and relationship was established by the prosecution witnesses. He contends that the earlier conduct of Poonam i.e. her removal on account of dishonest acts and removal of belongings of the complainant party followed by her link to the accused and disclosure of a specific information, which was a privileged information, by the accused persons indicates towards the involvement of the Poonam in the present case. The conclusion is inescapable. Hence, even if the Court does not find any error in the acquittal of Ket Ram, it would still make out to a total of 05 persons who were involved in the offence. Hence, offence of dacoity would be made out along with the offence under Section 396 IPC.

OFFENCE OF MURDER NOT MADE OUT

137 Learned counsel for the State, the complainant and the learned Amicus Curiae contend that the absence of an eyewitness to the actual infliction of the fatal injury is not, by itself, a ground to disbelieve the charge

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of murder, where the circumstances proved on record form a complete chain. It is submitted that Vanita was alive when the accused entered the house, her shriek was heard by the complainant; the accused were present inside the house in the course of the armed robbery; and she was found dead shortly thereafter, with the medical evidence ruling out a natural or accidental death. The removal of the jewellery and other articles, the identification of the accused, the electronic evidence and the recoveries are relied upon as further corroborative circumstances. It is further argued that where the accused conjointly participated in the same transaction and the fatal injury was caused during its course, the prosecution need not establish which particular accused delivered the fatal blow, provided the requisite common participation and legal basis for constructive liability are proved. The prosecution accordingly submits that the circumstances, taken cumulatively and not in isolation, support the charge under Section 302 IPC.

OFFENCE OF LURKING HOUSE TRESPASS

138 Counsel contends that the law recognises conjoint complicity. He contends that Section 460 IPC stipulates that when duly armed persons enter the house of the deceased and even if any of them causes any fatal injury as a result whereof the person dies, there is no requirement on the prosecution to establish existence of any common intention as the same is immaterial. Section 460 IPC, being a substantive offence, hence, conjoint liability is fastened against all persons who were part of said group. He places reliance on the judgment of the Supreme Court in the matter of ***State of Andhra***

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Pradesh Vs. Sobhan Babu, reported as 2011 (2) RCR (Crl.) 897. The relevant extract thereof reads thus: -

> *"4. The facts as recapitulated reveal that the accused duly armed had entered the house of the deceased and when they had been challenged they had caused one fatal injury to the deceased. The High Court has found that as the case of the accused was not covered by Clause thirdly of Section 300 they were liable for conviction under Section 304 Part I and not Section 302. While dealing with this matter, the High Court has observed as under: -*
>
> > *"That being the settled law, we have to consider whether the two requirements contemplated by the third clause of Section 300 IPC have been fulfilled. We have already noticed that the testimony of direct witnesses pointing to one thing that A2 dealt a knife blow on the left abdomen of the deceased - The only question then to be considered is whether A2 intended to inflict injury that was found on the dead body of the deceased. It is time to recapitulate the evidence of P.Ws. 1 to 4 quickly. P.w. 1 testified that by the time he came on to the balcony of the first floor the deceased and A-2 were grappling and more particularly the deceased was on the top of A-2 pinning him down to the ground. It is to be noted that the deceased was an internationally renowned cyclist and physically well built person and whereas A2 is a shorter man. In the situation in which A-2 was placed made us to believe that he dealt a knife blow in the process of extricating himself from the clutches of the deceased and unfortunately the blow landed*

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> *on the vital part of the deceased, which ultimately led to his death. In these circumstances, the offence committed by A-2 comes within the purview of Section 304 IPC."*
>
> *5. We find that in the facts of the case, the observations given above are not correct. It cannot be ignored that the two accused had entered the premises at mid night duly armed with the intention of committing robbery. They were also charged under Section 460 IPC on that account. It is also in evidence that the deceased had managed to pin A2 down to the ground and A2 had caused one injury in the stomach of the deceased while he lay on top of him. Two injuries were thereafter caused on the thigh of the deceased by A2 and the other accused. It is also in evidence that when the neighbours arrived on the scene they too were caused injuries and threatened with dire consequences. To say, therefore, that there was no intention on the part of the accused to cause death would be carrying the matter a little too far. The High Court has been influenced by the fact that there was no common intention on the part of the accused to commit murder. We see, however, that the common intention can be inferred from the circumstances of the case and that the intention can be gathered from the circumstances as they arise even during an incident. The initial purpose was to commit robbery, but as the accused were armed with knives which they had used repeatedly and effectively, they were willing to kill as well and that they could not cause more damage as they were overwhelmed and pinned down.*

139 A reference is also made to the judgment of the Supreme Court in the matter of ***Haradhan Das Vs. State of West Bengal, reported as 2013(1)***

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RCR (Crl.) 755. The relevant extract thereof reads thus: -

> *"24. The accused persons were charged under Section 302 read with Sections 149, 148 and 326 as well as Section 460 IPC. The FIR had been lodged by Somnath Mukherjee son of the deceased who, as already noticed, expired during the course of the trial. As per the statement of witnesses, the miscreants were five in number. The present appellant had duly been identified by the injured witnesses as well as by other persons who were present in the house at the time of occurrence. The Trial Court acquitted three accused primarily on the ground that they had not been identified and there was no direct evidence implicating the said three accused in the commission of the crime. This finding of the Trial Court had attained finality as the State did not challenge the same. One accused died during the trial.*
>
> *25. The appellant alone has been found guilty and punished by the Trial Court and his sentence stands confirmed by the High Court. Five persons had got together to commit the offence of lurking house trespass and causing the death of Barindra Nath Mukherjee. Since there was no evidence of pre-determined mind of the accused persons to commit such an offence and except the appellant other accused were not even identified, the Trial Court acquitted the accused persons except the appellant. Even if other accused were acquitted in the above circumstances for an offence under Section 302/149 IPC, still there was direct evidence involving the appellant in committing the offence and particularly for causing the vital injuries to the deceased. The appellant had duly been identified by PW9, wife of the deceased who was present in the room itself. There is no reason to*

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disbelieve her statement. The injuries were caused with the intention to kill the deceased and they were caused on the vital parts of the body. From the medical evidence on record itself, it is clear that the ribs of the deceased were fractured, the abdominal wall was injured and on the head there was an injury which continued to bleed till death of the deceased. Due identification of role attributable to the appellant clearly establishes the ingredients of Section 302 IPC and thus, makes him liable to be punished for the said offence.

26. If five or more accused are charged with an offence under Section 302 read with Section 149 IPC and the Court finally finds that the person's identification, role and object in participation against some of those accused is not proved, still other persons forming the unlawful assembly and against whom the prosecution is able to prove its case beyond reasonable doubt can be punished for an offence under Sections 302/149 IPC. The statutory principle provided under the provision of Section 149 IPC will include the persons who were acquitted because that is the case of the prosecution. The conviction recorded by the Trial Court cannot be vitiated on that ground. This Court in the case of Khem Karan and Others v. The State of U.P. and Another [AIR 1974 SC 1567], while discussing somewhat similar circumstances and dealing with an offence under Section 307 read with Section 149 IPC, applied the principle of constructive liability and held as under:-

> *"7. What remains is the question of sentence. It is true that those assailants who did not receive injuries have escaped punishment and conviction has been clamped down on*

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> *those who have sustained injuries in the course of the clash. It is equally true that those who have allegedly committed the substantive offences have jumped the gauntlet of the law and the appellants have been held guilty only constructively. We also notice that the case has been pending for around ten years and the accused must have been in jail for some time, a circumstance which is relevant under the new Criminal Procedure Code though it has come into operation only from April 1, 1974. Taking a conspectus of the various circumstances in the case, some of which are indicated above, we are satisfied that the ends of justice would be met by reducing the sentence to three years rigorous imprisonment under S. 307, read with S. 149, and one year rigorous imprisonment under S. 147, IPC, the two terms running concurrently. With this modification regarding sentence, we dismiss the appeal."*

27. There is another perspective from which the present case can be examined. As already noticed, the accused persons were charged for the offence under Section 460 IPC and were tried for the same offence. The Trial Court has not returned any finding as to the guilt of the accused under Section 460 IPC and found the accused persons guilty of the offence under Section 302 read with Section 149 IPC. Even the High Court has not dwelled upon this discussion in the judgment impugned. The provisions of Section 460 IPC read as follows:-

> *"460. All persons jointly concerned in lurking house-trespass or house- breaking by night punishable where death or grievous hurt caused by one of them.—If, at the*

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time of the committing of lurking house- trespass by night or house- breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house- trespass by night or house- breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

28. The bare reading of the above provision shows that every person who is jointly concerned in committing the offence of lurking house trespass by night or house breaking by night is to be punished with life imprisonment where death has been caused or with imprisonment which may extend to ten years where grievous hurt has been caused to any person. This joint liability is based upon the principle of constructive liability. Thus, the person who has actually committed the death or grievous hurt would be liable to be punished under the relevant provisions i.e. Section 302 or Section 326, as the case may be, while committing the offence of lurking house trespass by night. It is possible that common intention or object be not the foundation of an offence under Section 460 IPC. Thus, to establish an offence under Section 460, it may not be necessary for the prosecution to establish common intention or object. Suffice it will be to establish that they acted jointly and committed the offences stated in Section 460 IPC. The principle of constructive liability is applicable in distinction to contributory liability. This Court in the case of Abdul Aziz v. State of Rajasthan [(2007) 10 SCC 283], clearly stated that if a person committing housebreaking by night

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> *also actually commits murder, he must attract the penalty for the latter offence under Section 302 and the Court found it almost impossible to hold that he can escape the punishment provided for murder merely because the murder was committed by him while he was committing the offence of housebreaking and that he can only be dealt with under Section 460.*

140 Learned counsel for the State, the complainant and the learned Amicus Curiae submit that the evidence establishes that the accused entered the dwelling house at night as part of a concerted plan, were armed, restrained the occupants and proceeded to commit robbery. Their conduct inside the house, the manner in which the occupants were controlled and the circumstances in which the deceased sustained the fatal injury are relied upon to show preparation for the use of force and joint participation in the occurrence. It is contended that the liability contemplated by Section 460 IPC is constructive in nature and does not require proof that every participant personally inflicted the fatal injury, provided the statutory foundational facts of the offence and joint participation are established. The prosecution accordingly submits that the acts of the accused must be viewed as one transaction and that the consequence caused by one of the persons jointly concerned cannot be considered in isolation from the common enterprise.

141 He contends that once ingredients of Section 460 IPC are made out, all persons would be liable to be convicted for commission of the offence irrespective of absence of specific attribution of specific role to the accused

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persons.

142 Learned amicus finally submits that the present case is a part eye witness and part circumstantial evidence based account. In the eye witness account, the accused persons entered into the house of the complainant and held the complainant as a hostage and asked for the keys to the almirah where the ornaments had been kept and also to the extent whereby they had snatched the cash amount of Rs.1,00,000/- from the complainant. The aspect as to the murder of his wife by the accused persons is based upon circumstantial evidence, since he is not an eye witness to that part of the incident. However, considering the fact that he came out of the house only upon hearing the shrieks of his wife and taking into consideration that the prosecution witness specifically stated that the injury was homicidal and was not self sufferred. A specific question in this regard was also put to the doctor, which he satisfactorily explained that he could not have been self-sustained or be caused on account of any slippage. The same establishes the involvement of the accused persons in the commission of the offence and inference has to be drawn against them with the aid of Section 10 read with Section 114 of the Indian Evidence Act, 1872.

OFFENCE UNDER SECTIONS 395 AND 397 IPC AND THE ARMS ACT

143 Learned counsel for the State and the complainant contend that the evidence establishes a concerted armed robbery in which the occupants were threatened and restrained, whereas cash and jewellery were forcibly

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removed and the complainant was assaulted while his wife was murdered. It is submitted that the number of participants must be assessed with reference to the persons conjointly committing or aiding the robbery and that a participant who facilitates the offence from behind the scenes need not necessarily be physically present inside the house. The prosecution relies upon the alleged prior acquaintance between Poonam and Vikram @ Vicky, the specific knowledge displayed by the assailants regarding the place where the jewellery was kept, the CCTV footage, identification, call detail records and recoveries as circumstances supporting the allegation of concerted participation. It is further contended that the firearm-related offences are supported by the recoveries, the sanction and the other evidence led by the prosecution and that the defence cannot seek for an acquittal merely by arguing that the weapons were first seized in a separate case.

144 No other arguments have been raised by counsel for either of the parties.

CONSIDERATION AND CONCLUSION

145 We have heard learned counsel appearing on behalf of the respective parties and have gone through the evidence as well as the precedent judgments relied upon by them in support of their respective arguments.

146 The case raises crucial questions as to whether the accused committed the offences in question and also as to whether a case for infliction of capital punishment is made out or not. In the said process, issue as to significance, reliability and admissibility of Test Identification Parade;

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joint/simultaneous disclosure followed by a joint recovery and its legal significance and admissibility under section 27 of the Evidence Act; admissibility of the electronic record and the Certificate under Section 65B and its validity as per the Indian Evidence Act, 1872 when the same is issued by a family member and not the owner and the conjoint criminal liability where direct evidence as to some of the offences are not available.

147 Before proceeding further in the matter, it would be apt to refer to the relevant evidence led by the parties.

148 The complainant Dr. Atul Arora, while appearing as PW.1, gave a detailed account of the manner in which the incident had taken place. The same in entirety is, however, not repeated to avoid repetition, and only the relevant extract necessary for adjudicating the case is being adverted to.

149 In his deposition in the Court, PW.1 Dr. Atul Arora-complainant stated that he went upstairs to his residential portion on 09.01.2023 at about 9:20 P.M. and came out of the room of his parents on hearing the screams of his wife Dr. Vanita and as soon as he stepped out of the room of his parents, he was overpowered by two young men having guns in their hands respectively. One of them hit him on his head with the gun in his hand, while the other took him at gunpoint by placing it on his neck. They threatened to kill him in case the complainant made a noise and pushed the complainant towards the drawing room and made him sit on the Sofa set. They demanded the mobile phone and also asked him to hand over the cash and the keys. The complainant was having Rs.1 lakh in cash and some keys etc. which were

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handed over by him to the accused persons. Then they asked about the Mandir in the house and about the keys of the almirah situated just above the Mandir. They also stated that they knew that all the jewellery was lying in the said Almirah. Another young man, wearing a muffler on his face, came to the spot and asked the same questions. The other two persons went in search of his house while one person stood guard on the complainant. The person with the muffled face came into the kitchen with the DVR of the CCTV cameras installed at the house and broke the DVR and took out the hard disc and tried to burn the same on the Gas stove and later put the same in his jacket. The second person was holding a bag in his hand containing the jewellery belonging to his family. The complainant requested them to go away from the house since they had taken whatever they needed. The accused persons started looking at each other and from the conversation, the complainant gathered that they were planning to kill him. He thus requested to meet his parents, who were in another room, for one last time. The person who was holding him at gunpoint followed him. The complainant entered the room and bolted it from inside. When he asked for the mobile phone from his mother, she informed him that the accused had also taken the same away. The wires of the intercom had been cut and the telephone had been disconnected. He opened another door of the room of his parents, which opens towards the back side of the house. A Government school is adjacent to the back side. He jumped from the balcony of his house into the said school and scaled the school wall with the help of a ladder and then informed one of the neighbours, Ashok and

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narrated the entire incident to him. He made a telephone call to the police, whereupon PCR reached there. The accused had already left by that time. He found his wife Vanita lying dead in the bakery of the residence. Blood was oozing out from her nose as well as her mouth. Seeing the same, the complainant went into a shock. Certain persons standing by him called his daughter and intimated her about the incident. Other persons also reached there. He found the almirah broken and the articles were lying on the floor. It was informed by him that he suspected his domestic help Poonam and her boyfriend Vikram. It was also conveyed by him that he had removed the domestic help Poonam in July 2022, as she was noticed stealing the valuables from the house and also that she was aware of where the jewellery was kept in the house by his wife. The other domestic help, Ket Ram and his wife Gudiya, had also come to the spot. He suspected the person with the muffled face was Vikram, on the basis of his physique and voice. It is also stated by him that four persons entered the house. The said witness also proved his statement as well as the list of articles which was handed over by him on 10.01.2023 to the police and the same was Ex.P2. He also identified and proved various documents pertaining to the investigation of the case. His medico-legal examination was proved as Ex.P6. He further stated that he received a telephonic message on 11.01.2023, from the SHO Satish Kumar to reach the Court of the Chief Judicial Magistrate, Kurukshetra. He reached there at about 2:00 P.M. and went inside the Court of the Chief Judicial Magistrate, who asked him to sit in the adjacent courtroom. He was called

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after about 40 minutes by the Chief Judicial Magistrate in the Courtroom where there were 08 persons with muffled faces standing in the Court. On the directions of the Chief Judicial Magistrate, all the 08 persons removed the clothes from their faces and the complainant was asked to identify them as to whether they were the assailants who entered the house on 09.01.2023. The complainant identified 04 accused persons out of the said 08 persons and then left the Courtroom. He also identified the jewellery items belonging to his family vide memo Ex.P7 and received the same on superdari by moving an application in the District Court. He also proved that the jewellery was photographed and photographs of the same were proved as EX.P10 to Ex.P12 and that photographs of the house as Ex.P13 to P.25. He proved the evidence collected by the police and also deposed that police had taken the CCTV footage of the camera installed in the hospital premises, from his son-in-law. The witness specifically answered the questions that he had seen the 04 accused persons at the time of the commission of the crime at his residence and that at the time of Test Identification in the Court, none of the persons was moving or walking in the courtroom. A specific query was put to the witness that the complainant had not specifically identified the person to whom he had handed over the cash amount of Rs.1 lakh. The complainant replied that since he was not asked to identify the person to whom he had given the cash, hence, the same was not done and that he can do it even now. The defence counsel, however, cut short the cross on the said aspect and did not seek any specific identification of the offender. It was also stated by the

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complainant that the assailants were in the house for about 20 minutes and one person was continuously guarding him, while others moved around the house and hence, he has seen them with his own eyes. He stated that he has CCTV cameras installed in the hospital and residential premises, but he had not seen the footage because he was perplexed and was in a shock. He thus asked his son-in-law, Amit, to show the CCTV footage to the police and also gave him the DVR password, but his son in law already had it. He stated that he did not see the CCTV footage at any point in time prior to the Test Identification Parade. The relevant extract of the cross-examination reads thus: -

> *"Q. Whether you had got recorded in your statement Ex.P1 as well as other statements under section 161 Cr.P.C. that you can identify all the four assailants?*
>
> *Ans. I had told the police that I had seen all the four accused when they were committing the crime in my residence.*
>
> *xxx xxx xxx*
>
> *Q. Whether you had identified specifically any of the assailants as the person to whom you had given the cash of about Rs.1 lakh during the test identification parade in the court of learned CJM, Kurukshetra?*
>
> *Ans. Nobody asked me to identify the person to whom I had handed over the cash during the test identification parade. If you ask me now, I can tell the same.*
>
> *xxx xxx xxx*
>
> *Since the CCTV cameras are installed in my hospital as well as*

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in the residential premises, the general control and supervision remains with me. Just after the incident, I did not see the CCTV recording as I was not in a condition to do so being perplexed and shocked. As far as observing the CCTV footage by the police is concerned, I had asked my son in law Amit to show the CCTV footage to the police and I had given the password of the DVR to him but he already had the password. I had not even seen the CCTV footage at any point of time prior to test identification parade."

150 The witness specifically stated that he had not levelled any allegation against the accused Ket Ram in any of his statements and that he had not seen as to which of the accused had robbed his mother. Rather, he further informed that statement Ex.P1 was recorded on the intervening night of 9.1.2023/10.1.2023 at about 1:30 to 2:00 A.M. He also stated that one of the accused was wearing a red T-shirt while another was wearing a T-shirt having an emblem of ADIDAS. Another accused was wearing a T-shirt starting with the alphabet 'SU', but he does not remember other alphabets. He stated that at the time of test identification, the accused were not wearing the same clothes and that 08 persons were wearing a similar type of clothes; however, none of them was wearing the same/similar clothes as were worn by the accused at the time of the incident. He was also shown a coloured printout of a news item and stated that the first two muffled-face persons from left to right were wearing the same clothes as worn by two of the assailants at the time of commission of the crime. The witness also fairly stated that he had not

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witnessed the accused giving beatings to his wife and parents and could not give details as regards the pixel of the CCTV cameras installed in the house or the hospital. He did admit about the presence of PW Neelam, i.e the Nurse on night duty and pleaded ignorance about the software installed in the DVR of the CCTV cameras.

151 He further stated that he did not suspect the involvement of Ket Ram in the conspiracy of the commission of the crime but did state that both of them i.e. Ket Ram and his wife Gudiya, knew as to where the DVR and CCTV cameras were installed and where the jewellery was kept.

152 PW2. Amit Kumar, son-in-law of the complainant, proved the CCTV footage of Dr. Atul Arora Hospital, i.e. the place of occurrence. The relevant part of the deposition of PW.2 reads thus: -

> *"Stated that I am married to Dr. Ananya, daughter of Dr. Atul Arora, resident of House No.105/13, Urban Estate, Kurukshetra. CCTV cameras along with DVR were installed by my father in law Dr. Atul Arora but the said camera and DVR were managed by me as passwords were with me. I had taken CCTV footage of dated 09.01.2023 because murder of my mother in law took place along with robbery/dacoity. CCTV footages were transferred by me in pen drive Ex.MO1 and I also gave certificate under section 65 B of Indian Evidence Act in this regard Ex.P32 to the police and the same were taken into possession vide memo Ex.P33, which bears my signatures.*
>
> *2. At this stage, pen drive Ex.MO1 is played with the*

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permission of the court. On seeing the same, the witness states that these are the same CCTV footages of aforementioned date."

153 It is also observed that when the certificate Ex.P32 pertaining to Section 65-B of the Evidence Act, 1872, was exhibited, no objection was raised about the mode and manner of proof. The said witness also deposed that although he was not the owner of the CCTV cameras, he used to operate the CCTV cameras and the DVR in the hospital and used to visit Kurukshetra in routine. He also admitted that he was aware of the password. He also specifically deposed that the time was not changed in the CCTV footage, as the same showed the time as set in the DVR. He admitted that there is no mention of any make, model or any type of computer, laptop, etc. in the certificate but informed that it was an HP make, black colour desktop and the CCTV footage had been preserved in that. He denied the suggestion that the footage was not clear and that the assailants could not be seen in the said CCTV footage.

154 Dr. Randeep Kumar, Senior Scientific Officer/Scene of Crime, In-charge Mobile Forensic Science Unit, Kurukshetra appeared as PW.3. He proved the part of the investigation conducted in his presence and the report prepared by him. He stated that he came to the spot and that he inspected the ground floor but could not see anything on the walls and floor of the room.

155 Dr. Naresh Kumar, who had performed the post-mortem of

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Vanita, appeared as PW.5. He noticed an injury of 7x5 cm on the right temporo-occipital region on the scalp. There was a reddish contusion of size 2x1 cm over the left side of the nose, which reflected that the nasal bone was fractured through and through. The fracture ends of the bone showed infiltration of blood in its bony trabeculae. There was another contusion of 15x2 cm present obliquely over the lateral aspect of the left side of the upper 1/3rd of the back. On dissection, underlying soft tissues were ecchymosed. A reddish abrasion of 14x9cm was also found present obliquely over the lateral aspect of the left side of the abdominal wall, situated 16cm above the left anterior superior iliac spine and 30cm left to midline. There was another contusion 2.5x2 cm over the anterior aspect of the middle 1/3rd of the right thigh.

156 The doctor proved the injuries to be the cause of death and that all injuries were ante mortem in nature and opined that injury No.1 alone was sufficient to cause death in an ordinary course.

157 He proved the medical record about the post-mortem and other evidence and material objects handed over by him to the Investigating Officer. The doctor specifically deposed that injury No.1 could be seen only after removing the brain matter and remaining dura from base to skull. He specifically denied that injuries No.1 and 2 were connected to each other. He deposed that injury No.2 could be caused by a single fist blow. He, however, specifically opined that injury No. 1 was caused by a blunt weapon or by use of blunt force. It is also stated that the possibility of stucking of hair of the

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deceased at the site of the wall cannot be ruled out, but the said possibility is remote. The relevant part of the cross-examination reads thus: -

> *"Injury No.1 was caused by a blunt weapon or by use of blunt force. Possibility of stucking of hair of the deceased at the site of the wall where she was hit, cannot be ruled out. However, the possibility is remote."*

158 He specifically opined that all the injuries were ante-mortem in nature and there were no post-mortem bruises as there was no ecchymosis on dissection of the wounds. It was also opined that the possibility of sustaining a linear fracture shown as injury No.1 in the PMR cannot be ruled out as being caused by impact of striking of the person against the wall and the same could not have been sustained as a result of fall. The relevant extract reads thus: -

> *"Volunteered that depressed fracture can occur by blunt weapon but it also varies from force to force by the blunt weapon. Possibility of sustaining the linear fracture as mentioned in injury No.1 in PMR Ex.P5 cannot be ruled out being caused by the impact of striking of the person against the wall. Volunteered that pattern and distribution of injuries in this case is not consistent with a fall because injuries were present on the both sides of body."*

159 The doctor was also cross-examined as to whether the injury, viz. fracture in the anterior cranial fossa, could also be sustained as a result of direct impact from a forward wall to which the doctor specifically replied that even though such an injury could be caused, however, in the present case,

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there was no corresponding injury on the head or face, thus, the said injury could not be the result of a fall. The relevant part of the cross-examination is extracted as under: -

> *"Volunteered that if a person fall forward then there must be corresponding injuries on head or face. In present case, there were injuries present only on the left side of nose."*

160 In response to the question as to whether injury No.1 could have been sustained by striking the head into the wall once, the doctor specifically answered that there is a least possibility that injury No. 1 could be sustained by striking the head into the wall only once. The relevant part of the cross-examination reads thus: -

> *"Q. Whether the whole injury No.1 as mentioned in PMR can be caused by striking the head into the wall once?*
>
> *Ans. There is least possibility that injury No.1 could be sustained by striking the head into wall once."*

161 Dr. Dinesh Sharda, Medical Officer, LNJP Hospital, Kurukshetra, who medico-legally examined the complainant, appeared as PW.6 and proved the medico-legal report. He found 04 injuries on the person of the complainant, which are extracted as under: -

> *"1. Diffuse swelling present over right parietal region and complaint of pain at the injury site.*
>
> *2. Diffuse reddish-blueish contusion with abrasion of size*

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4 X 4 cm present over right knee on medial aspect."

3. Diffuse reddish contusion of size of 6 X 5 cm present over left iliac crest.

4. Complaint of backache.

162 The doctor also opined that the possibility of injuries No.1 to 3 having been sustained due to a jump from a height of 15 feet cannot be ruled out. The same reads thus: -

"Possibility of injuries No.1 to 3 as mentioned in Ex.P6 being sustained due to a jump from a height of 15 feet cannot be ruled out."

163 Dr. Navjeet Klair, the Chief Judicial Magistrate, appeared as PW.11 and deposed about the Test Identification Parade undertaken in her presence. The relevant extract thereof reads thus: -

"That on 11.01.2023, I was posted as Chief Judicial Magistrate, Kurukshetra. That day, an application Ex.P47 was moved by police for getting Test Identification Parade. Thereafter, an order Ex.P48 was passed. Thereafter, Test Identification Parade was conducted in my presence and I prepared my report Ex.P49. I had also passed another order Ex.P50 with regard to the proceedings. On the same day, another application Ex.P51 was moved for getting certified copies of order and Test Identification Parade report. Certified copies above-mentioned were supplied to the police. I also passed an order Ex.P52 with regard to dispose of application for Test Identification Parade."

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164 The Chief Judicial Magistrate also stated that she has passed the order for conducting the Test Identification Parade on the application moved by the investigating officer. The application has been proved as Ex.P47 and the report has been proved as Ex.P49. She stated that the Test Identification Parade was conducted in the working hours and all the persons for the Test Identification Parade had been arranged by the Investigating Agency. She also deposed that all the four persons were identified, but accused Vikram could not be specifically identified at the first glance. It was however also admitted by her that he later identified Vikram @ Vicky as the person who used to pick up Poonam to the clinic. The relevant part of her deposition reads thus: -

> *"Investigating Agency had arranged all the eight persons for conducting Test Identification Parade. I do not recollect exactly but Inspector Prateek might have been conducting investigation. During the Test Identification Parade, the complainant had not identified any of the eight persons as Vikram. However, the complainant had identified all the accused."*

165 The said witness denied any disclosure of the identity of the person identified by the complainant. The relevant extract of her cross-examination reads thus: -

> *"I proceed to conduct the Test Identification Parade. Eight persons with muffled faces (with black colour cloth) of similar height and gait were made to stand in the court room in a line. The accused namely Vikramjeet @ Bittu was made to stand at Sr.*

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no. 2, accused Vikram @ Vicky was made to stand at Sr. no. 5, accused Sunil was made to stand at Sr. no. 6 and accused Manish was made to stand at Sr. no. 8 (i.e. last position) of the line starting from left to right.

The complainant Dr. Atul Arora was thereafter called inside the court room from the main entry meant for public and Advocates. On appearance of the complainant, all the eight persons, who were standing in the line with muffled faces, were asked to remove their face clothes. The complainant was then asked whether he could identify any of the assailants/accused persons out of the above referred eight persons standing in a line. The complainant identified the person standing at Sr. no. 2 of the line starting from left to right being one of the assailants. The complainant then identified the person standing at Sr. no. 6 of the line starting from left to right as another assailant and submitted he is the one who had held him at gun point on the date of incident in question. The complainant thereafter identified person standing at Sr. no. 8 of the line starting from left to right as one of the offending persons. The complainant then looked at the persons again and identified the person standing at Sr. no. 5 of the line starting from left to right and submitted that on the date of incident this person had covered his face with muffler but he recognized him as he came to his clinic thrice with Poonam, who used to work in their house.

Thereafter, the test identification proceedings stand completed.

This report be tagged with the remand papers."

166 The police officials, viz. ASI Surinder Kumar, who registered the

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FIR on receipt of information about the movement and whereabouts of the accused persons, appeared as PW.19, while Jasbir Singh, who is the Jija of accused Poonam, turned hostile and appeared as PW.27. The first Investigating Officer, Inspector Satish Kumar, appeared as PW.30, while the second investigating officer, Inspector Prateek Kumar, STF, Ambala, appeared as PW.32. The same are, however, not being adverted to at this juncture.

167 The position in law needs no affirmation that the prosecution evidence has to be examined as a whole and is not examined in bits and pieces by searching for every possible infirmity in one individual piece of evidence divorced from the remaining evidentiary circumstances. The prosecution evidence has to be seen more as solving a jigsaw puzzle where once the major pieces are put together, the rest automatically point out to the place of their fitment. In an investigation as well as evaluation of evidence, a similar approach is required to be followed and a court of law is to examine whether the circumstances, when considered cumulatively, constitute a coherent and complete chain leading to a safe reasonable inference about participation of the accused in the occurrence and whether such circumstances are consistent with their guilt and inconsistent with any reasonable hypothesis of innocence.

168 At this juncture, it shall be significant also to keep the fundamentals of the law of evidence in mind. The provisions of the Evidence Act may be both substantive and procedural and that while applying the procedural provisions, it needs to be borne in mind that they are handmaiden

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of justice. While it is important that an innocent is not incarcerated, equally important is the need that a guilty should not escape the gallows of law. Once an evidence is admissible and satisfies judicial conscience about the existence of a fact, on the yardstick of ordinary and reasonable prudence, in the normal course of events, human conduct and business, a Court is entitled to presume existence of facts and deem it as proved since the Evidence Act, 1872 specifically provides that a fact is said to be proved in court of law when, after considering the matters before it, the court either believes that it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that it exists. The language of the section signifies a legislative beauty where the prescribed test is not that a fact has to be proved in a water tight way in its all dimensions, rather it choses to use the expression 'probable' as well as 'supposition' as to the existence of a fact from the yardstick of a prudent man. Hence, the legislature never directed an extreme test for proving of a fact and it was conscious that prescribing such a standard of proof would be devastating. There can be no investigation where some lose end, on an extreme parameter, would not be left unproved as each fact proved by way of an evidence would give rise to proving the admissibility of the corroborative evidence as well. The chain may thus become unending.

169 In this regard, it shall be relevant to make a reference to the provisions of the Indian Evidence Act, 1872, which have a vital bearing. The same are extracted as under: -

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"Section 3-

xxx xxx xxx

"Fact". - "Fact" means and includes –

(1)any thing, state of things, or relation of things, capable of being perceived by the senses;

(2)any mental condition of which any person is conscious.

xxx xxx xxx

"Document" - means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

xxx xxx xxx

"Proved". - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved" - A fact is said to be disproved when, after considering the matter before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved". - A fact is said not to be proved when it is neither proved nor disproved.

xxx xxx xxx

4. "May presume".

Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until

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it is disproved, or may call for proof of it.

xxx xxx xxx

10. ***Things said or done by conspirator in reference to common design****.-Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.*

xxx xxx xxx

25. Confession to police officer not to be proved. *No confession made to a police officer, shall be proved as against a person accused of any offence.*

xxx xxx xxx

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.*

xxx xxx xxx

56. Fact judicially noticeable need not be proved. *No fact of which the Court will take judicial notice need to be proved.*

xxx xxx xxx

59. Proof of facts by oral evidence. *All facts, except the [contents of documents or electronic records], may be proved by oral evidence.*

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***60. Oral evidence must be direct**. Oral evidence must, in all cases whatever, be direct; that is to say-*

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

xxx xxx xxx

***106. Burden of proving fact especially within knowledge**. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

xxx xxx xxx

114. Court may presume existence of certain facts.

The Court may presume the existence of any fact which it thinks

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likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume -

(a) that a man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

xxx xxx xxx

***167. No new trial for improper admission or rejection of evidence**. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision."*

170 Referring to the above, counsel further contends that the recovery of concealed objects having been made on the basis of the disclosure statements recorded in quick succession was again upheld as admissible and protected under Section 27 of the Indian Evidence Act, 1872.

EVIDENCE AND RELIABILITY

47. Before analyzing the evidence on record, we deem it fit to discuss the relevant principles applicable to the facts and circumstances of the present appeals. It is the foundational duty of the Court to make an endeavor and find out the truth. Evidence is the material for unearthing the truth. In order to do so, a fact

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has to be proved by taking due note of the matters made available before the Court. To prove a fact, the adequate parameter is the degree of probability.

Rajesh Yadav and Anr. V. State of U.P., (2022) 12 SCC 200.

"Principles of law

11. Section 3 of the Evidence Act, 1872:

"3. Interpretation clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context—

"Evidence".—"Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

***"Proved**".—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.*

***"Disproved"**.—A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."*

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12. Section 3 of the Evidence Act defines "evidence", broadly divided into oral and documentary. "Evidence" under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an "adjective law" highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.

13. The definition of the word "proved" though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the "matters before it". The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence*.*

14. Matters are necessary, concomitant material factors to prove a fact. All evidence would be "matters" but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court's sojourn in deciphering the truth. Thus, the definition of "matters" is exhaustive, and therefore, much wider than that of "evidence". However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.

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15. Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

16. In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word "matter", and for that purpose, the definition of the expression of the words "means and includes", meant to be applied for evidence, has to be imported to that of a "matter" as well. Thus, a matter might include such of those which do not fall within the definition of Section 3, in the absence of any express bar.

17. What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as

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to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it*.*

18. The word "prudent" has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a Judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a Judge. It is only after undertaking the said exercise can he resume his role as a Judge to proceed further in the case.

19. The aforesaid provision also indicates that the court is concerned with the existence of a fact both in issue and relevant, as against a whole testimony. Thus, the concentration is on the proof of a fact for which a witness is required. Therefore, a court can appreciate and accept the testimony of a witness on a particular issue while rejecting it on others since it focuses on an issue of fact to be proved. However, we may hasten to add, the evidence of a witness as whole is a matter for the court to decide on the probability of proving a fact which is inclusive of the credibility of the witness. Whether an issue is concluded or not is also a court's domain. Appreciation of evidence

20. We have already indicated different classification of evidence. While appreciating the evidence as aforesaid along

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with the matters attached to it, evidence can be divided into three categories broadly, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters.

21. The aforesaid principle of law has been enunciated in the celebrated decision of this Court in ***Vadivelu Thevar v. State of Madras, 1957 SCR 981: AIR 1957 SC 614****: (AIR p. 619, paras 11-12)*

> *"11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that 'no particular number of witnesses shall in any case, be required for the proof of any fact'. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact to call any particular number of witnesses. In England, both before and after the passing of the Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying*

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down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well-recognised maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding Judge comes into play. ***The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally***

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***speaking, oral testimony in this context may be classified into three categories, namely**:*

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. ***It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the***

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> ***prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable****. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."*

171 The broader principles of law of evidence and the governing statutory provisions of the Evidence Act, 1872 clearly prescribe that evidence remains to be examined on the touchstone of the reasonable person.

172 It is in the above background that the arguments raised by the respective parties are being dealt examined.

I CREDIBILITY OF THE TEST IDENTIFICATION PARADE

173 Adverting to the issue of the Test Identification Parade not being conducted in accordance with law and the argument raised by the learned Senior Counsel for the accused on the points agitated by him about the defects noticed and the shortcomings in the Test Identification Parade as well as the response furnished by the respondents.

174 It is not in dispute that instructions had been issued in the year

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1936 and 1946 prescribing guidelines to be followed while conducting the Test Identification Parade. A perusal of the same shows that the requirements prescribed in the Test Identification Parade may be classified into two different categories. While one part of the instructions incorporated in the High Court Rules and Orders is to be strictly adhered to, the second part may not be equally sacrosanct. The part of the instructions which is largely procedural i.e. preparation of lists of persons included in the TIP, the note about the identification by the witnesses about its being wrong or being in relation to any specific act and connection or recording of the objections, if any, by accused or identification witness are largely non mandatory guidelines. The mandatory precautions prescribed lay down the precuations to be ensured viz non disclosure of the identity of the accused to the witness, and the ensure that the identity does not get disclosed by secluding the witnesses, accused as well the prosecuting agency isolated. The breach of non mandatory guidelines may not necessarily impact the admissibility of the evidence.

175 Position in law is well settled that a Test Identification Parade is merely a corroborative evidence and largely a tool for the investigating agency and it is not prescribed under the Evidence Act as a part of evidence. Hence, the issue of burden of proof, as prescribed for a fact in issue, would not be read into a Test Identification Parade. Its admissibility as a corroborative secondary evidence, has to be tested on the satisfaction prescribed for a corroborative evidence and no further. The primary evidence

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is still the identification by the victim/eye-witness.

176 It also flows from a perusal of the instructions issued and incorporated in Volume 3, Chapter XI-C , Part -C of the High Court Rules and Orders, that the said instructions had been issued by the Punjab Government for guidance of the Magistrates, viz the Executive Magistrates. The instructions were supplied to the District Magistrate for updating the Executive Magistrate about the procedure to be followed. Subsequently, the provisions of the Code of Criminal Procedure, 1973 were amended, and Section 54-A was incorporated empowering the Judicial Magistrates to conducting of the Test Identification Parade in their presence, as per the procedure that may be prescribed by the Judicial Magistrate.

177 In the present case, undisputedly, the identification took place in the presence of the Chief Judicial Magistrate herself and her presence lends credence to the identification procedure that had been followed. She specifically deposed that the identity of the accused had not been disclosed to the complainant and that the same had been zealously preserved. She also deposed as to the persons being of similar height and looks and also that the witness identified all the accused. Hence, a mere non-preparation of the list of the other persons who were joined in the Test Identification Parade as decoys would thus not vitiate the Test Identification.

178 Needless to reiterate that the position in law is well settled that the TIP is largely meant as an aid to investigation and not as a primary evidence for determination of the guilt of the accused. The identification in

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court is still regarded as the primary evidence.

179 A higher degree of sanctity has been attached under to the Test Identification Parade conducted in the presence of a Judicial Magistrate on account of a presumed independence and awareness. Needless to mention that Section 54A Cr.P.C. is a part of a parliamentary statutory Code. The executive instructions that were issued in the year 1936/1946 or as existed in the State Police Rules of 1936 would not over-ride a specific clause incorporated in the Parliamentary Legislation. The legitimacy of the Test Identification Parade, which has been carried out under the Cr.P.C., would thus not be subject to the guidelines/instructions prescribed elsewhere. The Legislature, through a conscious design, has not prescribed the procedural mandate under the Police rules etc. and has vested confidence, credibility and evidentiary value as to the fairness of procedure when TIP is conducted in the presence of Judicial Officer.

180 It is also evident that no objection of any nature whatsoever had been raised by any of the accused persons to the Test Identification Parade on any ground. Further, the Chief Judicial Magistrate also did not record any fact or circumstance on the basis whereof the Test Identification Parade could be impeached of its admissibility. In the aforesaid report, the Chief Judicial Magistrate specifically stated that the complainant was called into the court room only after all the 08 persons had been brought to the court room and that random placements in the Test Identification Parade had been done.

181 She also stated that all the eight persons were of similar height

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and gait, and they were made to stand in the court room in a line. She further deposed that the witness identified all the accused persons, including one assailant at Sr. No.06 viz Sunil being the person who held him at gunpoint on the date of incident in question. The complainant also identified the person standing at Sr. No.05 viz Vikram @ Vicky to be the person who had covered his face with a muffler and that he had come to the clinic thrice with Poonam who used to work in their house. The submission of the counsel for the accused that the victim could not identify the accused Vikram @ Vicky is thus incorrect.

182 Once the identification of the face was clear, merely because it was done after identifying the other three accused i.e. on the second glance, the same does not create a doubt about identification. Rather, it may very well be an act of being sure, by the witness. Vikram @ Vicky was the only person who was with a muffled face and all the faces had been uncovered when Test Identification Parade was conducted. It may also be an act of prudence and rationality to see the other faces as well. Law does not prescribe that all faces have to be identified only at the time when one passes by it and not thereafter. Hence, no adverse inference as to identification can be drawn on the said score.

183 The Test Identification Parade report EX.P49 prepared by the Chief Judicial Magistrate is specific and there is no breach of any procedural safeguard pertaining to withholding the identity of the accused persons. A prescription of a standard higher than the one which satisfies the judicial

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conscience would not be prescribed at the demand of an accused. Prejudice is not to be assumed but is required to be established from the circumstances and it may not always be possible to meticulously comply with all the guidelines suggested in instructions. Like in the instant case, it may not be possible for the investigating officer to arrange for 32 persons of similar height who may be similarly or identically dressed and who may be willing to participate in police proceedings, i.e. a Test Identification Parade. It is also required to be kept in mind that the Test Identification Parade is to be conducted at the earliest and that any undue delay may even otherwise impair the credibility of the Test Identification Parade. The accused persons were arrested on 10th of January, 2023 at about 10:30 pm in an another case and they were produced before the Magistrate on 11th of January, 2023 where the Test Identification Parade was conducted on the same day itself by noon. Their identity was kept completely concealed. While the defence did try to make a reference to the newspaper report to show that the accused were pictured in the clothes worn by them, however, the date of the said newspaper report has not been proved and the said photograph is only a marked document. Even otherwise the report of the Magistrate specifically dispels the above objections as the Magistrate said that they were all similarly dressed. Even otherwise, it is hard to construe that a person who had suffered such a huge setback and loss would actually be surfing through the newspapers on the day immediately following the tragic incident resulting in the loss of his wife. There are far too many social and police formalities required to be undertaken which would keep the

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complainant occupied for the entire day.

184 Needless to mention that the incident took place at around 9:30 P.M. on the night of 09.01.2023. The statement of PW.1 was recorded around 2:30/3:00 A.M. on 10.01.2023. The accused were arrested in the present case at around 10:00 P.M. on 10.01.2023 and Test Identification Parade was conducted on 11.01.2023 around 2:00 P.M. There is a little chance of the photographs of accused being published on 11.01.2023 and even lesser chances of complainant seeing them unless it is also established that the complainant had subscribed to the said newspaper as well. There being no whisper about the same, the fact as claimed, cannot be judicially inferred.

185 Needless also to mention that the sole issue of identity exposure is being suggested because the clothes worn in picture were seized later. Merely because a seizure and possession memo was prepared later does not mean that they were also wearing the same dress even at the time of Test Identification Parade. There being no such reference in the report and it being specifically mentioned that all were wearing similar clothes, no breach of identity can be assumed against the Chief Judicial Magistrate.

186 At the same time, it is also evident from a perusal of the judgments relied upon by the learned Amicus appearing on behalf of the complainant that a test identification parade is not a primary piece of evidence and is only a corroborative piece of evidence. The same is conducted at the earliest solely as an aid to the investigating agency as to whether they have held the correct assailants as captured in the case and whether the investigation

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is headed in the right direction or not. The primary evidence is the identification of the accused undertaken in a court of law. In the case in hand, the witness not only identified all the accused persons including specific identification of the accused with a gun and the person with muffled face correctly in the Test Identification Parade, but also during the identification conducted in the Court. He specifically stated and identified all the six persons present in the Court who were suspected of committing the offence. The relevant part thereof reads thus: -

> *"All six persons in the court, conspired with each other and in pursuance of the conspiracy looted the jewellery, cash and committed murder of my wife."*

187 Thus, a conjoint reading of the primary evidence i.e. identification of the accused in court coupled with the specific identification of all the four assailants arrested by the police, during the Test Identification Parade, leaves no doubt in the mind of this Court about the involvement of the accused in the commission of the offence.

188 We have also perused the CCTV footage, which was also played in Court during the hearing, and it is evident that the images are discernible and are not just blurred figures and that on a blown up/zoomed picture, the faces would be clearly visible.

189 We thus fail to find ourselves in agreement with the defence counsel about the Test Identification Parade being vitiated and unworthy of

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admissibility on account of non-compliance with the instructions/guidelines.

190 It is further evident from the perusal of the testimony of PW1 Dr. Atul Arora, complainant, that he had not seen the CCTV footage before the conduct of Test Identification Parade and that the deposition of said witness would not be held unreliable solely because the investigating officer, while appearing as PW.30, stated that the complainant had seen CCTV footage before the Test Identification Parade. There is also no force in the argument that one of the victims had sustained a bullet injury and thus he could be identified on the basis of injury sustained by him, since the Chief Judicial Magistrate did not record any instance about disclosure of disability to reveal identity of any accused during the Test Identification Parade. We also notice that the said witness, viz PW.1 complainant, Dr. Atul Arora, had opted and offered to make individual identification of each person in Court; however, the defence chose not to tread the said path. We are thus not inclined to prescribe any higher standard than that of ordinary prudence to be exercised during a Test Identification Parade merely because some other standard may, in a given case, be considered preferable. The Hon'ble Supreme Court in ***State of Maharashtra v. Suresh, (2000) 1 SCC 471***, has observed that if 'potholes' are sought to be ferreted out from the proceedings of Magistrates conducting such parades, possibly no Test Identification Parade would escape one or two lapses, and that a parade should not be rendered unusable merely on account of such minor imperfections. The Court further held that where the safeguards adopted are sufficient to ensure that the parade has been conducted in a

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reasonably foolproof manner, the same ought not to be discarded. Thus, merely because certain additional measures could possibly have better served the object of the Test Identification Parade, the same by themselves, would not constitute a ground for discarding an otherwise properly conducted parade under the direct supervision of the Chief Judicial Magistrate.

II DISCLOSURE STATEMENT AND RECOVERIES

191 With respect to the aforesaid submission, although learned Senior Counsel appearing on behalf of the accused has laid considerable emphasis on the contention that a joint or simultaneous disclosure followed by a joint or simultaneous recovery is inadmissible and does not receive the protection of Section 27 of the Indian Evidence Act, 1872, however, the said proposition, in such absolute terms, cannot be accepted. The position in law, as authoritatively laid down by the Hon'ble Supreme Court in ***State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600***, and reiterated in ***Kishore Bhadke v. State of Maharashtra, (2017) 3 SCC 760,*** is that joint or, more appropriately, simultaneous disclosures are not per se inadmissible under Section 27 of the Indian Evidence Act, 1872. The expression "a person accused" occurring in Section 27 is not necessarily confined to a single accused and may comprehend a plurality of accused. Where information is furnished by one accused after the other, without any break and almost simultaneously, and such information is followed by the accused pointing out the material object or place leading to its discovery, such evidence does not, merely by reason of its simultaneous nature, fall outside the ambit of Section

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27 of the Indian Evidence Act, 1872.

192 The aforesaid principle has to be applied having regard to the facts and circumstances of each case and upon a proper evaluation of the evidence, particularly as regards the information actually furnished by each accused and the discovery effected consequent thereto.

193 In the present case, the recovered articles were duly identified by the complainant, and no dispute of any nature whatsoever has been raised either by any third party or by any other person claiming ownership or entitlement in respect of the articles recovered by the police at the disclosure of the accused. The identification of the recovered articles, by the complainant constitutes an additional circumstance which is required to be appreciated along with the other evidence on record.

194 Besides, the accused persons also failed to offer any satisfactory explanation as to how and under what circumstances they were in possession of those articles/jewelleries. Illustration (a) to section 114 of the Indian Evidence Act, 1872, thus, would persuade this court to draw an inference against the accused persons. Once the accused had every opportunity to offer a valid explanation about the circumstances in which they were in possession of the jewellery, a failure on their part to offer a reasonable and satisfactory explanation for the same would be a circumstance to their disadvantage. Needless to mention that the recovery had been effected in a quick succession to the date of occurrence and there being no delay between the date of occurrence, the date of arrest, recording of the disclosure as well as the

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recovery, the promptitude itself rules out the possibility of any unfair play or tampering of the evidence by the prosecution. The list of articles stolen from the household was duly given by the complainant PW.1 Dr. Atul Arora vide Ex.P2 dated 10th January 2023 while the recovery was effected on 11th January 2023. Hence, it cannot also be said that the list of articles Ex.P2 was prepared after the recovery had already been effected. Needless to mention that the incident took place on 9th January 2023 and the police had recorded the statement on the intervening night of 9th January 2023 and the process itself had continued till about 3:00 A.M. in the morning. Invariably, the complainant, being the husband of the deceased, would be required to verify the jewellery artefacts which they owned and which were lying in the house at the time of the incident. It is too well known as a fact that men of the house would usually not be aware as to what jewellery articles had been kept at a specific place and that it is largely for the women to be knowing about these things. Thus, there would be some verification required to be undertaken by the complainant. Thus, merely because the list of the removed jewellery articles was submitted later would thus not be a suspicious circumstance in the facts of the present case; rather, it only reflects a natural conduct.

195 In so far as the contention of the learned Senior Counsel for the accused that the prosecution has not established the house from which the recovery was effected to be in possession of the accused, the said argument is rejected at this stage.

196 Section 27 of the Indian Evidence Act, 1872, gives rise to

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admissibility of a disclosure to the extent whereby a fact has been discovered. In the present case, the fact discovered is the recovery of jewellery stolen from the house of the complainant from a place of which the accused had specific and exclusive information. While under ordinary prudence, it may be desired that the deposition of a landlord should also have been recorded for establishing a further chain, however, a mere failure on the part of the prosecution to do the same would not vitiate a recovery. The establishment of ownership is not a pre-requisite for discovery of the fact under Section 27 of the Indian Evidence Act, 1872. While such an aspect may be of significance in certain cases, however, in the facts of the present case, an absence thereof is in no way fatal to the case of the prosecution. Even otherwise, people in small towns and villages are generally not willing to cooperate or join police proceedings or to offer their statements more-so when it comes to the cases about armed dacoities/robberies where murder has been committed. The element of fear looms larger on the witnesses than the public spirit to assist the police. A Court is required to take the practical realities into consideration and it would not hasten to throw away a case of the prosecution for any minor lapse.

197 No investigation can ever be foolproof and complete. There would always be certain circumstances for which corroborative evidence may be required. However, the need for corroboration is an exercise of prudence to be exercised where the evidence adduced by the prosecution fails to inspire confidence of the Court. Where the aforesaid circumstances are non-existent,

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corroborative evidence to establish the ownership of the house/room may not be material. The circumstances have to be seen as a whole and not in isolated patches.

198 Adverting to the additional submission that while one of the witnesses has named a different locality and stated that the room was situated in 'Subhas Nagar, Guhla', the other witness stated that the locality is in village 'Salempur Cheeka'. A portrayal has been made as if these are two different places, however, it is a matter of common knowledge that Guhla and Cheeka are twin revenue estates that have subsumed into one singular integrated identity. The administrative name of the unit remains as "Guhla-Cheeka." The demarcation of the revenue hadbast estate can only be done by the revenue officials and that the ordinary residents usually would have no idea as to the specific revenue estates and use the expressions 'Guhla' or 'Cheeka' simultaneously/alternatively. Needless to mention that in such suburban areas, the colonies are usually unapproved and unauthorised and names are given by the local residents at their own convenience. A reference to the village where such an unapproved colony may have been carved out, or the Tehsil, by naming the colony area in the Municipal record, would depend only on the witness's awareness of the geographical location. Whilst residents of that area may be better placed to give a more accurate identification, someone not well conversant with the geographical location would use commonly known expressions. Thus, the submission of learned Senior Counsel for the accused, attempting to project as if they are two different areas which may be separated

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by distance, is incorrect and is liable to be rejected.

199 The position in law is well settled that joint recovery may be effected at the instance of the accused persons jointly and a recovery would not be hit by a simultaneous nature of the same. Reference in this regard may be placed on the judgments extracted in the submissions by the respondent. The judgment relied upon by counsel for the accused rather corroborate only the above position. There are no intervening circumstances or motives attributed to either the investigating agency or to the complainant and under the said circumstances Section 114 of the Indian Evidence Act, 1872, when read in light of illustration 'a', coupled with failure to offer any valid and satisfactory explanation about how the jewellery was in their possession, leads to an adverse inference against the accused. The burden lay on the accused under Section 106 of the Indian Evidence Act, 1872, to dispel the inference that flows against the accused about being in possession of the looted jewellery. The same being a fact in their specific and exclusive knowledge, the onus had to be discharged by the accused and if their failure to do so would be to their detriment. We find that the argument advanced by the counsel for the accused lack merit and deserves rejection. Proof of fact has to be seen from the prism of the definition of 'proved' prescribed therein and existence of a fact is proved when the Court believes its existence to be probable from the matters placed before it.

200 The requirement prescribed by the laws of evidence is not beyond every doubt but beyond reasonable doubt. An attempt at indicating a

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semblance of doubt and not establishing any real basis for entertaining any doubt, renders the assumptive arguments, by the counsel for the accused, liable to be rejected.

201 When a Court of law finds a doubt in case of prosecution, it has to be based on some valid and tangible grounds. Merely because the defence feels that a higher thresh-hold of sanctity, preservation of evidence and procedure could have better served the purpose, the procedure otherwise followed and which satisfies judicial conscience and satisfaction, existence of a doubt shall not be read into the evidence. The yardstick of 'ordinary prudence' is not to be applied as an 'extra-ordinary prudence'.

202 Further, for a better appreciation of the legal concept, it shall be apposite to make reference to the judgment in the matter of ***Kum Shubha @ Shubhashankar Vs. State of Karnataka, 2025 INSC 830*** wherein a similar view was expressed. The relevant extract is as follows:-

> *"86. From the aforesaid materials, it is impossible for us to come to any other conclusion, than the one put forth by the prosecution, as the communications between the accused persons are too many, having a distinct pattern, following one after the other and even during odd hours of the night. The sudden rise in communications on the date of the incident and even a day prior to it, followed by a sudden drop in the communications on the very night of the unfortunate incident and days thereafter, consistently point only towards the guilt of the accused and serve as proof of the conspiracy that was hatched to murder the*

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deceased. At this juncture, we would like to point out that while CDR data may not be construed as a substantive piece of evidence, it is certainly to be used for appropriate corroboration. One has to see the attending circumstances to decide the evidentiary value of CDR. For example, where the evidence is so overwhelming and the conduct of an accused is such that he is bound to give a sufficient explanation for it, but fails to do so, as in the instant Criminal Appeal No. 1029 of 2011 & Connected Matters 70 of 132 case, the CDR might even take the position of substantive evidence. Therefore, in a given factual scenario, the Court can place heavy reliance upon the same for the purpose of rendering a conviction. Suffice it is to state that proving the guilt depends upon the degree of probability.

iv. Recovery of M.O.11 and M.O.12

87. Though substantial arguments have been made on M.O.11 and M.O.12, we are inclined to uphold the recovery. It is the case of the prosecution that A-2 was the pillion rider who got down from the scooter (M.O.12) and attacked the deceased using the steel rod/pipe (M.O.11). It is not in dispute that the recovery of M.O.11 was made at the instance of A-2. The same was witnessed by PW-30, who has duly affixed his signature on the seizure mahazar marked as Exhibit P-87. Both the Courts have rightly accepted the evidence of PW-30, who is an independent witness. The evidence of PW-30 cannot be eschewed solely on the ground that the other panch witness was not examined by the prosecution, despite being cited as a witness. The recovery of M.O.11 has been effected from a secluded place in a military compound. It was picked up from the bush, on being Criminal Appeal No. 1029 of 2011 & Connected Matters 71 of 132 identified by A-2. Merely because A-1 was also present during

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the recovery, one cannot say that the recovery was effectuated on the basis of joint disclosure made by A-1 and A-2, and thus, is inadmissible. Herein, it is pertinent to point out that the 'voluntary' statements of A-1 and A-2 were also recorded separately and marked as Exhibit P-94 and Exhibit P-95 respectively.

Kishore Bhadke v. State of Maharashtra, (2017) 3 SCC 760

> *"35. In State (NCT of Delhi) v. Navjot Sandhu (SCC pp. 711-12, para 145), this Court has held that a joint disclosure or simultaneous disclosures, per se, are not inadmissible under Section 27 of the Evidence Act. A person accused need not necessarily be a single person, but it could be a plurality of the accused. The Court held that a joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in chorus. When two persons in custody are interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact which was reduced into writing, such disclosure by two or more persons in police custody do not go out of the purview of Section 27 altogether. What is relevant is that information given by one after the other without any break, almost simultaneously, as in the present case and such information is followed up by pointing out the material things by both of them then there is no good reason to eschew such evidence from the regime of Section 27. Whether that information is credible is a matter of evaluation of evidence. The courts below have accepted the prosecution version in this behalf, being credible.*

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Suffice it to say that the disclosure made by Accused 3 about the relevant fact, per se, is not inadmissible."

(emphasis supplied)"

88. The argument raised by the appellants that the link required under Section 27 of the IEA is missing due to the absence of the panch witnesses while recording the disclosure statements of the accused is also not acceptable, on the facts of the case, as the presence of the witness to the disclosure statement is not a mandate and only one of prudence. The mere absence of the witness to the disclosure statement is hardly sufficient to hold that the recovery itself is doubtful."

III **TEST IDENTIFICATION OF STOLEN JEWELLERY**

203 While responding to the issue of identification of stolen jewellery, it is undisputed that there is no procedure prescribed for identification of the personal belongings in the State of Haryana. Although certain procedures have been prescribed in the State of Rajasthan and the same had been referred to by the Supreme Court in some of its judgments. The position in law is however settled in a catena of judgments of the Supreme Court referred to in the submissions by the respondents, to the effect that in respect of the personal belongings of any person, an identification of the same by the said person is a valid and admissible evidence for identification of the seized belongings. Further, there has also been no third-party claim raised with respect to the aforesaid jewellery articles.

204 Needless to mention that there would be no reason for the Court

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to assume that the complainant would not be able to identify the jewellery of his wife. He would be a natural witness to identity them as there would have been multiple occasions when he would have seen his deceased wife wear them. The Courts have also repeatedly upheld identification of personal belongings even by close relatives including cousins, by holding them as natural witnesses. In the said legal and factual background, we do not find any valid basis to reject the identification. Merely because the accused dispute the identification, the same is not a ground to discard the evidence which otherwise satisfies the judicial conscience. The mandate of section 114 read with illustration 'a' of the Evidence Act, 1872 gives rise to an assumption of a fact against the accused. Once the prosecution discharges its onus, the burden falls on the accused to explain his ownership or the circumstances in which they were in possession of the same. As per Section 106 of the Indian Evidence Act, 1872, when a person is in in special knowledge of a fact, the burden of proving the same is on such person failing which a judicial inference may be drawn against him.

205 We thus do not find ourselves in agreement with the counsel for the accused that the identification of the belongings carried out by the complainant himself has not been proved by prosecution or that the recovered items were not the ones robbed from the complainant.

ADMISSIBILITY OF ELECTRONIC EVIDENCE

206 Learned Senior Counsel for the accused has vehemently argued against the admissibility of the certificate issued under Section 65B of the

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Indian Evidence Act, 1872, by PW.2 Amit Kumar/son-in-law of the complainant on the ground that he is not the person who was in management, control and supervision of the CCTV cameras.

207 A vehement reliance has been placed on the judgments of the Supreme Court in the matter of ***Anvar P. V*** (supra) and as declared in ***Arjun Pandit Rao Khotkar*** (supra) and that a breach of the said mandate would render the electronic document inadmissible in evidence.

208 The provision has much often raised a thought-provoking debate. While it has been argued very often that every statute needs to be construed having regard to the intent of Legislature and the object and purpose it seeks to achieve as well as the mischief it intends to remedy.

209 Undisputedly, authenticity of an electronic document and its integrity is foremost point of determination, before it can be held admissible in evidence. The notification of the Information Technology Act, 2000, also gave rise to the need to amend the Evidence Act. In its wisdom, the drafting Committee searched for and noticed a similar provision in the United Kingdom, under Section 69 of the Police and Criminal Evidence Act, 1984. The above Act was later repealed by Section 60 of the Youth, Justice and Criminal Evidence Act, 1999, after the U.K. Law Commission observed that the special enactment served no useful purpose.

210 Undisputedly, the expression ‘any’ may also be interpreted to mean ‘all’, in a broader context, statutory purpose or intent of inclusivity reflected in a Legislation. Where a provision or legislation is an enactment

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about social inclusivity or is meant for eradicating a social evil, the expression 'any' has been interpreted to mean 'all' so as to bring within its fold, the beneficiaries or the violators, as the case may be. When the Scheme of the Legislation desires a comprehensive application, a wider latitude is often extended to such expression. The Courts thus take a holistic view to ensure effective implementation of the legislative intent to ensure legislative efficacy.

211 It has been frequently questioned as to whether the legislature intended a flexible rule while prescribing the a satisfaction as to any of the conditions or as to whether law mandated an inflexible rule and a total compliance of all the conditions, before an electronic record may be assumed to be free from tampering and be held admissible. Even though the debate may be raised by any one of the parties in every case where such an issue is involved however, it is required to be kept in mind that a position of law once declared by the Supreme Court remains binding and has to be complied with the investigating agency.

212 The question which however also arises for consideration is as to whether the argument can be raised at the appellate stage or not ? While declaring that all conditions specified in section 65B need to be satisfied for an electronic record/document to be admissible, the Supreme Court has however held that the electronic document is not *per se* inadmissible and hence an objection as to the admissibility of the document needs to be raised at the time of when it is proved, as to the mode and manner of proof, before

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the trial court, before this objection and argument can be raised at an appellate stage.

213 It remains undisputed that at the time when the aforesaid document was exhibited, no objection was raised on behalf of the accused to the admissibility of the said certificate on the ground of the mode or manner of proof. The questions that were put to him during the cross were more in the nature of the difference of the time or the technical specifications of the computer/ systems and suggestions that he is not incharge of the CCTV camera. The same were thus not in respect of the non satisfaction of the mandate. The legal position in this regard is well settled by the Hon'ble Supreme Court in ***Sonu @ Amar v. State of Haryana, (2017) 8 SCC 570***, wherein it was held that an objection relating to the mode or manner of proof has to be raised at the time of proving of the document as an exhibit and not at a subsequent stage and certainly not at the stage of appeal. The Hon'ble Supreme Court further explained that the crucial consideration is whether the defect could have been cured at the stage when the document was exhibited. Where an objection is not raised at the appropriate stage, the party tendering the evidence is deprived of an opportunity to rectify the deficiency, hence, objection would not be permitted to be raised for the first time at the appellate stage.

214 The aforesaid principle has subsequently been reiterated by the Hon'ble Supreme Court in ***Sundar @ Sundarrajan v. State by Inspector of Police, decided on 21 March 2023***, wherein it was held that the mode or

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manner of proof is procedural in nature and that an objection not taken at the trial would not ordinarily be permitted to be raised at the appellate stage. The Court further recognized that had the objection been raised at the stage of marking of the electronic record, the prosecution could have been sought an opportunity to cure the deficiency by producing the requisite certificate.

215 In the present case, therefore, having regard to the fact that no objection was raised when the document was tendered and exhibited in evidence, the accused cannot, at this belated stage, seek to impeach the admissibility of the electronic document on the ground of an alleged defect in the mode or manner of proof.

216 Adverting to the issue as to whether the son-in-law (PW.2-Amit) could be said to be in management, supervision or control of the CCTV or not.

217 We have given our thought to the argument advanced by the parties and are of the view that the argument raised by the counsel for the accused cannot be accepted. In the matter relating the evidence, the court has to apply and interpret the provisions in a wider manner. Such an interpretation would not be a prejudicial application since the parties have all the opportunity to dispute the evidence and prove their defence. Ordinarily, any person who exercises a direct or indirect power over a subject matter, irrespective of ownership, can be construed as a person to be in control.

218 It also needs to be kept in mind that strict rules of a structured organisational hierarchy of control, management and supervision, or

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delineation of powers and duties is not specified in households or amongst inter-personal relationships. The demarcation line is often non-existent and there is a multiple, overlapping and simultaneous control. Such possibility increases as one gets older. Children who stay away keep a constant/regular vigil over the well-being of their elderly, through access and control over the CCTV's. The witness, who is the son-in-law of the complainant, had the password of the CCTV Camera and the DVR and used to regularly monitor the place of occurrence. Besides, there is no male offspring of the complainant who may be present at the house or elsewhere and it natural in such circumstances that the daughter and son-in-law would be the persons who would be taking all steps in the control to ensure about the well being of the parents. The witness would thus be deemed to be in supervision/control of the CCTV Camera as well.

219 The certificate mentioned about the place where the CCTV was installed, the number of camera's, the place where the DVR had been kept, the time duration for the which the footage had been exported and also that the footage is the exact copy of what is contained in the DVR and that there was no tampering in the same. While appearing in the witness box, the witnesses also proved the contents of the CCTV footage, on its being played in Court and identified the pen drive as well.

220 We also reiterate that the present case is not a case which is based on circumstantial evidence alone and/ or that but for CCTV footage, there would be nothing to link the accused to the offence. The case in hand being a

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part eye witness account and part circumstantial (only with respect to commission of some offences and not in relation to the occurrence of the event), hence, the same is only a corroborative evidence. The victim himself stepped into the witness box as PW.1 and gave explicit details of the entire incident. He also identified the accused persons who had entered the household and had named the suspects even before they were arrested. The testimony to the effect that the accused entered the house, held the complainant as a hostage, gave him beatings, the accused taking a sum of Rs.1 Lakh and the keys and that he also saw them come back carrying the bag in which the stolen articles were present are clearly an eye witness account. The said part of the allegation stands corroborated by the CCTV footage, which shows the empty handed entry and the accused persons carrying the cake and a bag, at the time of the exit.

221 Presence of the accused at the place of occurrence and at the specified time is also corroborated by the call details record exhibited as Ex.P91, Ex.P93, EX.P105, EX.P106, EX.P110, EX.P112, EX.P114, and EX.P116. The certificate issued under Section 65B of the Indian Evidence Act, 1872, in this regard has also been proved by the witnesses. The same showed that there had been an exchange of calls between Dr.Vanita and the telephone number of accused Manish. The customer application form as well as the CDRs showed their presence at the same spot and even the CCTV footage corroborated that one of the persons was using a mobile phone at the time when they entered the clinic and then took the stairs to the first floor, i.e.

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the residence area. The circumstance is not co-incidental to be ignored. Even though the tower location, as a stand alone evidence, may have its limitations, however, there should be evidence on record to dispute the CDR detailing the locations. Besides, even though the CDR and the location only give a general idea about the location but when the entire evidence is seen together, the picture is clearly woven together to reflect a complete image.

222 In so far as the argument that there was a wrong time which has reflected in the CCTV footage is concerned, the same, in our view, is not a contradiction or a material discrepancy. For an event to be labelled as contradictory, the existence of one should impeach the presence of the other. When such consequence does not flow and a clear satisfactory explanation is available, the same would not be a contradictory deposition. When a wrong time has been set in the DVR, the same would continue to display in the CCTV footage and it cannot also be held as a tampering since tampering entails removal or altering of the original and substituting the same with some other figures. The discrepancy in the time shown in the CCTV footage has been satisfactorily explained to the Court and we do not find any grounds to disbelieve the same.

DISCREPANCIES IN THE MEDICAL EVIDENCE

223 In respect of the arguments with respect to discrepant medical evidence, there are two fold aspects. Firstly, in relation to the injuries sustained by the complainant himself. Counsel contends that even though complainant claims having been given a revolver Butt blow and beatings by

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the accused followed by his jumping from the balcony to the school roof and then on the ground, but there are no corresponding injuries as per the MLR.

224 The MLR of the complainant is proved on record as Ex.P6. Dr. Dinesh Sharda appeared as PW.6 and proved four injuries on the complainant including diffuse swelling over right parietal region, knee, iliac crest and back.

225 The doctor opined that injuries as above could be due to jump from a height of nearly 15 feet. He also expressed that a blunt weapon too could have been used. Thus, opinion has been given not only with respect to the injuries having been caused on account of a butt blow but also from a jump.

226 So far as other allegations of beatings are concerned, the same were due to slaps as the accused is not alleged to have used of any weapon. There is every possibility that there are no leftover marks of slap blows. The allegations levelled by the complainant about having been caused injuries thus cannot be disbelieved. We thus find no contradiction or discrepancy.

227 Adverting to the argument that the injury sustained by the deceased had not been caused by any of the accused nor any person had seen the accused causing said injuries and that the medical evidence does not support the argument of the accused.

228 While the suggestive case of the accused had been that the deceased Dr. Vanita could have sustained the injury as a result of fall/slip and thus getting her head banged against the wall, however, PW.5 Naresh Kumar, Medical Officer, who conducted the post-mortem examination of the

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deceased had specifically ruled out the aforesaid suggestion and opined that the injury could not have been caused by one single blow.

229 The specific questions and suggestions have been responded through specific detailed replies. It ruled out that injuries could have been suffered accidentally, rather, he suggested the injuries to be homicidal. The relevant question and responses already stand extracted in the preceding parts of the judgment and need no reiteration. There were thus repeated blows by banging against the wall as the force by which the injury could be sustained could not be on account of the fall. Besides, it was also recorded that the injuries were on both sides and hence could not have been as a result of the fall.

230 Further, so far as injury No.1 pertaining to a fracture is concerned, the medical evidence was sought to be countered from the absence of the fracture in the X-ray examination; however, the doctor also explained the said infirmity and stated that fracture could be detected only after the brain matter had been removed during the post-mortem examination. Further, suggestions were also made to the effect that the injuries may possibly have been sustained at the time when the dead body was kept in the mortuary or in a refrigerator, however, possibility of the same was also completely ruled out by the doctor, who stated that injuries were antemortem in nature and that there was an ecchymosis present and that the same would exist only in antemortem injuries and would not be present in post-mortem injuries. Thus, the presumptive arguments raised by learned Senior counsel for the accused

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have been explained by the doctor and all accidental possibility of their existence has been completely ruled out. There is no reason to discard the said medical evidence or to hold that the medical evidence was discrepant or suffered from material contradictions.

231 The medical evidence, therefore, does not merely establish the factum of death but it also substantially narrows the possible manner in which the fatal injury could have been caused. The medical evidence is hence consistent with the ocular account regarding the circumstances prevailing inside the house and materially rules out any other alternative explanation suggested by the defence. It consequently furnishes an additional corroboration to the prosecution version.

NON-EXAMINATION OF MATERIAL WITNESSES

232 Adverting to the argument that certain material witnesses, viz., the parents of the complainant, Gudiya- the wife of Ket Ram, Neelam- the Nurse on night duty as well as several other official witnesses were not examined by the prosecution, we are of the opinion that a mere non-examination of said witnesses, in the facts and circumstances of the present case, is inconsequential and would have no bearing on the prosecution case. The Hon'ble Supreme Court in ***Laxmibai (Dead) through LRs v. Bhagwantbuvā (Dead) through LRs., (2013) 4 SCC 97***, has reiterated the well-settled principle that, in the matter of appreciation of evidence, it is not the number of witnesses but the quality of their evidence which is material. The Court emphasised that evidence is required to be weighed and not counted

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and that there is no requirement in law that any particular number of witnesses must be examined to prove or disprove a fact. The said principle was reiterated by the Hon'ble Supreme Court in ***Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401***.

233 The position in law in this regard flows from Section 134 of the Indian Evidence Act, 1872, which provides that no particular number of witnesses shall in any case be required for the proof of any fact. Thus, it is never a plurality of witnesses which matters but quality of the evidence given even by the solitary witness.

234 In the light of the aforesaid settled position, the mere fact that the prosecution has not examined every witness, who may have had some connection with the occurrence or with the investigation would not by itself, be a ground to discard an otherwise cogent, credible and trustworthy evidence available on record. What is material is the intrinsic worth, reliability and evidentiary value of the testimony adduced before the Court and not the mere multiplicity or plurality of witnesses.

235 It is indisputable that at the time when the accused persons entered the house, the parents of PW.1 Dr. Atul Arora, were in a separate room and he was sitting with them. He rushed out of the house only upon hearing the shrieks of his wife and he was immediately held hostage by the accused persons. It is not the case of the prosecution that the parents of the complainant had come out to the spot, instead, the specific case is that some of the assailants went to the room of the parents and snatched some money from his

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mother as well as took away the mobile phone from his mother. Thus, the prosecution never set up a case that the parents had come out of the room and were present in the dining/kitchen area where the complainant had been held hostage. Further, after the ornaments had been removed, the accused started talking to each other which possibly was in relation to the elimination of PW.1 Dr. Atul Arora. Intimidated, he moved to the room of his parents on the pretext of meeting them for last time and then bolted the room from inside. It would be highly unlikely that once PW.1 Dr. Atul Arora had bolted the room from inside, the parents would open the said room when there is a real apprehension of harm/death to their life and also to the life of their son who attempted to make good his escape and to call for help. Thus, there was no occasion for them to open the door from inside and to come outside. The deposition of the parents would thus at best be with respect to identification of the accused who had snatched the mobile phone or taken some money from them as well. Since the said identification had already been done by PW.1 Dr. Atul Arora, there was no impending necessity for examination of the other witnesses.

236 Similarly, it is also not the case of the prosecution that the Nurse on night duty, Neelam, had also come upstairs. A person may or may not be a witness to the incident, despite being at a place of occurrence. It not being a specific case of the prosecution that Neelam had seen any part of the incident, her non-examination would thus be immaterial, as she would only be a hearsay witness and her testimony carried no further weight.

237 So far as non-examination of Gudiya wife of Ket Ram is

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concerned, there was no occasion or reason for the prosecution to bring the said witness for two reasons, i.e. firstly, her husband was one of the accused who was being tried as a conspirator with the other accused in the commission of the offence and that in such circumstances, she was most unlikely to support the case of the prosecution and, secondly, her testimony would also be a repetition of the deposition that had already been made by PW.1. Dr. Atul Arora. There was thus no compelling necessity for having multiplicity of witnesses for proving the same facts. Hence, non-examination of said witness also cannot be said to be fatal to the case of the prosecution.

238 Similarly, non-examination of the neighbour is also immaterial as his evidence would also be hearsay and he could have deposed only with respect to PW.1 having contacted him. The other official witnesses i.e. Satish Kumar also did not have any bearing on the case and that failure to examine him would not be fatal to the case of the prosecution. It has already been dealt with by us in earlier paragraphs that a mere failure on the part of the prosecution in not examining the owner of the room/house from which recovery was made would have no material bearing on the facts of the case.

239 For the said reasons, the argument advanced by the learned Senior counsel for the accused is rejected as lacking in merits.

ARREST OF THE ACCUSED SHROUDED IN DOUBT

240 The contention of the learned Senior counsel appearing for the accused had been to the effect that the accused persons were arrested under a false encounter and a case had been registered against them. The recovery

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effected in the said case was also shown in the present case. Learned Senior counsel contends that as the accused have been acquitted in the said case vide judgment dated 09.10.2025, hence, their implication in the present case was also liable to be set aside as it is only a fallout of the said case.

241 We are, however, disinclined to accept the argument. The sequence of events has to be taken note of. The registration of the F.I.R. in the present case precedes the arrest and detention of the accused persons on the following day. It remains undisputed that another case under Section 307 of the IPC read with the provisions of the Arms Act, 1959, was registered against the accused persons for having fired at the police party resulting in an encounter and that they already stand acquitted in the said case.

242 However, merely because the police registered a second case about the encounter, against the accused, which they could not prove, would not be sufficient to draw a judicial inference that the accused person also had no connection with the case in hand. It would at best be that the recovery of the weapon effected from the accused, in the said case, and seized in the present case as well, cannot be relied upon in the present case. There is however enough material, both factual and circumstantial, which establishes the participation of the accused persons in the commission of the offence. It is noticeable that the complainant had disclosed about his suspicion as to the involvement of certain persons and to one of the accused. It is only later that the same person was also arrested in quick succession alongwith the other co-accused. The same was followed by quick identification of the accused and

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recovery of stolen articles. The evidence hence completes the entire chain of direct account and the links in the circumstantial chain of events. There is no position in law that if the prosecution fails to prove its one case against the accused persons, prosecution of the same accused in all other cases is also liable to fail. Each case has to be seen on the basis of the evidence brought before a court and a finding is to be recorded based upon the same. Assuming that even if the arrest of an accused in a specific case is held illegal, yet, the only consequence that shall flow therefrom is that the accused shall be entitled to claim bail but it is not a position in law that if an arrest is illegal, the entire prosecution must fail on account thereof. This is not an illegality that may vitiate a trial and hence the consequence thereof cannot percolate in any other proceeding and can only be to the extent that the immediate prejudice caused on account thereof is removed. Its relevance can only be incase both the offences or cases are the same. It shall have no bearing when both the cases are independent of each other and relate to different incidents, even if some of the witnesses happen to be the same. The said circumstances do not exist in the present case and hence merits of the case in hand have to be seen on the basis of the evidence brought before the court in the present case notwithstanding that the prosecution failed to prove its case about the incident of cross-firing allegedly committed by the accused persons at the police party, which led to the registration of the FIR No.13 dated 10.01.2023 and wherein the accused were acquitted vide judgment dated 09.10.2025.

243 The principle of *falsus in uno falsus in omnibus* is not a followed

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legal_jurisprudence in our country and the prosecution case would not be discarded even when some part of the prosecution version is found to be incorrect or false, the same in the present case being about the mode and manner in which the accused were arrested. The judgment (EX.D13) in the said case can be read only qua the said case and with respect to the issue which is common and flows in the present case as well, and no further.

244 Even though there is no corresponding provision pertaining to estoppel, in Criminal law, however, while examining the provision of Section 403 of the Cr.P.C., 1898 (corresponding to section 300 Cr.P.C,1973), it was held that principle of *res judicata* is applicable even in a criminal trial, in the matter of ***Pritam Singh and another Vs. The State of Punjab, reported as AIR 1956 SC 415***, Thereafter, in a larger Bench of 05 judges, in a case titled ***Manipur Administration Vs. Thokchom Bira Singh, AIR 1965 SC 87***, the Supreme Court recognized the rule as to issue estoppel. It thus precluded the reception of evidence to disturb a finding reached in favour of an accused person in a previous criminal trial. It was held that Section 403 of the Cr.P.C., 1898, did not preclude the applicability of Rule of issue estoppel since the Rule is in accord with sound principles and supported by High authority. It thus re-affirmed the law in the matter of ***Pritam Singh and another*** (supra). The position was reiterated in the matter of ***Lalta and others Vs. State of U.P., AIR 1970 SC 1381***.

245 The above position in law found a favour also in the matter of ***Ravinder Singh V/s Sukhbir Singh and others, reported as 2013 (3) SCC***

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891. It was explained that an issue estoppel prevents re-litigation of an issue which has been determined in a criminal trial between the parties. For invoking the principle, not only the parties ought to be the same but also the fact in issue, whether proved or not, must be identical.

246 In the recent case of ***State (CBI) Vs. Mohd.Salim Zargar @ Fayaz and others, reported as 2025 SCC OnLine SC 591***, held that a confessional statement held inadmissible in a previous trial cannot be accepted in subsequent proceedings as it would disturb a finding of fact already recorded in a previous trial.

247 The weapon of offence allegedly used in the present case was undipsutedly seized in FIR No.13 (supra). The said weapon was later seized and taken in possession in the present case as well. The said seizure has been disbelieved by the Court and the accuse stand acquitted, hence, the said finding would be binding in the present case as well.

248 Once the State has been unable to prove its case as well as the seizure of the weapon in the principal case where the weapon was taken in possession, its recovery in the present case can be no better. Hence, the recovery of the weapon of offence allegedly used in the crime deserves to be disregarded. The conviction of the respondents to the above extent thus deserves to be set aside.

OFFENCE OF DACOITY NOT MADE OUT

249 It has been the contention of the learned Senior counsel for the accused that there is a requirement of a minimum of 05 persons to make out

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an offence of dacoity and that the present case does not show participation of 05 persons. He contends that originally 07 persons were tried for the commission of the offence viz Sunil, Vikramjeet @ Bittu, Vikram @ Vicky and Manish along with Poonam, Umesh and Ket Ram. The said accused Umesah and Ket Ram have since been found innocent. The allegation against Umesh was that he had supplied the arms that was used by the accused in the commission of the offence whereas the allegation against Ket Ram was of having signalled the accused persons from the rooftop to enter the premises. The allegations against either of them were not established during trial and both of them were acquitted by the trial court. It has been argued during the deposition of witnesses, the case set up by the prosecution was that the accused persons gained entry to the residential portion on the pretext of purchasing a cake and not on the basis of any active role of the co-accused Ket ram to secure their entry to the premises. Besides, there is also no evidence to show as to how and in what way the co-accused Ket Ram was in contact with any other person or he signaled the other accused to gain entry to the premises.

250 It has further been argued that so far as the involvement of Poonam is concerned, the same has also not been established since the only allegation against her was that accused Vikram @ Vicky was her acquaintance and no other role is attributed to her.

251 We have heard learned counsel for the parties and have also gone through the evidence. Undisputedly, two of the accused persons namely

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Umesh and Ket Ram have been acquitted by the Trial Court, while the remaining five, including Poonam have been sentenced to death penalty for the offence under Section 302/120-B IPC and they have been sentenced to varied sentences for other offences.

252 State of Haryana has not preferred any appeal against the acquittal of the above two persons. The complainant Dr. Atul Arora has however filed CRA-AD-132-2026 against the acquittal of Ket Ram only and even he has chosen not to impugn the acquittal of Umesh Kumar who had allegedly supplied the weapon to the other accused.

253 It is also undisputed that even though it was alleged that one of the assailants was holding the weapon that had been used to hold the complainant as a hostage and the said weapon was origianlly recovered in FIR No.13. The accused were undeniably acquitted in the said FIR and the said judgment has not been challenged. No recovery of any weapon had been effected at the disclosure of the accused Umesh in either the said case or in the present case and no link evidence could also be collected to prove the supply chain or the involvement of the accused Umesh. Thus, there is no reason to interfere with the judgment passed by the trial court to the extent of his acquittal.

254 Adverting next to the issue of acquittal of co-accused Ket Ram. The allegation against him, as per the prosecution case is that he signalled the accused from the rooftop and facilitated their safe entry into the house. However, there is no evidence to the said effect as to how and in what

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manner, the accused were signalled. Still further, the CCTV footage clearly showed that none of the accused persons was looking upwards. Besides, during evidence, the case set up by the prosecution was that the accused persons had talked to the deceased to purchase a cake from her and gained entry to the house on the said pretext.

255 The CCTV footage also showed that one of the accused was talking on the phone at the time when they entered the premises. The prosecution further relied upon the CDR's of the mobile number to connect the presence of the accused persons at the spot. Thus, it was a projected case, through the evidence during trial, of the accused gaining entry into the house on a false pretext and the prosecution case was not based on any signal from the roof top by the accused Ket Ram. Besides, there is no evidence even to establish any link of the other accused with Ket Ram and as to how he had come in contact with any other accused or as to how they remained in touch or became part of the conspiracy. Thus, the entire case against Ket Ram was based on a suspicion because he, amongst others, knew about where various jewellery items were kept. A similar attribution is also levelled against Poonam as well. Hence, the case was based solely on the suspicion that he might have shared the information with the other accused.

256 During deposition, none of the witnesses however repeated the allegations or proved any allegation against the accused Ket Ram. He was a domestic help and hence an easy suspect. The evidence rather shows that at the time of the offence, accused Ket Ram as well as his wife Gudiya were also

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held hostage at gunpoint. Besides, had he been in conspiracy with the other co-accused, there would have been some element of *quid pro quo*. No reason or motive for Ket Ram to have joined with the other accused has also come on record. Hence, the allegations against the accused Ket Ram do not travel any further and beyond suspicion and the evidence does not depict any involvement or participation. The position in law needs no reiteration that a suspicion, how so ever strong, would not be substituted for proof. Hence, no inference of culpability can be drawn against Ket Ram. Besides, the only basis for filing the report against Ket Ram was that he had met with Poonam one day prior to the incident. The Investigating Officer, however failed to divulge any detail as to where the other accused had met Ket Ram. Investigating Officer rather fairly conceded that there is no CDR between Ket Ram and Poonam and there is also no evidence that Ket Ram had met any other accused at any point or he knew them. As per the deposition, even Poonam knew where the jewellery had been kept, hence, there was no better information that could have been shared by Ket Ram. Besides, in none of his statements did the complainant Dr. Atul Arora level any allegation against Ket Ram. The mentioning of the name of the Ket Ram was only in the nature of an information and was not in the nature of an allegation. The same surfaced for the first time only while deposing in Court. The evidence collected by the police failed to corroborate any of the allegations that had been levelled against the accused Ket Ram. Thus the case of the prosecution travelled no beyond uncorroborated allegations against Ket Ram and the investigation was

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completely silent on the aspect of motive or actus reus which are two essential pre-requisites of a criminal offence. There is also no evidence as to the reflect the accused Ket Ram to be a part of the criminal conspiracy either from any evidence or from his conduct.

257 In the light of the evidence already discussed above, we find no error in the impugned judgment also to the extent whereby accused Ket Ram had been acquitted. In the said circumstances, we have no hesitation in holding that the impugned judgment suffers from no illegality or infirmity also to the extent whereby Ket Ram has been acquitted. CRA-AD-132-2026, titled Dr. Atul Arora Vs. State of Haryana and another, is thus liable to be dismissed.

258 Now, adverting to the aspect of involvement of Poonam in the offence in question.

259 As per the facts borne out from the record and from the deposition of the witnesses, accused Vikram @ Vicky was an acquaintance of Poonam and that he had the occasion to visit the clinic on certain occasions when he used to pick up Poonam from the clinic. The evidence available on record, however, falls short of reflecting participation of Poonam in the commission of the offence as a conspirator. The case set up by the prosecution is that Poonam had made a telephone call with the accused, on the date of the incident and also prior thereto, from the phone belonging to PW.27 Jasbir Singh. Thus the participation of Poonam was sought to be connected by her conduct and continuous contact with Vikram @ Vicky not only on the date of the incident but also prior thereo. However, the said witness i.e. PW 27 –

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Jasbir Singh did not support the case of the prosecution and instead deposed that Poonam did not make any call from his number to the accused persons. Hence, the prosecution failed to establish as to how and in what manner the other accused persons had been in touch with Poonam. The prosecution was required to establish motive and mode and manner of participation by Poonam in the offence before she may be held to be a conspiratory. Besides, it also needs to be established that the information as to the facilitation of the crime by the other accused was shared after a shared intention to commit an offence. Merely because accused Vikram @ Vicky was an acquaintance of Poonam in some way would not be sufficient to assume her involvement in a conspiracy to commit an offence.

260 We are conscious also of the fact that Poonam may have shared the information about where the belongings/jewellery was kept by Vanita/Dr. Atul Arora, however, even the said assumption would be insufficient to infer her to be a conspirator. Any information may have been shared in good faith or in a normal conversation and may not necessarily be given with an intent to entice or aid somebody into commission of an offence.

261 Section 120A of the IPC defines 'Criminal Conspiracy' and the same reads thus: -

> *"120A.* ***Definition of criminal conspiracy****. When two or more persons agree to do, or cause to be done,-*
> *(1) an illegal act, or*
> *(2) an act which is not illegal by illegal means, such an*

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agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

262 The ingredient for the commission of the offence is that there has to be an agreement between two or more parties for doing or causing to be done either an illegal act or a legal act by illegal means. Hence, evidence must disclose whether the accused were pursuing the same object. If they are not joint in the object, a mere sharing of an information may be immaterial for inferring a culpable state of mine. Besides, the sharing as to an illegal act or object must precede the sharing of the information and evidence should show a continued sharing of the purpose even after the information. While it is not necessary that a conspirator should know each and every detail, but existence of an agreement amongst the accused has to be established.

263 A conspiracy creates a joint liability, hence, a Court of law has to prudently and objectively sift through the evidence to determine whether evidence suggests and establishes existence of a conspiracy, from the primary as well as circumstantial evidence.

264 The evidence available on record however fails to disclose any specific role to Poonam in the formation of a conspiracy for commission of

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the offence. It also fails to show that she had any benefit to be derived from the sharing of the information or that she induced, abetted or had aided the other accused persons in any manner whatsoever in commission of the offence.

265 The prosecution has also failed to collect any evidence to establish any contact of Poonam, soon before or after the incident, with the other accused persons, on the basis whereof any specific pattern or suspicious activities could be gathered so as to draw an inference against the said accused. Needless to mention that such conduct may have been relevant and admissible under Section 10 of the Indian Evidence Act, 1872 and could have been a referring point to draw an inference against her with the aid of Section 114 of the Indian Evidence Act, 1872.

266 Section 10 of the Indian Evidence Act, 1872, has been incorporated to make acts and statements of co-conspirators admissible against all the conspirators in circumstances where there are acts done in furtherance of a common intention, after such an intention was first entertained by any one of them. Thus, the acts have to commence post entertaining any such intention.

267 In the present case the police merely recorded the disclosure of Poonam, where she stated that she used to talk to Vikram @ Vicky on his mobile Nos.80532-24069 and 81689-39863 from her mobile Phone No.99925-04355 and she also supplied the number of Dr. Vanita and had roped in Ket Ram. The entire case against Poonam and Ket Ram is however

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based only on the disclosure statement but in the absence of discovery of any fact, the same is at best a confession recorded at the time when they were in police custody. All recoveries have been effected from the other co-accused. Besides, the mobile phone No.9992504355 which Poonam allegedly used to get in touch with the other accused, belonged to PW.27 Jasbir Singh but he denied having ever given the SIM to Poonam. He stated that his brother-in-law Satish had been using the said SIM card and that the name of Poonam's husband was Darshan. It is also not in dispute that Poonam was arrested after the other accused had already been arrested and their disclosure statements had already been recorded. Despite the Investigating Officer admitting that Ket Ram, his wife Gudiya and Poonam had mobile phones, yet, the CDR did not establish any inter-se telephonic connection of the abvoe persons with the other accused or even inter se between them at any time in proximity to the occurrence or thereafter. The witness viz the Investigating Officer, also admitted that call details and tower locations of Ket Ram and his wife Gudiya @ Madhu are not on file.

268 The Investigating Officer further admitted that he did not even investigate about the place from where Ket Ram gave a signal and has also not prepared the rough site plan of the place.

269 The Investigating Officer also admitted that there is no evidence of Poonam meeting Ket Ram outside the house. Significantly, the Investigating Officer admitted that wife of Ket Ram was employed after Poonam had been sacked. It seems highly unlikely for Gudiya @ Madhu or

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even Ket Ram to be on talking terms with Poonam after having replaced her.

270 Hence, accused Poonam is neither linked as an associate or conspirator with the other accused nor with Ket Ram. She became a prime suspect being a common link between the victim and the accused.

271 Even though police brought the CDR pertaining to the phone usage between the phone number allegedly being used by Poonam and the other accused is shown, however, the number is not established to be under use by Poonam.

272 We find that in the light of the law discussed earlier and taking into consideration the evidence that had been adverted to, the prosecution was short of bringing any credible and admissible evidence to show participation of Poonam in the commission of the offence or her complicity in the commission of the offence. Thus, she is entitled to the benefit of doubt as she cannot be incarcerated for commission of the offence solely on the ground of strong suspicion on account of being acquainted with one of the main accused. The judgment of the trial Court is thus liable to be partly modified and to be set aside to the extent whereby the accused Poonam has been convicted and sentenced in the present case and she is entitled to be acquitted of the charge framed against her.

273 The trial court had convicted five persons for commission of the offence, hence the requirements for the offence of dacoity were fulfilled. Since, as per the discussion above, accused Poonam is entitled to a benefit of doubt on account of absence of link evidence in the chain of circumstantial

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evidence to lead to a solitary hypothesis as to the participation of Poonam in the commission of the offence, hence, the number of accused whoses' conviction still stands is less than five. The allegations against Poonam are required to be proved on the parameters of law pertaining to case based on circumstantial evidence but the chain of evidence is not complete and has room doubt her involvement in the offence. The position in law is well settled that in a case based on circumstantial evidence, if the evidence fails to satisfy the judicial conscience on the legal parameters of Sharad Birdhichand Sarda, the benefit thereof has to be extended to the accused. Thus, with the extension of the benefit of doubt to accused Poonam, the number of accused persons would be less than five, hence, the offence of Dacoity shall also not be made out and instead it would be an offence or Robbery.

OFFENCE OF MURDER NOT MADE OUT

274 Learned Senior Counsel for the accused had vehemently argued that the case of the prosecution does not establish the offence of murder against the accused-appellants herein, and hence, they cannot be held guilty for commission of the offence under Section 302 IPC. It was further argued that none of the witnesses has seen any of the accused committing the offence of murder, thus, they cannot be held liable for commission of the offence as there is no proof of either commission of murder by any of the accused nor sharing of any common intention. He reiterated the arguments as have already been dealt with while dealing with the argument pertaining to the medical evidence. The said arguments and discussion thereupon are not being

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repeated.

275 The medical evidence clearly establishes that the injuries sustained by Vanita were not the result of any fall or accidental slip, rather, it was on account of a forceful homicidal impact whereby her head had been struck against the wall. It has also emerged from the evidence of the complainant that he came out of his parents' room on hearing the shrieks of his wife, Vanita. Thus, the said evidence is a corroborative circumstantial evidence. The accused persons were identified as the assailants who were present at the house at the relevant time, and as per the call data record, they were the persons who held talk/discussion with the deceased on her telephone number at the time when they gained entry into the house. The accused were the only persons who were outside when the complainant came out after hearing the shriek of his wife. The accused thus owed an explanation to the events that led to the deceased Vanita having sustained the fatal injuries.

276 In the above undisputed factual scenario, the circumstances of the case lead to a presumption of facts, which a Court of law thinks as a likely turn of events to have happened in the common course of natural events and human conduct. The death in the present case was neither suicidal nor natural. Hence, it could either be accidental or homicidal. The specific suggestion and cross of the doctor rules out every possibility of the sustained injury being accidental by nature. The doctor also establishes the injuries to be homicidal by nature. The turn of events and natural human conduct gives rise to an inference that the death was homicidal and had been caused by the accused

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persons.

277 In the light of the judgments referred to in earlier paras viz in the matter of **State of Andhra Pradesh Vs. Sobhan Babu** and **Haradhan Das Vs. State of West Bengal (Supra)** pertaining to joint liability and commission of offence by any individual entailing similar consequences also against the other accused, it would be immaterial at this juncture to enter into a debate as to which of the accused persons actually caused the fatal injury to the deceased. It is proved by the prosecution that all the aforesaid four accused persons had entered the house under the conspiracy to commit the offence of robbery and were fully prepared to take all such steps as may be necessary to execute the offence, including murder. The fact that they were armed with firearm shows that they had no hesitation to use any extreme force in the event of any resistance being offered by any person. The circumstances of the case lead to no other inference but that the death of Vanita was as a result of injury caused by the accused persons in furtherance of an illegal act and unlawful purpose by any means. The accused having entered into the house under criminal conspiracy are thus liable for commission of the offence under Section 302 read with Section 120-B IPC.

OFFENCE OF LURKING HOUSE TRESPASS

278 In so far as the conviction for the offence under Section 460 IPC is concerned, we are of the opinion that the ingredients of the offence are not satisfied. The relevant statutory provisions read thus: -

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"441. Criminal trespass- *Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".*

442. House trespass- *Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".*

Explanation- The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Lurking house-trespass.- *Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".*

450. House-trespass in order to commit offence punishable with imprisonment for life. *Whoever commits house-trespass in order to the committing of any offence punishable with [1][imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.*

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451 House-trespass in order to commit offence punishable with imprisonment.— *Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.*

452. House-trespass after preparation for hurt, assault or wrongful restraint.—

Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

xxx xxx xxx

460 All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them. —

If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

279 It is evident from a perusal of the above that the accused persons

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committed the offence of house trespass after preparation for causing hurt, assault and wrongful restraint, which is punishable under Section 452 IPC read with Section 442 IPC. Since the accused had entered the house to commit robbery, which is punishable under Section 392 IPC, which is not punishable with imprisonment for life, hence, Section 449 IPC, would not be attracted. Since the accused entered the house through the common passage and without taking precautions to conceal such trespass, hence, it would not be a case of lurking house trespass under Section 443 IPC. Besides, it also does not satisfy the ingredients of house breaking as defined under Section 445 IPC, hence, an offence under Section 460 IPC would not be made out. Rather, the accused would be liable to have committed an offence punishable under Section 452 IPC. Undisputedly, all the 04 accused had entered the house with an intent to commit an offence but the same was not with an intent to commit an offence punishable with life imprisonment but only happened to commit such an offence. The offence under Section 449 IPC would thus not be made out.

OFFENCE UNDER SECTIONS 395 AND 397 OF IPC AND ARMS ACT

280 Learned Senior Counsel appearing on behalf of the accused has contended that the prosecution has failed to establish the essential ingredients of dacoity and, further, that there is no reliable evidence to establish the individual role attributed to the respective accused persons in the commission of the alleged offence. It has also been argued that the alleged recovery of the articles and the identification thereof by the complainant cannot, in the

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absence of cogent and reliable evidence connecting each of the accused with the actual commission of the offence, be made the sole basis for sustaining their conviction under the aforesaid provisions.

281 In order to appreciate the submission, it would be necessary to advert to the relevant statutory provisions.

> *"390. **Robbery**. In all robbery there is either theft or extortion.*
>
> ***When theft is robbery**.-Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.*
>
> ***When extortion is robbery**- Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.*
>
> *Explanation. The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.*
>
> *391. **Dacoity**. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a*

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robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

392. ***Punishment for robbery****. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.*

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394. ***Voluntarily causing hurt in committing robbery****. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

395. ***Punishment for dacoity****. Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

396. ***Dacoity with murder****. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or [imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

397. ***Robbery, or dacoity, with attempt to cause death or***

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> ***grievous hurt***.- *If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."*

282 An offence of Dacoity mandates an association of 05 or more persons, in the commission of the offence, however, it is evident from the discussion held in the preceding paragraphs that of the seven persons who were tried for the offence, two were acquitted by the trial Court. We have found no error in the acquittal of the accused persons by the trial court and have also dismissed the appeal bearing No.CRA-AD-132-2026 titled Dr. Atul Arora versus State of Haryana and another.

283 There were thus five persons who were convicted and sentenced by the trial Court. During our consideration in the preceding paras, it is evident that the prosecution could not prove its case against co-accused Poonam beyond reasonable doubt.

284 It is also not in dispute that no recovery has been effected from the accused Poonam or at her disclosure. Hence, apart from an initial suspicion expressed by the complainant followed by confession of Poonam recorded while she was in custody, there is no other evidence. The evidence thus only gave rise to suspicion and it was not sufficient to prove the offence against her. Hence, she has been acquitted by us, by giving her the benefit of doubt. Hence, the prosecution has been able to successfully prove its case beyond

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reasonable doubts, only against 04 persons. Thus, charge of dacoity cannot subsist and they can only be held liable for offence under Section 392 IPC read with Section 120B IPC and for offence under Section 394 IPC read with Section 120B IPC, since complainant specifically attributed beatings having been caused to him by the accused.

285 It not being a case of attempt to murder or grievous hurt having been caused during robbery, hence, Section 397 IPC, would not be applicable. Noticeably, while Section 396 IPC specifically provides for punishment where a murder is caused during dacoity and conjointly holds everyone liable, there is no similar provision in IPC where murder is caused during robbery. Hence, in the absence of any attempt to murder or grievous hurt, ingredients for Section 397 IPC would not be satisfied.

286 We have also considered as to whether offence under Section 398 IPC is made out or not. The above Section is applicable where robbery/dacoity is committed when armed with deadly weapons.

287 Undisputedly, as per the allegations, two of the accused were armed with firearms which would fall in the definition of deadly weapon. But at the same time, we cannot close our eyes to the undisputed fact that the firearms had been recovered in FIR No.13 dated 10.01.2023, wherein the recovery has not been held to be proved. Hence, in view of the judgments of the Supreme Court in the matter of ***Pritam Singh and another;*** ***Manipur Admnistration;*** ***Lalta and others***; ***Mohd.Salim Zargar @ Fayaz and others*** and ***Mohd.Salim Zargar @ Fayaz and others*** (supra), we cannot uphold and

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validate the said recovery in the present case as well. Hence, the allegation about the accused holding firearm cannot be held proved and evidence exists only with respect to the use of force, assault and wrong restraint. Consequently, the offence either under Section 398 IPC or under Section 25 of the Arms Act, 1959 cannot also be held to have been proved. Resultantly, we set aside the conviction of the accused for offence under Section 396 IPC read with Section 120B IPC; under Section 395 IPC read with Section 397 read with Section 120B IPC and Sections 25(6) and Section 27 of the Arms Act, 1959, and instead convict them for offence under Section 394 IPC read with Section 120B IPC and under Section 392 IPC read with Section 120B IPC in addition to their conviction for offence under section 302 read with 120B IPC and section 323/120B IPC.

288 In view of the discussion held above while CRA-AD-132-2026 titled as 'Dr. Atul Arora Vs. State of Haryana and another' is dismissed; CRA-D-40-2026, titled as 'Poonam and another Vs. State of Haryana', CRA-D-75-2026, titled as 'Sunil Kumar @ Sunil Vs. State of Haryana', and CRA-D-109-2026, titled as 'Vikram @ Vicky and another Vs. State of Haryana', are partly allowed and accused Poonam-appellant in CRA-D-40-2026, is acquitted. The judgment of conviction of the other accused-convicts is modified and they are held liable for the offences punishable under Section 120B IPC; Section 323 read with Section 120B IPC; Section 394 read with Section 120B IPC; Section 392 read with Section 120B IPC; Section 201 read with Section 120B IPC; Section 452 read with Section 120B IPC and under Section 302 read

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with Section 120B IPC.

SENTENCE

289 Having held so, the same leads us to examine the issue of sentencing as awarded by the trial Court vide order dated 20.12.2025 and as to whether the capital punishment for offence under Section 302 IPC read with Section 120-B IPC as awarded by the trial Court needs to be confirmed or any other suitable punishment be awarded taking into consideration the mitigating circumstances along with the sentence for the other offences.

290 The position in law needs no reiteration that a capital punishment should be imposed only in a 'rarest of the rare' case where the judicial or the collective social conscience is shocked and where a persons seems to be beyond reform. The court needs to be satisfied that no punishment other than capital punishment serves the cause of justice and that the existence and survival of the accused is a constant threat and peril to the society. Reference in this regard may be placed on the precedent judgments of the supreme court that prescribe the test for determining as to whether an offence would fall in the category of 'rarest of the rare' cases or not. The supreme Court laid certain yardstick to be considered before an offence may be categorized as rarest of the rare in the case of ***Bachan Singh versus State of Punjab reported as (1980)2 SCC 684***, a court is to see the extreme manner or brutality in which the crime was planned and committed, the motive behind the offense, the vulnerability of the victim as well the magnitude and the societal shocking impact of the crime and to weigh the same against the age of the accused, his

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mental state, background and emotional stress at the time of offence, the criminal antecedents and the gravity of the cases in which involved, the heightened possibility of the accused being involved in the life or crime. The relevant extract thereof reads as under: -

> ***"161**. A study of the propositions set out above, will show that, in substance, the authority of none of them has been affected by the legislative changes since the decision in Jagmohan's case. Of course, two of them require to be adjusted and attuned to the shift in the legislative policy. The first of those propositions is No. (iv) (a) which postulates, that according to the then extant CrPC both the alternative sentences provided in Section 302, Penal Code are normal sentences, and the Court can, therefore, after weighing the aggravating and mitigating circumstances of the particular case, in its discretion, impose either of those sentences. This postulate has now been modified by Section 354(3) which mandates the Court convicting a person for an offence punishable with death or, in the alternative with imprisonment for life or imprisonment for a term of years, not to ins-pose the sentence of death on that person unless there are "special reasons" - to be recorded - for such sentence. The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal. Thus, the legislative policy now writ large and clear on the face of Section 354(3) is that on conviction for murder and other capital offences punishable in the alternative with death under the Penal Code, the extreme penalty should be imposed only hi extreme cases.*

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***162**. In this view we are in accord with the dictum of this Court in Balwant Singh v. State of Punjab , wherein the interpretation of Section 354(3) first came up for consideration. After surveying the legislative background, one of us (Untwalia, J.) speaking for the Court, summed up the scope and implications of Section 354(3), thus:*

> *Under this provision the Court is required to state the reasons for the sentence awarded and in the case of sentence of death, special reasons are required to be stated. It would thus be noticed that awarding of the sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death sentence. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case.*

While applying proposition (iv) (a), therefore, the Court has to bear in mind this fundamental principle of policy embodied in Section 354(3).

***163.** Another proposition, the application of which, to an extent, is affected by the legislative changes, is No. (v). In portion (a) of that proposition, it is said that circumstances impinging on the nature and circumstances of the crime can be brought on record before the pre-conviction stage. In portion (b), it is emphasised that while making choice of the sentence under Section 302, Penal Code, the Court is principally*

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concerned with the circumstances connected with the particular crime under inquiry. Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3) a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the Court should not confine its consideration "principally" or merely to the circumstances connected with particular crime, but also give due consideration to the circumstances of the criminal.

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***209**. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures albeit incomplete, furnished by the Union of India, show that in the past Courts have inflicted the extreme penalty with*

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> *extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.*

291 In ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, reported as (2009) 6 SCC 498*****,** the Hon'ble Supreme Court commuted the death sentence of the accused therein to rigorous imprisonment for life and held as under**: -**

> ***"66.*** *The rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare*

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doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] sets the bar very high by introduction of the rarest of rare doctrine."

292 In ***Machhi Singh and others v. State of Punjab, [1983] 3SCR 413***, a three-Judge Bench of the Hon'ble Supreme Court holds,

[H-D]. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence in no case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself, bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'Killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed,

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> *the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty…*

293 As per the mandate of the Hon'ble Supreme Court, as per the report/record, the mitigating and aggravating circumstances qua each of the accused are as under: -

SUNIL KUMAR

294 Insofar as accused Sunil Kumar is concerned, the material placed before us indicates that he is 29 years of age. He was arrested in the present case in the year 2023 and was convicted in December 2025. He is engaged as a labourer and has adequate family support. The psychological assessment conducted during the course of the present proceedings records his IQ at 97, which falls within the average range, with schizoid and passive-aggressive traits; however, he is not suffering from any active psychiatric illness. The sociological assessment further indicates that he does not engage in substance abuse and only smokes occasionally. He had studied up to the 10th standard but discontinued his education thereafter.

295 It is also relevant that his conduct during incarceration has been reported to be cordial with the jail officials and his behaviour in social settings

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has been described as appropriate. The assessment does not indicate any history of violent behaviour or suicidal tendencies. These circumstances, particularly his relatively young age, employment as a labourer, educational background, family support and appropriate conduct during incarceration, are relevant factors which may be taken into consideration while determining the appropriate sentence to be imposed upon him.

VIKRAM @ VICKY

296 As regards accused Vikram @ Vicky, the material before us shows that he is 30 years of age and was arrested in the present case in the year 2023 and convicted in December 2025. He belongs to a financially poor background. His psychological assessment records his IQ at 90, within the average range, with schizoid and passive-aggressive traits. The assessment also records that he is experiencing adjustment disorder versus dysthymia.

297 From the sociological assessment, it emerges that he studied up to the 5th standard and is the youngest amongst four siblings. His father has expired and his mother is residing with his two elder brothers. These aspects relating to his age, socio-economic circumstances, educational background and family circumstances may be taken into consideration while assessing the mitigating circumstances relevant to the question of sentence. At the same time, the record also reflects his involvement in eight other criminal cases and that he was punished for misuse of the Prison Inmate Calling System while confined in District Jail, Karnal. These latter circumstances are matters which have to be separately considered while

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undertaking the overall sentencing exercise.

MANISH KUMAR

298 In the case of accused Manish Kumar, the material on record indicates that he is 26 years of age. He was first incarcerated in the years 2019 and 2021 in connection with different offences and was arrested in the present case in 2023 and convicted in December 2025. He belongs to a financially poor background. His psychological assessment records an IQ of 93, which falls within the average range, with schizoid and passive-aggressive traits. The assessment further records the presence of anxiety with major depressive symptoms.

299 From the sociological assessment, it emerges that Manish Kumar studied up to the 10th standard and is the youngest amongst four siblings. The assessment records his involvement in 16 criminal cases, including the present case. At the same time, the sociological assessment specifically records that no sociological circumstances were found to have influenced the commission of the present offence, while observing that no retrospective comment could be made. The circumstances relating to his young age, financially disadvantaged background, educational status and the psychological findings recorded in the assessment may be taken into consideration while undertaking the sentencing exercise, subject to the other circumstances appearing against him on the record.

VIKRAMJEET @ BITTU

300 With respect to accused Vikramjeet @ Bittu, the material placed

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before us shows that he is 31 years of age. He was arrested in the present case in the year 2023 and convicted in December 2025. He belongs to a financially poor background and has two brothers and two sisters. His psychological assessment records his IQ at 112, which falls within the above-average range, and notes narcissistic and passive-aggressive traits.

301 The sociological assessment indicates that he studied up to the 10th standard and is the third amongst five siblings. The assessment, however, records that he has been involved in criminal activities from the age of 13 years and has been involved in 20 criminal cases, including the present case. It further records that no sociological circumstances were found to have influenced the commission of the present offence, while no retrospective comment could be made. The factors relating to his age, financial background and family circumstances constitute the mitigating circumstances disclosed in the assessment, however, these factors have to be considered alongside the adverse circumstances emerging from the record while determining the appropriate sentence.

302 The mitigating circumstances of the case, as above, have been considered. The evidence does not show any criminal antecedents of the accused herein or their criminal orientation beyond reform. Under the given circumstances, the possibility of reformation of the accused persons at any time in future cannot be entirely ruled out and they have opportunity to suitably reintegrate into the mainstream of society keeping in view the retributive and reformative objects of sentencing.

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303 In ***Mohinder Singh v. State of Punjab, [2013] 3 SCR 90***, the Hon'ble Supreme Court holds,

> *[20E-F]. It is well settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest of rare" case principle is dependent upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fiber of the society, would call for imposition of capital punishment in order to ensure that it acts as a deterrent.*

304 In ***Shahjad Ali @ Ali Ur Rehman v. State of Uttarakhand, 2026 INSC 557***, decided on 06.05.2026, the Hon'ble Supreme Court, while upholding the conviction of the accused under Sections 302, 392, 411, 436 and 506 of the Indian Penal Code and Section 25/4 of the Arms Act, commuted the death sentence awarded under Section 302 IPC to imprisonment for life for a fixed term of twenty-five years without remission. The relevant part of the judgment is extracted hereunder: -

> *"52. Coming to the aspect of the sentence of death awarded by the learned trial Court and affirmed by the High Court, we are required to examine whether the present case falls within the "rarest of rare" category as laid down by this Court in Bachan Singh (supra).*

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53. A consideration of the overall conspectus of the case as emanating from the record reveals that the appellant was working in the shop of the deceased Sanjay Guleria and was removed from service on account of alleged misbehaviour with the deceased Lalita. The appellant comes from the lower echelon of society. Having lost his only source of livelihood, he had repeatedly and persistently requested Sanjay Guleria to take him back into service, but those requests went in vain. It is, therefore, discernible that the appellant was deeply frustrated on account of the loss of his source of livelihood and also probably, he felt insulted on account of being thrown out of employment on charges of misbehaviour. This context, while being wholly irrelevant to justify the crime, provides a degree of explanation for the mental state of the appellant that cannot be entirely eschewed from consideration while deliberating upon the quantum of sentence and the balancing act between death penalty and life imprisonment.

54. It is settled position of law that capital punishment can be only be awarded when the alternative of life imprisonment is unquestionably foreclosed. The exercise requires a careful and individualized balancing of the aggravating and mitigating circumstances, with the focus being not merely on the nature of the crime but equally on the character of the criminal, his background, prior antecedents, socio-economic circumstances, and the possibility of reformation and rehabilitation.

55. We have carefully considered the aggravating circumstances in the present case. The murders were pre-meditated, the appellant having arrived at the showroom with a knife concealed

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on his person with a clear intention to cause harm. The offence was committed in broad daylight in a public place in the presence of several eyewitnesses. The appellant first killed his employer and thereafter chased and killed Lalita, the lady who had reported his misconduct, by inflicting multiple stab wounds upon her. Following the double murder, the appellant threatened the bystanders, set the showroom ablaze and escaped by snatching the motorcycle of the customer Harish Chandra (PW-17) while threatening to kill any person who attempted to apprehend him. These circumstances undoubtedly reflect a grave and heinous crime.

56. At the same time, we cannot be unmindful of the mitigating circumstances. The appellant had no prior criminal antecedents. The motive for the commission of the crime, howsoever reprehensible, was traceable to a perceivable grievance arising from the termination of employment, his only source of livelihood and was not rooted in any communal, political, gratuitous, or preying motivation. The appellant belongs to the lower echelon of society and was driven, in part, by the frustration of repeated rejection of his pleas for re-engagement. There is no material on record establishing that the appellant poses a continuing threat to society or is incapable of reformation and rehabilitation.

57. On a careful and holistic consideration of the aforesaid aggravating and mitigating circumstances, we are of the opinion that the offence committed by the appellant, howsoever, brutal and heinous, cannot be brought within the purview of the "rarest of rare" category as expounded by this Court in Bachan Singh (supra). The double murder, though arising from a calculated

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premeditation, was fueled by the frustration of a man who had been deprived of his livelihood and whose repeated requests for revival of employment were rejected. It is thus, not a case exhibiting such extreme moral depravity or exceptional brutality as would shock the collective conscience of society so as to warrant the imposition of death penalty. Hence, we are not inclined to sustain the capital punishment imposed upon the appellant by the trial Court and affirmed by the High Court.

58. The question that then falls for determination is as to the appropriate sentence required to be imposed upon the appellant. The governing principles in this regard were evolved by this Court in Swamy Shraddananda v. State of Karnataka13, wherein it was held that in cases falling short of the "rarest of rare" category, the Court may yet find the ordinary sentence of life imprisonment subject to remission to be inadequate having regard to the gravity of the offence. In such situations, instead of being compelled to choose between a sentence of 14 years' imprisonment and death penalty, the Court may impose life imprisonment for a specified term without remission so as to ensure a punishment proportionate to the crime committed. The constitutionality of this principle was subsequently affirmed by a Constitution Bench in Union of India v. V. Sriharan alias Murugan14, which recognised 13 (2008) 13 SCC 767. The power of constitutional Courts to prescribe a fixed period of incarceration without remission depending upon the nature of the offence and the surrounding circumstances. The relevant excerpts from V. Sriharan (supra) are extracted hereinbelow: -

"104. That apart, in most of such cases where death

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penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modifiedpunishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.

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> *106. Viewed in that respect, we state that the ratio laid down in Swamy Shraddananda (2) [Swamy Shraddananda v. State of Karnataka, (2008) 13 SCC 767] that a special category of sentence; instead of death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in Sangeet v. State of Haryana, (2013) 2 SCC 452 that the deprival of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same."*
>
> *(Emphasis Supplied)*

59. The principles governing determination of such fixed-term sentence were comprehensively considered by a three-Judge bench of this Court in Navas @ Mulanavas v. State of Kerala15. After surveying a series of earlier precedents on the subject, this Court observed that fixation of the minimum term of incarceration is essentially an exercise in proportionality, requiring due consideration of factors such as the nature of the offence, number of victims, extent of injuries, motive, degree of premeditation, criminal antecedents, possibility of reformation, socio-economic background and conduct of the convict. The Court further noticed that in a majority of cases, applying the Swamy Shraddananda principle, the period of compulsory/fixed term incarceration has generally ranged between 20 and 35 years, with 25 years being frequently considered appropriate in cases involving double murder bereft of exceptionally

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aggravating circumstances. In the facts of that case, involving murder of two persons arising out of personal grievance and absence of criminal antecedents, the sentence of death was accordingly commuted to imprisonment for life with a minimum term of 25 years without remission.

60. Applying the aforesaid principles to the facts of the present case, we find that the aggravating circumstances are that the crime was premeditated; two persons both known to the appellant were killed in cold blood; the manner of assault was brutal and; the appellant thereafter indulged in acts of arson and threatened those present at the spot. At the same time, certain mitigating circumstances also deserve due reference. The appellant had no prior criminal antecedents; the offence arose out of personal frustration following loss of livelihood; he belongs to the lower strata of the society with a modest socio-economic background and; there is no material to indicate that he is beyond the scope of reformation.

61. Balancing the aforesaid circumstances, we are of the considered opinion that the ends of justice would be adequately met by commuting the sentence of death to imprisonment for life which shall enure to a fixed term of 25 (twenty-five) years without remission. Such a sentence, in our view, would be proportionate to the gravity of the offence while at the same time preserving the possibility of reformation and rehabilitation of the appellant."

305 It is evident from a perusal of the above that even though the offence of Robbery and murder is a heinous offence, however, the offence does not reflect brutality or extreme cruelty so as to shock the collective conscience of the society or to bring it within the category of rarest of the rare

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cases. It would also be difficult at this stage to hold that the accused are beyond reform and their reintegration in the society is unlikely. Besides, the material available on record also does not suggest that the accused are a threat to the society and their existence and later reinduction in the society is likely to expose the members of the society to grave danger or strong apprehension about their security.

306 In the above legal and factual background, we are now required to consider as to what would be an appropriate sentence to be imposed on the accused in the facts of the present case.

307 The Constitution Bench of the Supreme Court in the matter of ***Union of India Vs. V. Sriharan alias Murugan and others reported as (2016) 7 SCC 1***, as well as ***Moyuddin Shaikh Vs. State of Gujarat, passed in Criminal Appeal No.2686 of 2026 arising out of SLP (Crl.) Diary No.35717 of 2025, decided on 26.05.2026***, held that Constitutional Courts can impose any other punishment and modify the life sentence to a fixed-term sentence exceeding 14 years or so.

308 Having heard learned counsel for the parties and having weighed the mitigating and aggravating circumstances qua each of the accused, we are of the opinion that the present case, though the offence is grave and has shaken the conscience of society, does not warrant capital punishment as the only punishment to be imposed. The accused are between 26 and 31 years of age, hail from financially modest backgrounds, have limited education, and none is suffering from any active psychiatric illness. The record also reflects that

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accused Sunil Kumar has maintained cordial relations with the jail authorities and has shown no tendency toward violence. It cannot, therefore, be said with certainty that the accused are beyond reform or incapable of returning to the fold of society. At the same time, this Court cannot be oblivious to the adverse circumstances: a woman was done to death within the sanctity of her home, in pursuance of a conspiracy hatched with deliberation, and some of the accused carry a long history of involvement in other criminal cases. These aggravating features rule out any leniency that would belittle the loss suffered. We also ponder whether the true measure of a sentence lies in how swiftly it ends a life or in how long it compels a person to live with what he has done. A sentence that gives every morning for decades to reflect and repent is no mean sentence. While a family has lost one of its own, the law need not extinguish the lives of the convicts to vindicate that loss; it must instead ensure that they spend the prime of their lives in confinement, answerable for the crime, with the door of reform left ajar, but not of release. Balancing the two, we are of the considered view that the ends of justice would be met by commuting the death sentence to imprisonment for a minimum period of 30 years without remission.

309 Accordingly, while CRA-AD-132-2026 titled as ‘Dr. Atul Arora Vs. State of Haryana and another’ is dismissed; CRA-D-40-2026, titled as ‘Poonam and another Vs. State of Haryana’, is partly allowed and the accused Poonam is acquitted of the charges against her, while conviction and sentence of the co-accused are modified along with commuting the death penalty.

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Similarly, Appeal Nos.CRA-D-75-2026 and CRA-D-109-2026 are also partly allowed and conviction of accused-appellants and their sentences are modified/commuted. MRC-1-2026 'State of Haryana Vs. Sunil Kumar and others' is disposed of in terms as above. The sentence awarded to convicts-accused Sunil, Manish, Vikram @ Vicky and Vikramjeet @ Bittu are tabulated hereinafter below: -

Sr. No.	Under Section	Punishment	Fine	Sentence in Default of Payment of Fine
1	Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for life.	Rs. 10,000/- each	Simple Imprisonment for six months
2	Section 323 read with Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for one year.	Rs. 1,000/- each	Simple Imprisonment for fifteen days
3	Section 394 read with Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for life.	Rs. 10,000/- each	Simple Imprisonment for six months
4	Section 392 read with Section 120-B of the Indian Penal Code	All the convicts are sentenced to undergo Rigorous Imprisonment for seven years.	Rs. 10,000/- each	Simple Imprisonment for six months
5	Section 201 read with Section 120-B	All the convicts are sentenced to undergo Rigorous	Rs. 10,000/- each	Simple Imprisonment for six months

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Sr. No.	Under Section	Punishment	Fine	Sentence in Default of Payment of Fine
	of the Indian Penal Code	Imprisonment for three years.		
6	Section 452 of Indian Penal Code read with Section 120-B of Indian Penal Code	Convicts namely (1) Sunil Kumar, (2) Manish Kumar, (3) Vikramjeet @ Bittu, (4) Vikram @ Vicky are sentenced to undergo Rigorous Imprisonment for seven years**.**	Rs. 10,000/- each	Simple Imprisonment for six months
7	Section 302 of Indian Penal Code read with Section 120-B of Indian Penal Code	Sentenced to imprisonment for a minimum period of **30 years** without remission.	Rs.25,000/- each	Simple imprisonment for one year

310 All the sentences shall run concurrently.

311 A photocopy of the order be placed on the connected file(s).

(VINOD S. BHARDWAJ)
JUDGE

October 28, 2026.
raj arora

(RAVINDER MALIK)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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