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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2172 of 2023**

Krishna Jhali @ Krishna Kumar Jhali S/o Shri Chaitan Jhali Aged About 29 Years R/o Village Aawaspara, Badlawand, Police Chowki Bakawand, P.S. Nagarnar, District Bastar (C.G.)

---- Appellant

Versus

State of Chhattisgarh Through S.H.O.P.S. Kotwali, Jagdalpur, District-Bastar (C.G.)

---- Respondent

(Cause-title taken from Case Information System)

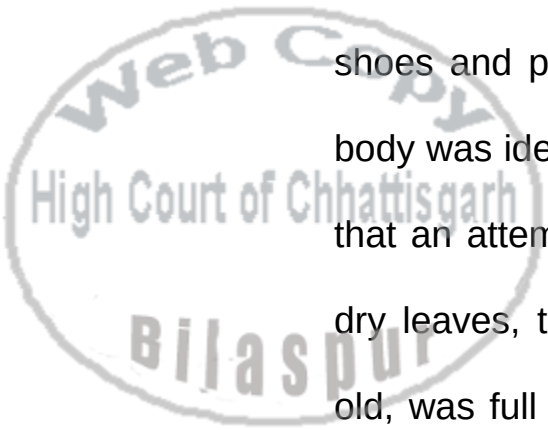
For Appellant : Mr. Ravindra Sharma, Advocate
For Respondent/State : Mr. Sangharsh Pandey, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Smt. Rajani Dubey, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****29.04.2024**

1. This criminal appeal under Section 374(2) of the CrPC is directed against the judgment of conviction and order of sentence dated 07.10.2023 passed by the Sessions Judge, Bastar at Jagdalpur (C.G.) in Sessions Trial No.41/2020, whereby the learned Sessions Judge has convicted the appellant for offence punishable under Sections 302 and 201 of the IPC and sentenced him to undergo imprisonment for life & fine of Rs.1,00/-, in default of payment of fine additional R.I. for 01 month and R.I. for three years & fine of Rs.100/-, in default of payment of fine additional R.I. for 01 month respectively with a direction to run both the sentences concurrently.



2. Case of the prosecution, in brief, is that on 12.04.2020, the complainant Atab Netam gave Merg Intimation (Ex.P-8) to the Police Station – Kotwali, Jagdalpur to the effect that his daughter Kavita Netam (deceased) who worked at Kumharpara Petrol Pump went missing when she left for home on 08.04.2020 at around 4.30 pm and while searching her, on 09.04.2020 the scooty of missing person Kavita was found in suspicious condition in the bushes of village Dodrepal forest. On the basis of which the Police Station Kotwali, Jagdalpur registered Missing Person Case No. 18/2020 and in the morning of 12.04.2020, a half burnt dead body in the forest, in front of Shiva temple, on the basis of half burnt clothes, shoes and physical structure present in the dead body, the dead body was identified as missing person Kavita Netam and on finding that an attempt was made to burn the dead body with the help of dry leaves, the dead body which appeared to be three-four days old, was full of insects and was giving off a foul smell. Based on the above information, Merg Intimation No. 30/2020 was registered in Police Station, Kotwali Jagdalpur on 12.04.2020.
3. Investigating Officer left for scene of occurrence on the same day i.e. 12.04.2020 and prepared visual map (Ex.P-10) of the incident site as per the instructions given by the applicant Atab Netam. After summoning the witnesses vide Ex.P-2, inquest over the dead body of the deceased was prepared vide Ex.P-1 and the dead body of the deceased Kavita Netam was sent through Constable No. 807 Ved Prakash Deshmukh after giving duty certificate (Ex.P-27) to Medical College, Dimrapal along with the post-mortem application



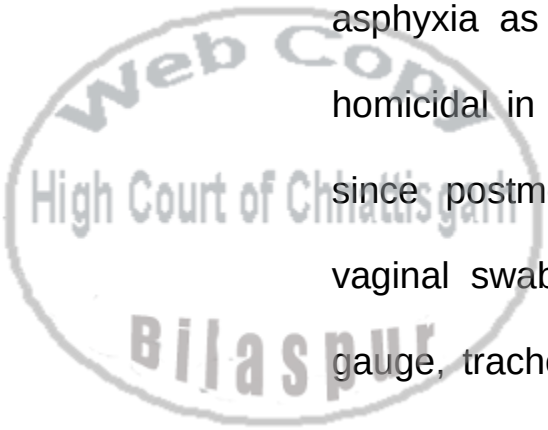


(Ex.P-18), where Dr. Gyanendra Kumar (PW-13) conducted postmortem on the dead body of the deceased vide Ex.P-19 and found following antemortem injuries :

- “1. Scalp ecchymosed on left side parieto-temporal region, left temporal muscle ecchymosed, skull vault intact, dura soft, brain matter having reddish-grey liquid mass.*
- 2. Left side chest muscle ecchymosed from 3rd ribs to 7th ribs intercostal muscle.*
- 3. Neck muscle ecchyposed, contused, hyoid bone having inward compression fractured.”*

He opined that the cause of death of the deceased was due to asphyxia as a result of throattling and the mode of death was homicidal in nature and duration of death was 2 days to 4 days since postmortem examination and Viscera, vaginal slide (2), vaginal swab, controlled swab, tracheal gauge piece, controlled gauge, trachea in a 10% formalin preserved, sealed and handed over to concerned Police Constable.

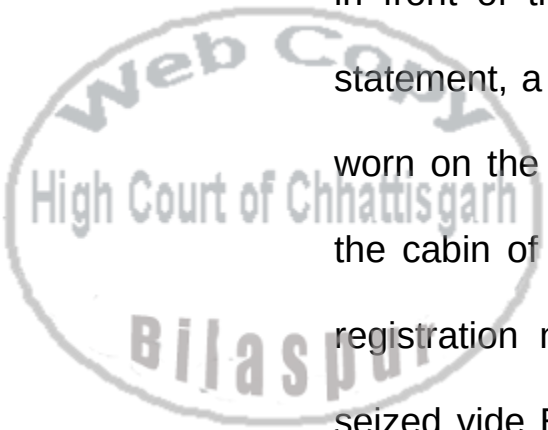
4. On 12.04.2024 itself, from the incident site, a pair of shoes, a black framed spectacles, a small piece of yellow glass bangle, a black button and a blue scarf worn by the dead body, and a half burned piece of white lined salwar kurta, head phone, a half-burned bunch of hair from the deceased's head and 100-100 grams each of bloodstained soil and plain soil were recovered in front of the witnesses vide Ex.P-12. After the postmortem, the Doctor presented 04 sealed boxes related to the preserved viscera and parts of the deceased's viscera in five sealed packets, vaginal slide, swab, trachea, gauze piece, control gauze piece etc. of the





deceased, brought to the Police Station by Constable Ved Prakash Deshmukh (PW-7) was seized vide Ex.P-21.

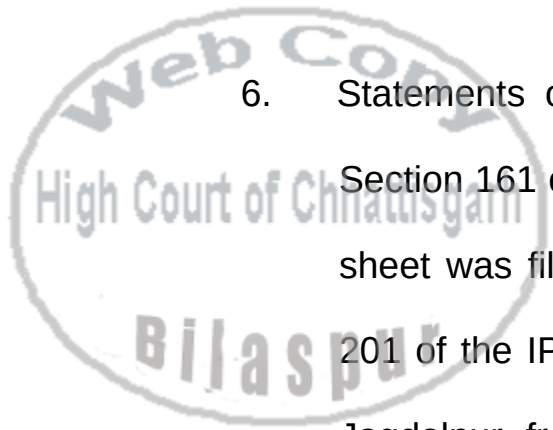
5. During the course of investigation on 15.04.2020, on the basis of investigation on the Merg Intimation under Section 174 Cr.P.C. and collected witnesses, when it was found that the deceased was murdered, a First Information Report No. 174/2020 was registered against the suspected accused Krishna Jhali under Section 302, 201 of IPC vide Ex.P-26. On 18.04.2020, at 08.55 pm, memorandum statement of the accused/appellant was recorded vide Ex.P-3 at the incident site near Village Asana forest, Jagdalpur in front of the witnesses and on the basis of his memorandum statement, a mobile phone of Vivo Company with SIM and clothes worn on the date of incident were seized vide Ex.P-4 from inside the cabin of Truck Number CG-17 KN 9325. Motorcycle having registration number CG 17 KN 7944 of the accused has been seized vide Ex.P-5. The accused was arrested vide Ex.P-13 and intimation of arrest was given to his family vide Ex.P-28. Spot map of the incident site and spot panchnama was prepared by the Patwari vide Ex.P-7 on 19.06.2020. On 29.04.2020, seized articles were sent for Histopathology examination through Superintendent of Police, Jagdalpur to Pathology Department Government Medical College, Jagdalpur vide Ex.P-29 and receipt was obtained vide Ex.P-30. On 30.06.2020, seized viscera of the deceased were sent for chemical analysis to Forensic Science Laboratory, Raipur through Superintendent of Police, Jagdalpur vide Ex.P-31 and receipt of the same was obtained vide Ex.P-32.





On the same day i.e. on 30.06.2023, seized articles were sent for chemical analysis to Forensic Science Laboratory, Raipur through Superintendent of Police, Jagdalpur vide Ex.P-33 and receipt of the same was obtained vide Ex.P-34. On the same date itself, a bunch of half-burned hair of the deceased, half-burned kurta of the deceased, half-burned headphone, trachea gauze piece of the deceased were sent in sealed packets for chemically tested through Superintendent of Police, Jagdalpur vide Ex.P-35 and receipt of the same was obtained vide Ex.P-36. Reports of the seized articles were received from concerned Department vide Ex.P-37 to Ex.P-40 respectively.

6. Statements of the accused and witnesses were recorded under Section 161 of the CrPC. After completion of investigation, charge-sheet was filed against the accused/appellant under Section 302, 201 of the IPC in the Court of Chief Judicial Magistrate, Bastar at Jagdalpur, from which the case was registered under Section 209 of CrPC and sent to the Court of Sessions Judge, Bastar at Jagdalpur for trial. When the charge under Sections 302, 201 of IPC was framed against the accused/appellant and explained to him, he denied the allegations and wanted trial. In the trial, under Section 313 of the CrPC, the accused has declared himself innocent and stated that he has been falsely implicated. He did not give any evidence in his defence.
7. In order to bring home the above-stated offence, the prosecution examined as many as 21 witnesses and exhibited 40 documents Exs.P-1 to P-40.





8. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 07.10.2023, convicted the appellant for offence under Sections 302, 201 of the IPC and sentenced him as mentioned in opening paragraph of this judgment, against which, this criminal appeal has been preferred by the accused/appellant.

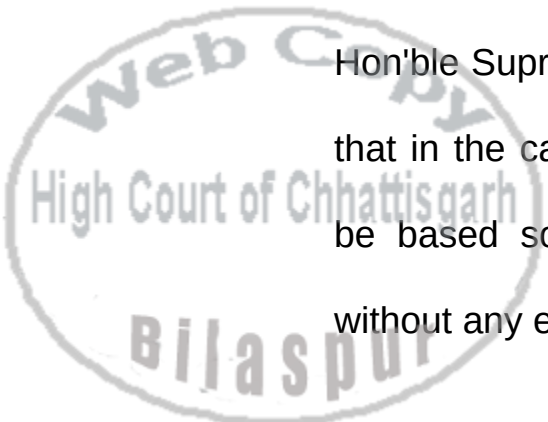
9. Mr. Ravindra Sharma, learned counsel for the appellant, would submit that the judgment and sentence passed by the learned trial Court is bad both on facts and in law. The learned trial court has convicted the accused/appellant on the basis of last seen theory as stated by PW-6 Ku. Kausilya Nath, whereby she has stated that she saw the deceased and appellant together on the date of alleged incident 08.04.2020, but earlier she has not made any statement under Section 161 or under Section 164 Cr.P.C. and for the first time she made statement on 22.09.2021 before the trial Court which is *prima facie* suspicious. The story of prosecution case is not based upon any motive and the story is unreliable, un-natural and contrary to the natural human conduct. He would further submit that the learned trial Court wrongly relied upon the statement of witnesses I.O./PW-21 Dhananjay Sinha, PW-3 Yograj Netam and PW-9 Mahendra Netam (the witnesses of memorandum & seizure) though there is material discrepancy in their statements and seizure from the accused/appellant is also not proved beyond reasonable doubt. The learned trial Court wrongly held that the appellant has caused injury to the deceased with intention to harm her limb and life, in absence of any evidence in this regard, that the





prosecution has failed to prove the presence of the appellant at the place of incident. He would also submit that the trial Court erred in ignoring the fact that the dead body was found from the open place and the memorandum witnesses are the relative of the deceased and the memorandum and seizure is also doubtful. The prosecution has failed to establish the chain of circumstantial evidence and the independent prosecution witnesses have also not been examined in support of the prosecution story. He would lastly submit that the conviction of the accused/appellant is solely based upon the last seen theory which is not immediately soon before the incident and the learned trial Court erred in ignoring that the Hon'ble Supreme Court and this Hon'ble Court has repeatedly held that in the cases of circumstantial evidence, the conviction cannot be based solely on the last seen theory. As such, conviction without any evidence is unsustainable and liable to be set aside.

10. On the other hand, Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State/respondent opposed the aforesaid submissions and would submit that unnatural death of the deceased Kavita Netam has been proved by Dr. Gyanendra Kumar (PW-13), who in turn opined that the cause of death of the deceased was Asphyxia due to throttling and the nature of death was homicidal through his report (Ex.P-19). He would further submit that the Investigating Officer (PW-21) recorded memorandum statement (Ex.P-3) of the accused and at his instance, a Vivo Mobile Phone Model No. 1907 which belongs to deceased was seized vide Ex.P-4. The independent & attesting





witnesses Yograj Netam (PW-3) and Mahesh Netam (PW-9) have proved their signature on the memorandum statement and seizure of the accused. Investigating Officer (PW-21) has also proved the same in the form of documentary evidence. He would also submit that as per the statement of (PW-1) Smt. Laxmi Netam (mother of deceased), (PW-2) Sulechandra Netam (uncle of deceased), (PW-3) Yograj Netam, (PW-8) Atab Netam (father of deceased) and (PW-9) Mahesh Netam (brother of deceased) have categorically deposed that the accused was the husband of the deceased and their relationship was not cordial due to which the deceased had been beaten up and was living separately from the accused in her maternal home for one and a half years. The prosecution has tendered sufficient and credible evidence for proving the commission of offence by the accused/appellant. The learned trial Court has appreciated the evidence in correct perspective and has recorded the finding of the guilt of accused as such, the trial Court has rightly convicted the appellant for offence under Section 302, 201 of the IPC and the appeal deserves to be dismissed.

11. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
12. Conviction of the accused-appellant is substantially based on the circumstantial evidence, recovery of shirt & jeans of the accused and Mobile Phone of the deceased and last seen theory as stated by PW-6 Ku. Kausilya Nath.



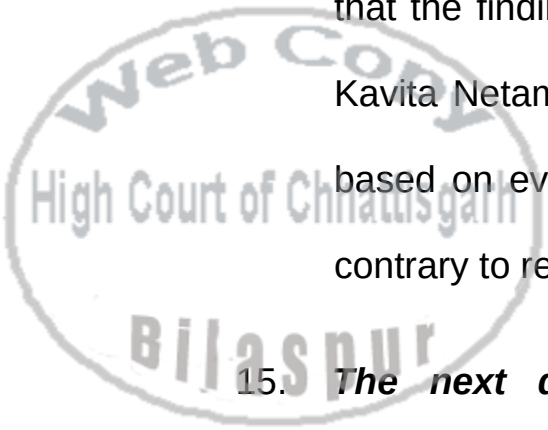


13. ***The first question for consideration would be, whether death of deceased Kavita Netam (Jhali) was homicidal in nature ?***

14. The trial Court after appreciating oral and documentary evidence available on record particularly relying upon the statement of Dr. Gyanendra Kumar (PW-13), who conducted postmortem vide Ex.P-19 has come to the conclusion that cause of death of the deceased was Asphyxia as a result of throattling and the mode of death was homicidal in nature. After hearing learned counsel for the parties and after considering the submissions advanced by learned counsel for the parties, we are of the considered opinion that the finding recorded by the trial Court that death of deceased Kavita Netam (Jhali) was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.

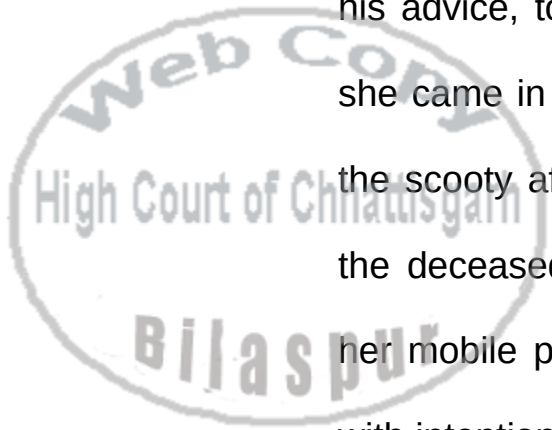
15. ***The next question for consideration would be, whether recovery of Mobile Phone of the deceased and recovery of shirt and jeans of the accused in which stains of soil were present so made from the accused pursuant to memorandum statement of the accused is admissible and it can be used against him or not ?***

16. In the present case, there is no direct evidence / eyewitness available on record. The trial Court has convicted the appellant on the basis of his memorandum statement followed by recovery of clothes of the appellants, which have been proved in accordance with law.





17. Memorandum statement (Ex.P-3) of the appellant has been proved by the Investigating Officer Dhananjay Sinha (PW-21) and on that basis, the appellant has been convicted.
18. A careful perusal of memorandum statement of the appellant (Ex.P-3) would show that it has been recorded by Investigating Officer Dhananjay Sinha (PW-21) at Police Station Kotwali, Jagdalpur in presence of two panch witnesses in which the appellant was said to have stated that on suspicion that his wife was having illicit relation with another person, he tried to make her understand for number of times, but when she was not agreeable to his advice, to take revenge, he called her near Dhodrepal, where she came in her scooty, stopped her nearby and took her off from the scooty after hiding the scooty behind the bushes forcibly took the deceased on his motorcycle towards Aasna forest, asked for her mobile phone which she refused to give, then on fit of anger with intention to kill her due to old dispute, threw her on the ground, pressed her chest with both knees and strangled her with both his hands and killed her. Keeping her mobile with him and left the dead body of the deceased at the spot and went to village Aasna in his motorcycle from where he brought two liters oil and came back to the place of incident and in order to conceal the evidence, after sprinkling oil on the dead body of the deceased, lit fire by matchbox kept in his pocket. Thereafter, on his motorcycle he came to Jagdalpur, after telling his friend Vicky Kashyap that he was going towards Andhra and after asking to keep his motorcycle asked him to left him upto to *Gailebati Dharamkanta*, on which he left the





accused upto Truck, thereafter, the accused along with his friend Devendra Manji went towards Coimbatore, Tamilnadu in Truck No. CG – 17 KN 9325 of Jaisawal Transport and in the way, he threw the SIM kept in the mobile and keep the mobile with him. Clothes worn on the date of incident and hidden the mobile in the cabin of Truck. Lets go and get it recovered.

19. At this stage, it would be appropriate to notice Section 27 of the Indian Evidence Act, 1872, which states as under: -

“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.”

20. Section 27 of the Indian Evidence Act is applicable only if the confessional statement relates distinctly to the fact thereby discovered.
21. The Supreme Court in the matter of **Asar Mohammad and others v. State of U.P.**¹ with reference to the word “fact” employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. It has been further held that the discovery of fact arises by reason of the fact that the information given by the accused

1 AIR 2018 SC 5264



exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of **Pulukuri Kotayya v. King Emperor**² observed as under: -

*“13. It is a settled legal position that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of **Vasanta Sampat Dupare v. State of Maharashtra** reported in (2015) 1 SCC 253, in particular, paragraph 23 thereof. The same read thus:*

*“23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in **Pulukuri Kotayya v. King Emperor** (supra) has held thus: (IA p. 77)*

“... it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the

² AIR 1947 PC 67



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

xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx”



22. Reverting to the facts of the case in light of the principles of law laid down by their Lordships of the Supreme Court in **Asar Mohammad** (supra), only discovery of an object, the place from which it is produced and knowledge of the accused as to this extent would be admissible and incriminating part of the accused statement that he has inflicted injuries to deceased Kavita Netam (Jhali) would not be admissible under Section 27 of the Evidence Act. In the present case, no incriminating article has been seized pursuant to the memorandum statement of the appellant (Ex.P-3). As such, that part of evidence would not be admissible.

23. The Supreme Court in the matter of **Aghnoo Nagesia v. State of**



Bihar³ has clearly held that confession to police whether in course of investigation or otherwise and confession made while in police custody would be hit by Section 25 of the Evidence Act and observed as under:-

"9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides : "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other

3 AIR 1966 SC 119



than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26. It provides 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. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S.25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while





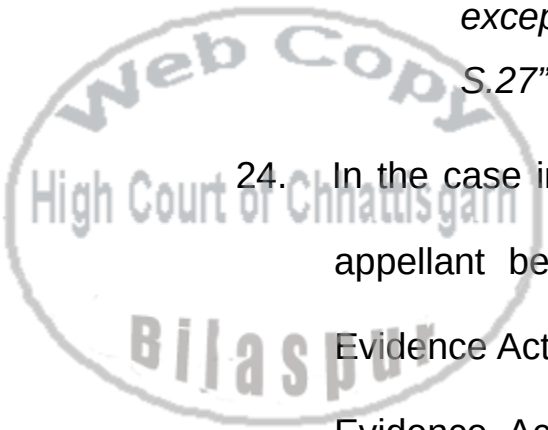
he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.”

Their Lordships further held as under:-

“18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S.27”

24. In the case in hand, confessional statement (Ex.P-3) made by the appellant before the police officer is hit by Section 25 of the Evidence Act and no part of it is admissible under Section 27 of the Evidence Act. As such, we are of the considered opinion that alleged memorandum statements of the appellant (Ex.P-3) is hit by Section 25 of the Evidence Act and no part of it is admissible under Section 27 of the Evidence Act in view of decisions rendered by Privy Council in ***Pulukuri Kotayya*** (supra) followed by the the Supreme Court in ***Asar Mohammad*** (supra). Even otherwise, no other incriminating piece of evidence is available on record to convict the appellant for offence under Sections 302, 201 of the IPC.

25. ***Now the next question for consideration would be whether the trial Court is justified in convicting the appellant only on the***





basis of theory of 'last seen together' as stated by PW.6 Ku. Kausilya Nath, whereby she has said that she saw the deceased and appellant together on the date of alleged incident, finding it to be duly established ?

26. The Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**⁴ has clearly laid down the factors to be taken into account in adjudication of cases of circumstantial evidence, which states as under :-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;

(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.”

4 (1984) 4 SCC 116





27. In the matter of **Arjun Marik v. State of Bihar**⁵, it has been held by their Lordships of the Supreme Court have held that conviction cannot be made solely on the basis of theory of 'last seen together' and observed in paragraph 31 as under :-

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to though a number of witnesses have been examined be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

28. Likewise in the matter of **State of Goa v. Sanjay Thakran**⁶ the Supreme Court has held that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was observed in paragraph 34 as under :-

“34. From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap

⁵ 1994 Supp (2) SCC 372

⁶ (2007) 3 SCC 755





between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration. There can be no fixed or straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by





showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case. ”

29. Similarly in the matter of **Kanhaiya Lal v. State of Rajasthan**⁷, their Lordships of the Supreme Court have clearly held that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime and there must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant in our considered opinion, by itself cannot lead to proof of guilt against the appellant. It has been held in paragraphs 15 and 16 as under :-

*“15. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*⁸.*

7 (2014) 4 SCC 715

8 (2010) 15 SCC 588





16. In view of the aforesaid circumstances, it is not possible to sustain the impugned judgment and sentence. This appeal is allowed and the conviction and sentence imposed on the appellant-accused Kanhaiya Lal are set aside and he is acquitted of the charge by giving benefit of doubt. He is directed to be released from the custody forthwith unless required otherwise.”

30. Finally in the matter of **Anjan Kumar Sarma v. State of Assam**⁹ their Lordships of the Supreme Court have clearly held that in a case where other links have been satisfactorily made out and circumstances point to guilt of accused, circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In absence of proof of other circumstances the only circumstance of last seen together and absence of satisfactory explanation, cannot be made basis of conviction.

31. Reverting to the facts of the present case in light of the aforesaid decisions rendered by the Supreme Court particularly in the matter of **Anjan Kumar Sarma** (supra), it is quite established that the prosecution has only proved that death of deceased Kavita Netam (Jhali) was homicidal in nature and that appellant- **Krishna Jhali @ Krishna Kumar Jhali** and the deceased both were lastly seen together and no other connecting links have been satisfactorily made out and no other incriminating circumstance which leads to the hypothesis of guilt against the appellant have been proved. As such, evidence of Ku. Kaushilya Nag, alleged evidence of last seen

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together, whereby she has said that she saw the deceased and the appellant together on the date of alleged incident i.e. on 08.04.2020, but earlier she has not made any statement U/s 161 or U/s 164 of Cr.P.C. and for the first time she made statement on 22.09.2021 before the trial Court, which is prima facie suspicious and lodging of missing report by Atab Netam (PW-8) on 09.04.2020 specifically not mentioning the fact of last seen together, recovery of dead body after 4 days, the prosecution has failed to establish the chain of circumstantial evidence and as such, we are of the considered opinion that the trial Court is absolutely unjustified in convicting the appellant for offence under Sections 302 and 201 of the IPC as it would be unsafe to rest conviction only on the theory of 'last seen together'

32. As a fallout and consequence of the aforesaid legal analysis, the criminal appeal filed on behalf of appellant - **Krishna Jhali @ Krishna Kumar Jhali** is **allowed**. Impugned judgment dated 07.10.2023 passed by the Sessions Judge, Bastar at Jagdalpur (C.G.) in Sessions Trial No.41/2020, convicting and sentencing the appellant for offence under Sections 302 and 201 of the IPC is hereby set aside. The accused /appellant is acquitted of the said charge levelled against him. He is in jail. He shall be set at liberty forthwith if no longer required in any other criminal case.

33. The appellant is directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973.



34. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

**Sd/-
(Rajani Dubey)
Judge**

**Sd/-
(Ramesh Sinha)
Chief Justice**

Chandra



**Head – Note**

In absence of proof of other circumstances the only circumstance of last seen together and absence of satisfactory explanation, cannot be made basis of conviction.

अन्य परिस्थितियों के प्रमाण के अभाव में अंतिम बार साथ देखे जाने की एकमात्र परिस्थिति तथा संतोषजनक स्पष्टीकरण के अभाव को दोषसिद्धि का आधार नहीं बनाया जा सकता।

