



**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Criminal Appeal No.1153 of 2022**

Lavkush Shukla, S/o Ravindra Nath Shukla, aged about 28 years, R/o Gram Barri, Post Office Baaridih Baarsethi, District Jounpur (UP) Presently R/o Vidhan Sabha Road, Mowa, House of Vishwanath Sharma of Dubey Colony, PS Pandri, District Raipur (CG).

---- Appellant

**Versus**

State of Chhattisgarh through District Magistrate, Raipur, Chhattisgarh.

---- Respondent

**Criminal Appeal No.1330 of 2022**

K. Vamsilata @ Vamsi Sharma, 42 years, Wd/o late K. Vishwanath Sharma, R/o Bamleshwari Nagar, Near Nav Nihal School Ke pass, Gudhiyari, PS Gudhiyari, District Raipur, Chhattisgarh.

---- Appellant

**Versus**

State of Chhattisgarh through The District Magistrate, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Appellant : Shri SC Verma, Sr. Advocate along with Shri Sajal Kumar Gupta, Advocate (In CRA No. 1153 of 2022).  
Shri Prafull N. Bharat, Sr. Advocate along with Shri Akash Pandey, Advocate (in CRA No.1330 of 2022).  
For State : Shri Wasim Miyan, Panel Lawyer

**Hon'ble Shri Justice Ramesh Sinha, CJ**

**Hon'ble Shri Justice Ravindra Kumar Agrawal, J**

**Judgment Reserved on 08.01.2024**

**Judgment Delivered on 28.02.2024**

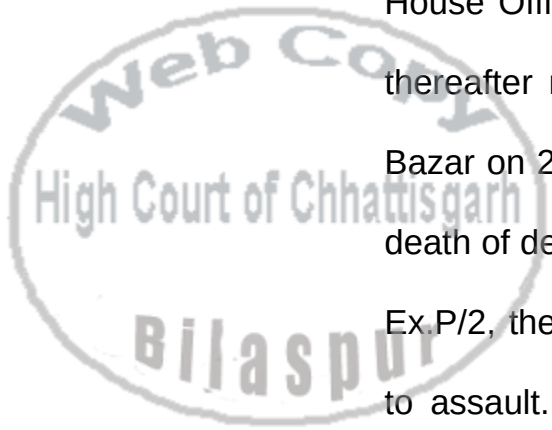
**Per, Ravindra Kumar Agrawal, J.**

1. Since both the appeals arise out of same crime and same sessions case, they are being heard and decided together by this common judgment.
2. Both the appeals arise out of judgment dated 05.07.2022 passed by the 9<sup>th</sup> Additional Sessions Judge, Raipur, in Sessions Case No.231 of 2019 whereby the accused persons have been convicted for the



offence under Sections 120-B and 302 IPC and sentenced them to undergo RI for life imprisonment with fine of Rs. 2000/- and RI for life imprisonment with fine of Rs. 2000/- respectively, in default of payment of fine, further RI for 1-1 year respectively. The sentences are directed to run concurrently.

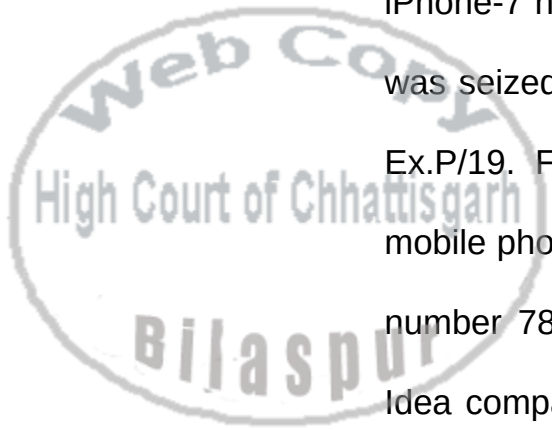
3. Brief facts of the case are that the deceased K. Vishwanath Sharma was found injured in his house in the intervening night of 19-20<sup>th</sup> July, 2019. He was being taken to DKS Hospital Raipur where he died during treatment on 20.07.2019 at about 7:15 am. Intimation about his death was sent by the doctor of DKS Hospital to the Station House Officer of Police Station Gol Bazar, Raipur, vide Ex.P/1 and thereafter merg intimation was recorded by the Police Station Gol Bazar on 20.07.2019 at about 14:30 hours with respect to unnatural death of deceased K Vishwanath vide Ex. P/2. In the merg intimation Ex.P/2, the probable cause of death was shown as head injury due to assault. Inquest of the body of the deceased was prepared in presence of the witnesses vide Ex.P/4 on 20.07.2019 and the body was sent for its postmortem to Jawahar Lal Nehru Memorial Medical College, Raipur, where Dr. Shiv Narayan Manjhi, PW-9 has conducted the postmortem of the body of deceased and gave his report Ex.P/38 whereby he opined that cause of death of the deceased was due to hemorrhage and shock as as result of head injury. All the injuries were antemortem in nature and duration of injuries were within 12 hours prior to death. The merg intimation recorded by Gol Bazar Police was sent to the jurisdictional police station i.e. police Station Gudhiyari, Raipur where another merg





intimation Ex.P/31 was recorded. An FIR Ex.P/43 was recorded for the offence under Section 302 IPC on 21.07.2019 against the unknown person.

4. Spot map Ex.P/37 was prepared by the investigating officer. Spot map Ex.P/9 was prepared by the Patwari. During investigation, the memorandum of the "A" Juvenile in conflict with law, Lavkush Shukla and K. Vamasilata was recorded on 22.07.2019 vide Ex.P/16, P/17 and P/18 respectively. On the basis of memorandum given by the accused persons in presence of witnesses, Samsung Mobile phone having SIM of Idea company bearing number 7089220000 and Apple iPhone-7 having SIM of Idea company bearing number 9644448752 was seized from accused Lavkush Shukla on 22.07.2019 itself vide Ex.P/19. From the accused K. Vamasilata @ Vamshi Sharma a mobile phone of Oppo company having SIM of Jio Company bearing number 7879429035, mobile of Samsung company having SIM of Idea company bearing number 7610344461 have been seized vide Ex.P/20. An iron hammer having wooden handle blood like stained was seized vide Ex.P/21 from the juvenile in conflict with law on the basis of his memorandum statement from the shrubs behind the house of one Sushil Agrawal near Marin Drive Garden, vide Ex.P/21. One half T-shirt and one Nokia mobile phone having SIM of Idea company bearing No.7089234875 and another SIM of Airtel bearing number 7607378709 was seized from juvenile in conflict with law vide Ex.P/22. From the accused Lavkush Shukla, an Activa Scooty was seized which was allegedly used in the commission of the offence. Viscera of the dead body of the deceased was sent for its





chemical examination from where viscera report Ex.P/61 was received in which no poisonous substance were found. The hammer seized from juvenile in conflict with law, clothes of the accused persons and article seized from the spot were sent for FSL examination to State Forensic Science Laboratories Raipur from where FSL report Ex.P/59 was received in which blood was found on the hammer and T-shirt of the juvenile in conflict with law. The pillow cover, underwear and cotton piece contained with blood stains of deceased Vishwanath was seized from the spot, however, no blood was found on the handle of the said hammer. Human blood was found on the T-shirt of juvenile in conflict with law and pillow cover seized from the spot. The origin of blood could not be detected from the other articles as the same was reported to be disintegrated. The police obtained call details of the mobile phones seized from the accused persons as also from the juvenile in conflict with law. The police also obtained a certificate under Section 65-B of the Evidence Act from the concerned mobile company. The statement under Section 161 CrPC of the witnesses was recorded. The accused persons have been arrested and after completion of investigation charge sheet was filed against the present appellants and "A" juvenile in conflict with law, for the offences under Sections 302, 120-B and 34 IPC before the Chief Judicial Magistrate, Raipur. The case was committed to the Sessions Court from where it has been transferred to the trial Court for its trial.

5. The trial Court has framed charges against the present appellants for the offence under Sections 302 read with Section 34 IPC and



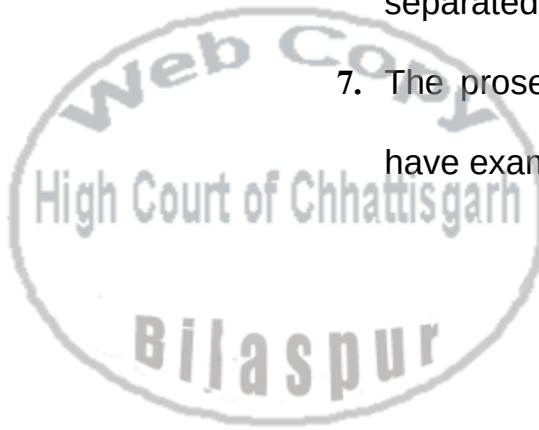


Section 102-B read with Section 34 IPC for hatching conspiracy to commit murder of deceased K. Vishwanath and in furtherance thereof, committed his murder. The accused persons/appellants have denied the charges and claimed trial.

6. Charge sheet was also filed against the "A", who claimed to be juvenile on the date of incident and raised an objection before the trial Court during the trial of the case. An inquiry was conducted by the trial Court and ultimately, vide order dated 16-02-2022, it was found that "A" was juvenile on the date of incident and therefore, after declaring him the juvenile in conflict with law, his trial was separated, and he was sent to Juvenile Justice Board, Raipur.

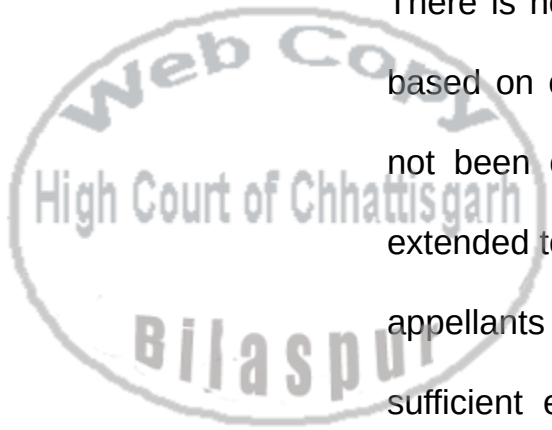
7. The prosecution, in order to prove offence against the appellants, have examined following 18 witnesses:

PW-1	Mohan Lal Nishad
PW-2	K.V.R. Sharma
PW-3	Shiv Kumar Sahu
PW-4	Tarun Verma
PW-5	Sagar Sahu
PW-6	Dhiraj Kumar Jain
PW-7	Somesh Sharma
PW-8	Jeevan Lal Parkar
PW-9	Shiv Narayan Manjhi
PW-10	Umakant Bhoi
PW-11	Prem Kumar
PW-12	Rohit Uikey
PW-13	Swati Kochuri
PW-14	Dheeraj Kochuri
PW-15	Sushant Banerjee
PW-16	Pankaj chandra
PW-17	Ravishankar Tiwari
PW-18	Pankaj Ramaiya





8. To prove the offence against the present appellants, the prosecution has relied upon documents Ex.P/1 to Ex.P/65.
9. After appreciation of the evidence available on record, the trial Court has convicted the appellants for the offence under Sections 302, 120-B IPC and sentenced them for life imprisonment. Hence these appeals.
10. Learned counsel for the appellants would submit that the appellants are innocent and have been falsely implicated in the case. The prosecution has failed to prove its case beyond reasonable doubts. There is no eyewitness to the incident and the prosecution case is based on circumstantial evidence. The chain of circumstances has not been completed and therefore the benefit should have been extended to the appellants. Merely based on call details made by the appellants to each other, the same cannot be considered to be sufficient evidence to hold guilty of the accused persons in the offence of commission of murder. No motive has been proved by the prosecution. There are inconsistency in the evidence of the witnesses. The call details annexed with the charge sheet has not been proved in accordance with law. Merely on the basis of memorandum statement and seizure of certain articles, the appellants cannot be convicted. The prosecution has further failed to establish that the appellants have hatched conspiracy to commit murder of deceased K. Vishwanath, and therefore, the appellants are entitled for their acquittal.

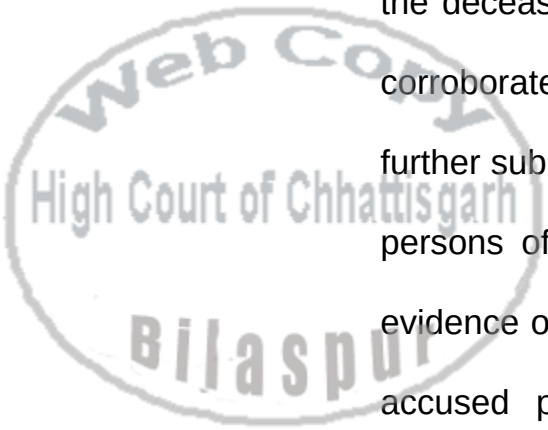




11. On the other hand, the counsel for the State supported the judgment of conviction and sentence and submitted that conspiracy always hatched in secrecy, the appellant K. Vamasilata @ Vamsi Sharma is the wife of deceased K. Vishwanath. The incident of murder has taken place inside the house of K. Vamsilata and there is no explanation from her as to how her Husband was found in an injured condition inside her house that too in the night. From the call details of the accused persons it has been proved that just before the incident all of them were in contact to each other through the mobile phone which proves the conspiracy and plan to commit murder of the deceased. The memorandum and seizure of the articles further corroborates the guilt of accused persons/appellants. He would further submit that the call details has been proved by the authorized persons of the concerned Telecom company. There are sufficient evidence on record which unerringly pointed towards the guilt of the accused persons and the chain of circumstantial evidence is complete and therefore the trial Court has rightly convicted the accused persons which cannot be said to be unjustified and the appeals of the appellants are liable to be dismissed.

12. We have heard the rival contentions put forth by the counsel for the parties and perused the records.

13. With respect to the homicidal death of the deceased, the prosecution has examined P.W. 9, Dr. Shiv Narayan Manjhi, who conducted the postmortem of the dead body of the deceased and gave his report Ex. P-38. At the time of conducting postmortem of the dead body of deceased K. Vishwanath, he has found the following injuries: -





“1. Contused lacerated wound present on left orbital ridge 04x01 cm. vertical, underneath scalp red color ecchymosis present on left frontal parietal & temporal bone. Skull bone showed depressed fracture on frontal & temporal bone size of 04x03 cm. vertical, which extends upto zygomatic bone, fracture of both side anterior cranial fossa & left middle cranial fossa. Brain lacerated against fracture, massive subdural & subarachnoid hemorrhage present all over but mostly on fracture sites. Cerebellum & mid brain showed massive subarachnoid hemorrhage.

2. Contusion present on shoulder just lateral to tip 04x03 cm. transverse.

3. Contusion present on left side chest just below axilla at posterior axillary line 05x04 cm. vertical.

4. Contusion present on left mastoid 06x04 cm. antero posteriorly.

5. Contusion present on left palm lateral aspect 03x02 cm. transverse. Metacarpal bone dislocated.

6. Contusion present on right hand dorsal surface 04x02 cm. transverse extending from 2nd to 4th metacarpals.”

The doctor has given his opinion that the (1) death was due to hemorrhage and shock as a result of head injury, (2) all injuries were caused with hard, blunt & heavy object, (3) all injuries were antemortem in nature, (4) duration of injuries were within 12 hours prior to death, (5) duration of death is within 24 hours prior to postmortem examination.

**14.** From the evidence of P.W. 9, Dr. Shiv Narayan Manjhi, the antemortem injuries over the body of deceased was found which led to his death. The injuries over the body and nature of death are also not been disputed by the accused persons. Therefore, it has been found proved that the death of deceased K. Vishwanath is homicidal in nature.

**15.** There is no eyewitness in the present case. The case of the prosecution rests on the circumstantial evidence. The Supreme







Court in case of **Ravindra Singh Vs. State of Punjab, 2022 (7)**

**SCC 581** has held in para 10 as under:-

10. The conviction of A2 is based only upon circumstantial evidence. Hence, in order to sustain a conviction, it is imperative that the chain of circumstances is complete, cogent and coherent. This court has consistently held in a long line of cases [See Hukam Singh v. State of Rajasthan AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrapa @ Krishnappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh @ Dalbir Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890)] that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

10.1. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt.

10.2. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein it has been observed that:

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....”.

16. In the matter of para **Surendra Kumar and Another Vs. State of Uttar Pradesh, 2021 (20) SCC 430**, the Hon'ble supreme Court has held in 11 and 12 as under:-



“11. As the case against the appellants is entirely based on circumstantial evidence, it is necessary to determine whether the available evidence lead only to the conclusion of guilt and exclude all contrary hypothesis. The enunciation on the law of circumstantial evidence stood the test of time since Hanumant Vs. State of Madhya Pradesh<sup>1</sup> where Mahajan J., has written as under:-

“10.....It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.....”

12. The nature, character and essential proof required in criminal cases was discussed in detail by Fazal Ali J in Sharad Birdhichand Sarada vs. State of Maharashtra<sup>2</sup> and the proposition of law culled out on circumstantial evidence was approved in many subsequent judgments and was recently reiterated by Krishna Murari J., writing the opinion for a three Judges Bench in Shailendra 1 AIR 1952 SC 343 2 (1984) 4 SCC 116 Rajdev Pasvan & Ors. Vs. State of Gujarat & Ors. 3 where it was succinctly laid down as under:-

“17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.”

**17. In the matter of Digambar Vaishnav and Another Vs. State of**

**Chhattisgarh, 2019 (4) SCC 522, the Hon'ble supreme Court has**

held :-

“14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises





and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

15. This Court in *Jaharlal Das v. State of Orissa*, (1991) 3 SCC 27, has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

16. In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

- i.) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- ii.) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and
- iii.) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. In *Varkey Joseph v. State of Kerala*, 1993 Suppl (3) SCC 745, this Court has held that suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18. In *Sujit Biswas v. State of Assam*, (2013) 12 SCC 406, this Court, while examining the distinction between 'proof beyond reasonable doubt' and 'suspicion' has held as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong,





cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense”.

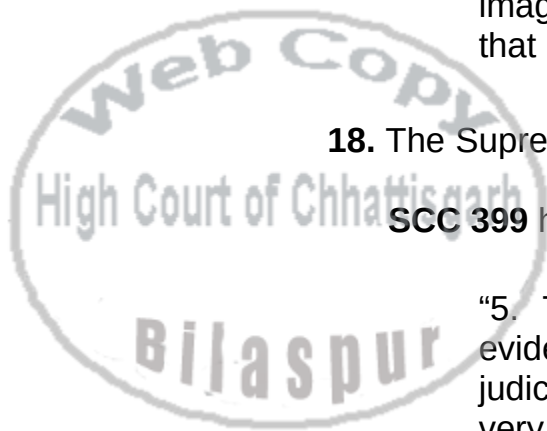
**18. The Supreme Court in case of Madhu Vs. State of Kerala, 2012 (2)**

SCC 399 has held in paragraph 5 as under:

“5. The care and caution with which circumstantial evidence has to be evaluated stands recognized by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt.”

**19. In the matter of Nagendra Sah Vs. State of Bihar, 2021 (10) SCC**

**725** in paragraphs 17 and 18 replying upon the golden principles enumerated in case Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 (4) SCC 116, the Supreme Court has held as under:





“17. As the entire case is based on circumstantial evidence, we may make a useful reference to a leading decision of this Court on the subject. In the case of Sharad Birdhichand Sarada v. State of Maharashtra<sup>2</sup>, in paragraph 153, this Court has laid down five golden principles (Panchsheel) which govern a case based only on circumstantial evidence. Paragraph 153 reads thus : -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following observations were made:

19.....Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.” (emphasis added).

18. Paragraphs 158 to 160 of the said decision are also relevant which read thus :

“158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra v. State of Bihar, to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by





him of the aforesaid case, the relevant portion of which may be extracted thus:

9.....But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, . . . such absence of explanation or false explanation would itself be an additional link which completes the chain."

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied :

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus:

30.....Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused." (emphasis added)"

20. The appellant K. Vamasilata is the wife of deceased K. Vishwanath who was residing with him along with their children PW-13, Swati Kochuri and PW-14, Dheeraj Kochuri. PW-13, Swati is the person who allegedly first came to the spot when she heard the noise of





heavily breathing of her father. She has stated in her deposition that she was studying in class 12<sup>th</sup> at Sachdeva International School. Her father was employed at Merchant Navy, Mumbai and usually came to her house on the interval of 4-5 months. On the date of incident, she, her brother Dheeraj and her mother were sleeping in a same room. On 20.07.2019 at about 4 am when she woke up and came outside from her room, she heard the noise of her father breathing heavily and then she went to his room and saw that her father was lying on the bed and blood was oozing from his mouth and his body was lying in an injured condition. She called her mother and then her mother and brother came there. She was in search of keys of main gate and at that time the neighbors had come there and with the help of neighbors her father was taken to hospital. Since that was the day of her examination, she went to school and returned back from school at about 3 pm. When the leading questions were asked from this witness, she denied quarrelsome relation of her father with her mother. She also denied conversation between her mother and co-accused Lavkush Shukla regarding hatching of conspiracy for commission of murder and its consideration of Rs.5 Lakhs. She has stated that since it was the time of their examination, her mother was sleeping with them. She denied of having suspicion over any person. In cross examination, she has stated that her mother helped her in her study till 1:30-2:00 am in the night. She admits that in between her room and her father's room, drawing room was situated. On the date of incident, her mobile phone and her mother's mobile phone were taken by her father to avoid disturbance in study. She along





with her mother were sleeping together. Her brother Dheeraj had gone to sleep at about 11 pm in the night. She admits that she woke her mother up after seeing her father in injured condition. At the time when she woke her mother up, she was sleeping in her room.

21. From the evidence of PW-13, the daughter of the deceased as well as the daughter of the appellant K Vamasilata, she is not the eyewitness, but when she heard the noise of her father, she went there and saw that her father was lying in bed in an injured condition.
22. PW-14, Dheeraj Kochuri, who is the son of deceased and appellant K. Vamasilata, have also stated in his deposition that on the date of incident at about 4 am his sister Swati informed him that blood is oozing out from the neck of his father and when he went along with his sister, he saw that deep breathing was being taken by his father and blood was oozing from his neck. He made a telephonic call to helpline and his sister called an ambulance. His mother called one Wasnik uncle through telephone and thereafter they have taken their father to the Hospital. He has further stated that in the night they were preparing for their examination and when he went to the room of his father, he saw that back door of his room was open. When the leading question was asked, he denied that relation between his mother and his father was not cordial. In cross examination, he has stated that on the date of incident he went asleep at about 11 in the night and his mother and sister were preparing for examination.
23. PW-2, K.V.R. Sharma, who is the father of the deceased, have stated in his deposition that his son is married with K. Vamasilata 18 years back. His son was working in Merchant Navy at Mumbai and







whenever he comes on leave, he used to reside with his wife and children. On 20.07.2019, his granddaughter Swati informed him that someone has assaulted her father on his head and asked to accompany Hospital. When he came to her house, he saw that his son was lying in injured condition, he was breathing slowly. Blood was oozing from the injuries. His daughter in law had called the ambulance and taken him to Medical College Hospital Raipur from where he was referred to DKS Hospital and when he taken him to DKS Hospital, after half an hour his son died. This witness was declared hostile and denied his statement Ex.P/7 given to the police. In cross examination, he has admitted that he was not informed about any quarrels in between his son, his daughter in law and his grandchildren. He admits that he regularly used to talk to his son, daughter in law and grandchildren. He further admits that his granddaughter has informed him that someone has assaulted his father which was disclosed to the police and if it is not there in his police statement, he could not tell the reason. He also admits that whenever his son used to come Raipur, he kept both the mobile phones with him.

24. From the evidence of these witnesses, it appears that the prosecution could not establish that the present appellants have committed murder of the deceased. No one has seen the other co-accused or "A" juvenile in conflict with law, near the place of incident at the relevant point of time.
25. PW-8, Jeevan Lal Parkar, who was Head Constable at Police Station Gudhiyari on the date of incident have stated that he received





information about death of K. Vishwanath through control room and thereafter merged intimation, Ex.P/31 was recorded by him. He has given notices to the witnesses for inquest of the dead body of the deceased vide Ex.P/3 and in presence of witnesses, the inquest was prepared vide Ex.P/4 and thereafter the body of the deceased was sent to the Ambedkar Hospital Raipur for its postmortem. On 20.07.2019 he went to spot and seized an orange colour pillow cover, a wooden handle, a bangle of dark orange colour from the spot. All the articles were stained with blood like stains and seized vide Ex.P/34. He also seized a white brownish colour nightie from the spot stained with blood like stains. Another nightie of white-red colour was also seized and a supporter (ladies) of brown colour stained with blood like stains were also seized vide Ex.P/36. He prepared spot map on 20.07.2019 itself vide Ex.P/37. In cross examination, he has admitted that there is no document on record that he received information through control room. He seized the articles vide Ex.P/34 firstly. He has not sealed the seized articles and therefore there is no specimen seal in the seized articles. The time of seizure has not been written in the seizure memo Ex.P/35 and P/36. The articles seized vide Ex.P/36 was given by Swati, but her signature is not there in Ex.P/36. He admits that none of the seized articles were sealed on the spot after its seizure. He admits that the place of incident was surrounded by boundary wall which was 4-5 feet in height. There are three doors to enter into the house. First is the main door, second is the backdoor from back side and third is from kitchen side.



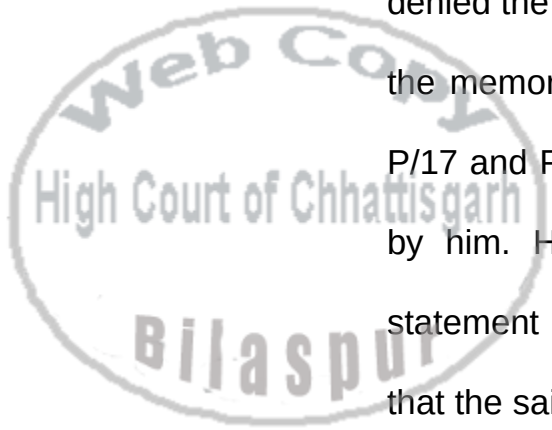


26. PW-15, Sushanto Banerjee, who is an Inspector and investigating officer of the case, has stated that Head Constable Jeevan Lal Parkar had gone to the spot and after merging inquiry when he returned back to the police station, he recorded numbered merging intimation and when it was found that death of the deceased was due to head injury caused by hard and blunt object, he registered the offence under Section 302 IPC on 21.07.2019 and FIR is Ex.P/43. On suspicion, he had taken "A" juvenile in conflict with law, Lavkush Shukla and Smt. K.Vamasilata in custody and interrogated them before the witnesses and recorded their memorandum statements Ex.P/16, P/17 and P/18 respectively. According to their memorandum statement, seizure of their mobile phone and clothes were made. From the "A" Juvenile in conflict with law, an iron hammer was seized from the shrubs opposite the house of Sushil Agrawal near Chhota Marine Drive, Katora Talab. Seizure memos are Ex.P/19, P/20 and P/21. The clothes of the "A" juvenile in conflict with law, and mobile phone was also seized from him vide Ex.P/22. Black coloured Activa scooter was seized from Lavkush Shukla vide Ex.P/23. Viscera was seized vide Ex.P/41. During investigation, he recorded the statement of KVR Sharma, Smt. Vijya Vaishvi, Ku. Swati Kothuri, Dheeraj Kothuri on their own version and after considering sufficient evidence against the accused persons he arrested them. In cross examination, he has stated that statement of the witnesses taken during the merging enquiry has not been annexed with the charge sheet. He could not say as to Constable Jeevan Lal Parkar have inquired from the family member of the deceased during





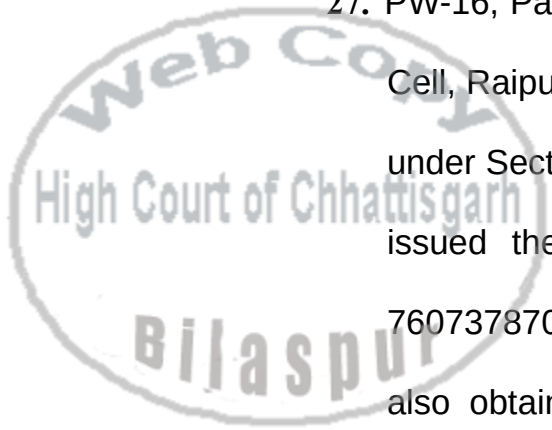
the merg enquiry or not. He admits that all the four witnesses KVR Sharma, Smt. Vijya, Swati and Dheeraj have not seen the incident and they came to know about the incident later. The family members of the deceased have not raised any suspicion over any person, but his daughter Swati has raised suspicion that her mother and Lavkush Shukla have committed murder of her father. He has stated that during investigation, the daughter of the deceased have raised suspicion over her mother K.Vamsilata and Lavkush and therefore he interrogated both of them and then he apprised about involvement of "A" juvenile in conflict with law, in the offence. He denied the suggestion given by the defence that he has not recorded the memorandum statement of the accused persons vide Ex.P/16, P/17 and P/18. He also denied that any seizure has not been made by him. He admits that at the time of recording memorandum statement of "A" juvenile in conflict with law, he was in knowledge that the said hammer was lying in an open place, but he immediately has not proceeded to seize the same. He has not got examined the said hammer by the fingerprint expert. He further admits that a wooden handle have already been seized vide Ex.P/34 from the spot. He admits that the hammer which has been seized vide Ex.P/21 is also attached with the wooden handle. During investigation, he came to know that the said hammer was purchased on 17.07.2019 from Gol Bazar market Raipur but he has not tried to inquire as to from which shop of Gol Bazar it has been purchased and there is no reason for this. He admits that he has not come across any witness who have seen any person nearby the house of





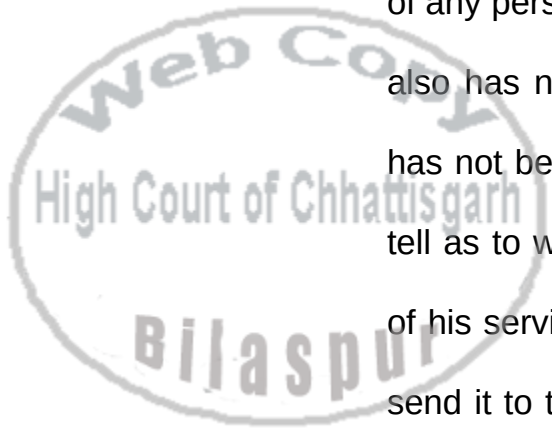
the deceased at the relevant point of time and there is no evidence to that respect. He further admits that no footprint or fingerprint were found by the forensic team on the spot and therefore he could not match the same from the footprint of other accused persons. He admits that dog squad also could not collect and evidence. He denied the suggestion given by the accused persons that he has not made any seizure of any mobile phone from the accused persons. He admits that during investigation he could not receive any evidence with respect to quarrelsome relation with the deceased and his wife i.e. the appellant K. Vamasilata.

27. PW-16, Pankaj Chandra, who is the Superintendent of Police, Cyber Cell, Raipur, have stated in his deposition that he send the certificate under Section 65-B of the Evidence Act which is Ex.P/48 and he has issued the said certificate with respect to the mobile number 7607378709 which is Ex.P/49. CDR of the said mobile number was also obtained from the service provider company which is in 11 pages vide Ex.P/50. The correspondence with respect to obtaining the certificate of Section 65-B of the Evidence Act with respect to mobile numbers 7089220000 and 9644448552 from Idea cellular company is Ex.P/51. The correspondence for issuance of certificate with respect to mobile number 7879429035 from reliance Jio company is Ex.P/52. In cross examination, he has admitted that the call details, location and CDR of service provider company have not been maintained by the server of their office and whatever information sent by the service provider company to their office through government authorized e-mail, they have taken the printout





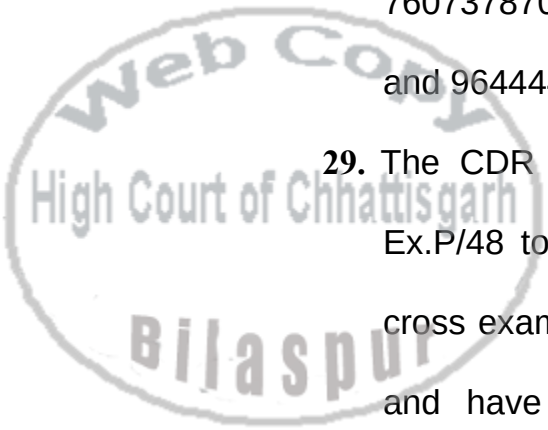
of the same and send it to the concerned police station. He admitted that his office is not able to collect information by access through server of the service provider company. He further admits that vide Ex.P/51 & P/52 he has asked only for the certificate under Section 65-B of the Evidence Act from the service provider company. He admits that reference number of Ex.P/51 and P/52 are the same, but their contents are different. A common serial number has also been mentioned in its dispatch seal of Ex.P/51&P/52. He is unable to say as to who has generated the CDR of Ex.P/50 and send it to Gudhiyari police station. He admits that there is no seal or signature of any person over Ex.P/50 and on which date it has been generated also has not been mentioned. He further admits that CDR Ex.P/50 has not been generated by him. He further admits that he could not tell as to who, by which computer, on what date and at which place of his service provider company has taken out the print of CDR and send it to the police station. He admits that there is no certificate of Section 65-B of the Evidence Act alongwith CDR Ex.P/50 from its service provider company Airtel. He admits that before issuance of certificate, Ex.P/49, he has not tallied the CDR Ex.P/50 from the information available with the service provider company. He further states that he could not tell as to CDR Ex.P/50 is related to whom. He voluntarily stated that in the letter dated 04.11.2019 issued by the Station House Officer, the owner of the mobile number 7607378709 is mentioned. He further admits that any of the CDR with respect to the present case have not been generated by him from the server of the service provider.





28. PW-17, Ravishankar Tiwari, who was the Station House Officer at Police Station Gudiyari from 19.08.2019 to 28.08.2021, have stated in his deposition that after transfer of the earlier SHO he has taken charge and further investigated the present case and a query has been made vide Ex.P/53 from the doctor. He sent the articles for its FSL examination to State FSL Raipur. He also sent viscera of the deceased for its chemical examination to FSL Raipur. During the course of investigation, he has written letters to the Service provider companies of the mobile of the accused/appellant K. Vamasilata i.e. mobile No.7879429035, mobile of "A" juvenile in conflict with law 7607378709 and mobile number of Lavkush Shukla i.e. 7089220000 and 9644448552 which is Ex.P/58.

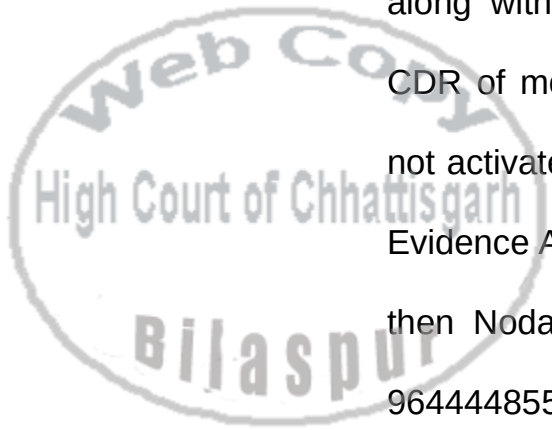
29. The CDR of the said mobile numbers have been obtained vide Ex.P/48 to P/52. He has received FSL report Ex.P/59 to P/61. In cross examination, he has admitted that he has not visited the spot and have not recorded any statement of the witnesses. The statement of the witnesses were already recorded by his predecessor. He has further stated that he has submitted the documents collected by his predecessor during the investigation along with charge sheet. On 19.08.2019, he received the case diary of the case for further investigation and at that time the call detail reports of the mobile numbers of the accused persons were already available. He further admits that those call details which were available in the case diary, when he received the case diary for further investigation, have not been annexed with the charge sheet and a fresh call detail which were obtained along with certificate of





Section 65-B of the Evidence Act have been annexed with the charge sheet.

30. PW-18, Pankaj Ramaiya, who is Nodal support officer, Vodafone-Idea Cellular Limited, have stated in his deposition that he received a memo on 22.10.2019 from Crime Cyber Cell Raipur for issuance of a certificate under Section 65-B of the Evidence Act and in compliance of the same a certificate under Section 65-B of Evidence Act was issued by Shri Awadh Jain, who was the Nodal Officer of the company with respect to the mobile No.7089220000 and 9644448552 and its CDR for the period 01.07.2019 to 30.07.2019 along with customer application form. He has further stated that CDR of mobile number 9644448552 was also expected but it was not activated at that time. The said certificate of Section 65-B of the Evidence Act is Ex.P/62 issued by the said Awadh Jain who was the then Nodal Officer of the company. The CDR of mobile number 9644448552 is Ex.P/63. He has further stated that the customer application form along with certificate of Section 65-B of the mobile number 7089220000 which was in the name of Lavkush Shukla S/o Ravindra Nath Shukla was also given to the police which is Ex.P/64. He has further stated that the CDR of mobile number 7089220000 was issued for the period 01.07.2019 to 30.07.2019 which was of page numbers 1 to 175, but only 90 pages are attached in the present case which was only for the period from 12.07.2019 to 23.07.2019, Ex.P/65. In cross examination he has stated that in the month of October 2019, Rajesh Kumar was posted as Nodal Officer of the company at Madhya Pradesh and Chhattisgarh circle. The

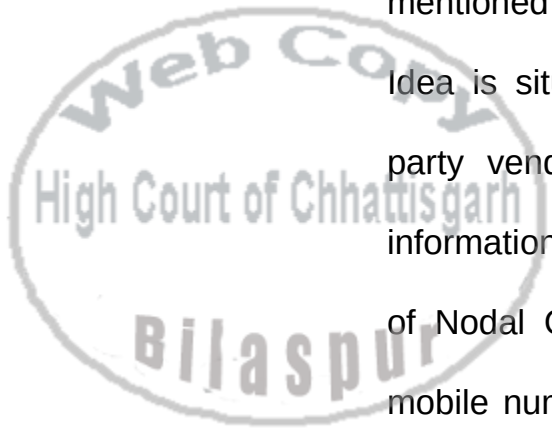






state of MP-CG comes under a single circle having its circle office at Indore. The information about CAF and CDR are confidential and it can only be provided to the investigation agency on its request. He admits that he himself has not generated the information of documents Ex.P/62 to P/65. He also admits that the said documents Ex.P/62 to P/65 has not been generated in his presence. He was not in knowledge as to on what date, in which place and from which computer the same was generated. He admits that on 22.10.2019 Shri Awadh Jain was not posted as a Nodal Officer and in the documents Ex.P/63 and P/65 the place of its generation is mentioned as Indore. He further states that the server of Vodafone-Idea is situated at Mumbai which remains in possession of third party vendor and he is responsible for its maintenance. The information about CAF and CDR was not stored in the computer set of Nodal Officer. He voluntarily stated that the data of relevant mobile numbers are fetching from the server through their own ID, but there is no mention of fetching data from the server in Ex.P/62. He admits that IP address, file address or location of the server is not mentioned in Ex.P/62. In further cross examination he admits that he was not posted as Nodal Officer.

- 31.** PW-6, Dhiraj Kumar Jain, is the Assistant Nodal Officer in Reliance Jio Company Raipur, who has stated in his deposition that Gudhiyari Police asked him to submit call details and other relevant documents along with certificate of Section 65-B of the Evidence Act for the period between 01.07.2019 to 20.07.2019 with respect to mobile number 7879429035. The customer application form Ex.P/26 and





the mobile call details Ex.P/27 was given to the police. Mobile number 7879429035 was registered in the name of accused K.Vamsilata, W/o deceased K. Vishwanath. Certificate 65-B of the Evidence Act was also issued by their company which is Ex.P/28. The certificate was issued by Shri Sanjeev Nema who was the Assistant Nodal Officer. In cross examination he has admitted that the documents for which the certificate of Section 65-B of the Evidence Act was issued have not been generated by him. He admits that the reference number in the letter dated 22.10.2019 issued by the Additional Superintendent of Police is mentioned as 992 whereas, in the counter reply given by their office vide Ex.P/29, the reference number is mentioned as 1106 and police station Purani Basti is mentioned whereas, in the letter dated 22.10.2019 police station Gudhiyari is mentioned. In cross examination, he has admitted that he and Sanjeev Nema were not the Nodal Officer. There was two computers at Raipur office, one is in his possession and another is in possession of his co-worker Sanjeev Nema. He has admitted that documents of Ex.P/26 and P/27 have not been generated from his computer.

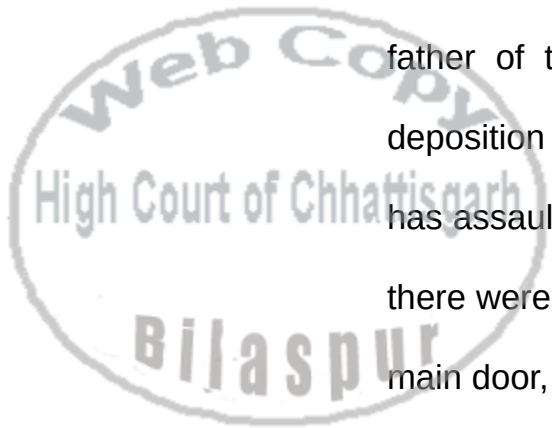
32. The prosecution has relied upon the abovestated call details of the accused persons for establishing the conspiracy between the accused persons. Section 10 of the Evidence Act, 1872, speaks about the things said or done by conspirator in its reference to common design which is extracted hereinbelow:

“Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong,



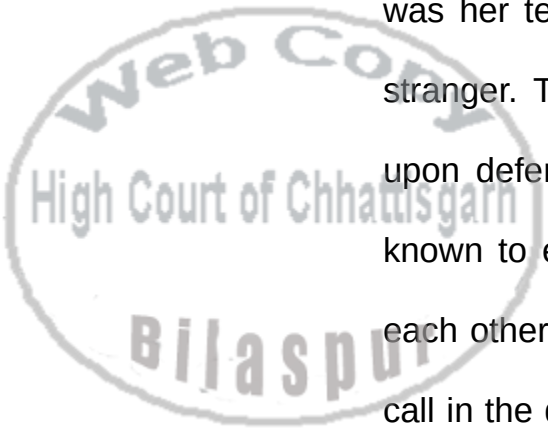
anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

33. Conspiracy is always hatched in secrecy, but it can also be established from the act done by the conspirator, their statements or by their conduct. Pre and post incident conduct of the conspirator is also relevant to draw a conclusion about the conspiracy.
34. In the present case, the deceased K.Vishwanath was found in injured condition in the intervening night of 19-20.07.2019. The father of the deceased KVR Sharma, PW-2, have stated in his deposition that his granddaughter Swati informed him that someone has assaulted her father. In his cross examination he has stated that there were three doors to enter the house of the deceased. One was main door, second was from backside and third one from kitchen.
35. PW-14, Dhiraj Kochuri have stated in paragraph 5 of his deposition that the door of backside of the house was opened which has not been rebutted in his cross examination.
36. As per the memorandum statements of the accused persons Ex.P/16 to P/18, it appears that the accused persons have entered into the room of the deceased from the backdoor and at the relevant point of time, the “A” juvenile in conflict with law and Lavkush Shukla had a telephonic talk to each other. The said telephonic call between “A” juvenile in conflict with law and Lavkush Shukla was stated to be in between 12 to 2:17 hours in the night.





37. The prosecution has tried to connect the link that in the intervening night of 19- 20.07.2019, the accused K. Vamsilata, had a telephonic call to accused Lavkush Shukla. The P.W. 13, daughter of the deceased as well as the accused K. Vamsilata, has denied that her mother was having any mobile phone with her on that day, but has said that her father has taken her mother's mobile phone.
38. The trial Court has considered the mobile call details as the connecting link to prove conspiracy between the accused persons by shifting the burden upon the defence that they have not produced any document regarding the fact that the accused Lavkush Shukla was her tenant, and therefore, in absence of the same, they were stranger. The trial Court has also taken a view by shifting burden upon defence that the defence has failed to prove that they were known to each other and therefore they had the telephonic call to each other and thus, they are being the strangers, had a telephonic call in the deep night, and one of them is the wife of deceased. The trial Court has also taken the note that kept open the back door was also the part of conspiracy by the accused K. Vamsilata which reflects from memorandum statement of the accused persons.
39. The witness of memorandum and seizure PW-5, Sagar Sahu and PW-7, Somesh Sharma have not supported the case of the prosecution. However, the investigating officer PW-15, Sushanto Bannerjee have proved recording of memorandum statement of the accused persons Ex.P/16 to Ex.P/18 and in pursuance thereof, the seizure memos from the accused persons. The investigating officer, PW-15, have stated that an iron hammer was seized at the instance



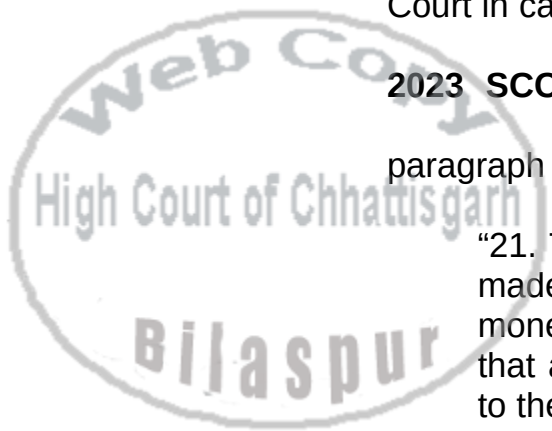


of “A” juvenile in conflict with law from the shrubs behind the house of Sushil Agrawal near Chhota Marine Drive Katora Talab. The said iron hammer and the clothes of the “A” juvenile in conflict with law was sent for FSL examination and human blood was found in the said iron hammer and clothes of the “A” juvenile in conflict with law vide Ex.P/59. As per query report given by Dr. Shiv Narayan Manjhi, PW-9, the injuries found on the body of the deceased could have been caused by the said iron hammer.

40. The relevancy and evidentiary value of disclosure statement made by the accused persons came to be considered by the Supreme Court in case of **Manoj Kumar Soni Vs. State of Madhya Pradesh, 2023 SCC Online (SC) 984**, wherein it has been observed in paragraph 21 to 25 as under :

“21. The facts of the case reveal that all the accused persons made disclosure statements to the I.O. whereupon recovery of money, jewellery, etc. was effected. Although it is quite unusual that all five accused, after being arrested, would lead the I.O. to the places for effecting recovery of the stolen articles, we do not propose to disbelieve the prosecution plea only on this score. Manoj's involvement was primarily based on the disclosure statements made by co-accused Suleman and Jaihind where they admitted to selling the stolen articles to him and a similar statement made by Manoj himself which led to recovery under Section 27, Evidence Act. Similarly, both the courts below, in convicting Kallu, largely relied upon the disclosure statement made by Kallu himself as well as co-accused Jaihind, who confessed to giving Rs.3,000.00 to Kallu from the stolen money and storing a country-made pistol along with three cartridges at his house/tapra.

22. A doubt looms: can disclosure statements per se, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt.





23. The law on the evidentiary value of disclosure statements under Section 27, Evidence Act made by the accused himself seems to be well established. The decision of the Privy Council in Pulukuri Kotayya and others vs. King-Emperor<sup>4</sup> holds the field even today wherein it was held that the provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects. The Privy Council observed:

The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into s. 27 something which is not there, and admitting in evidence a confession barred by s. 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

24. The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in Emperor vs. Lalit Mohan Chuckerburty<sup>5</sup>, to "lend assurance to other evidence against a coaccused". In Haricharan Kurmi vs. State of Bihar<sup>6</sup>, this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:

13. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

25. In yet another case of discrediting a flawed conviction under Section 411, IPC, this Court, in Shiv Kumar vs. State of Madhya Pradesh<sup>7</sup> overturned the conviction under Section 411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:

24..... the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the





appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens rea is clearly not established for the charge under Section 411 IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing." [William Shakespeare, Merchant of Venice, Act 1 Scene 1.]”

41. The investigating officer Sushant Bannerjee, PW-15, have stated that he has recorded memorandum statement “A” juvenile in conflict with law, Ex.P/16, Lavkush Shukla, Ex.P/17 and K.Vamsilata, Ex.P/18. Pursuant to their disclosure statements, seizure of their mobile phones were made. From the accused Lavkush Shukla, the mobile numbers 7089220000 and 9644448752 was seized. From the accused K.Vamsilata two mobile phones bearing numbers 7879429035 and 7610344461 was seized and from the “A” juvenile in conflict with law mobile numbers 7089234875 and 7607378709 was seized.

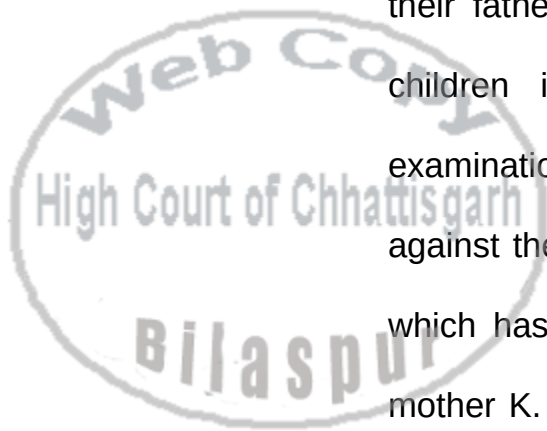
42. The prosecution has tried to establish that at the relevant point of time when the deceased was murdered, all the three accused persons were connected through the mobile phones which point towards their guilt. The call detail corroborates the evidence that the accused persons were in contact to each other on the date of incident. From Lavkush Shukla one Black coloured Activa Scooty was seized; from “A” juvenile in conflict with law one iron hammer and his half T-shirt was seized. Although in the FSL report Ex.P/59 human blood was found on the T-shirt of the “A” juvenile in conflict with law as also in the pillow cover seized from the spot, but the





origin of blood could not be determined as the result of the same was found inconclusive. The prosecution could not establish the fact that the blood found on the pillow cover seized from the spot is of the same blood group which was found on the T-shirt of the accused "A" juvenile in conflict with law.

43. From the accused K. Vamsilata except seizure of two mobile phones bearing numbers 7879429035 and 7610344461 nothing has been recovered. From the evidence of PW-13, Swati Kochui & PW-14, Dheeraj Kochuri, both children of deceased as well as accused K. Vamsilata, it appears that mobile phone of their mother was taken by their father at the time of incident and mother was sleeping with children in another room as they were preparing for their examination. The prosecution has failed to extract any material against the accused that on the date of incident the mobile phones which has been seized by their father was in possession of their mother K. Vamsilata and was not kept by their father at the time of incident. Since the children of the deceased and appellant K. Vamsilata have stated that the mobile phone of their mother was taken by their father on the date of incident, conversation between the deceased and the appellant Lavkush Shukla cannot be ruled out as deceased suspected that his wife is having relation with the appellant Lavkush Shukla. There is evidence on record that the deceased was having dispute with his wife on account of her having affair with the accused Lavkush Shukla. Although, the prosecution tried to prove that at the time of incident there was a conversation from mobile number 7879429035 which belongs to accused K.

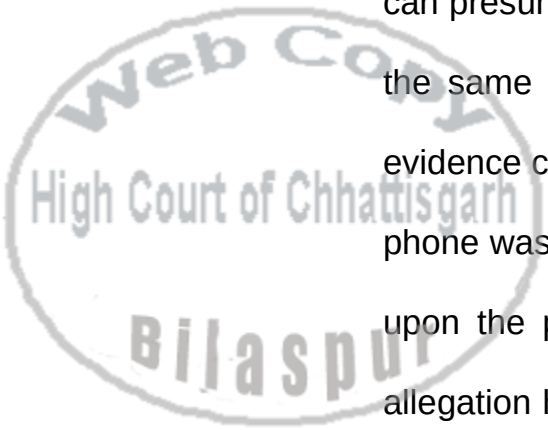






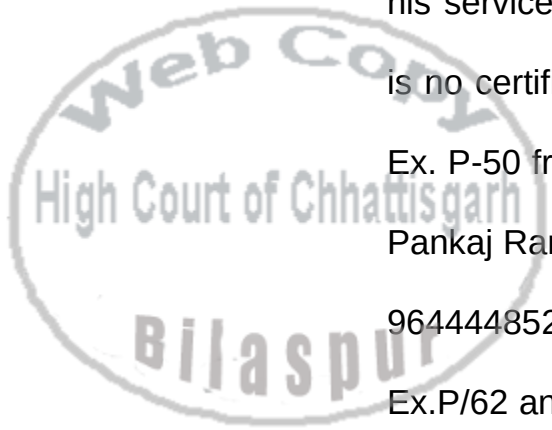
Vamsilata to that of mobile number 7089220000 which belongs to Lavkush Shukla, but it cannot be established that conversation was made between K.Vamsilata and Lavkush Shukla, particularly when the evidence came on record that at the relevant point of time the mobile phone of K.Vamsilata was taken by her husband i.e. the deceased. The prosecution has to prove that there was conversation between the accused K. Vamsilata and the other accused persons. Merely presuming that the conversation from the mobile phone of the accused K.Vamsilata cannot be sufficient to hold that it was she who was engaged in conversation with other accused persons. One can presume that mobile phone is using by a person in whose name the same has been issued by the service provider, but when the evidence came on record that at the relevant point of time the mobile phone was in possession of some other person, then it is the burden upon the prosecution to prove that the person against whom the allegation has been levelled, was engaged in conversation from that mobile phone with the other co-accused persons.

44. So far as authenticity of the call detail reports and issuance of certificate under Section 65-B of the Evidence Act is concerned, PW-6, Dhiraj Kumar Jain, Assistant Nodal Officer, Reliance Jio, Raipur, has stated in his evidence that their office has issued the call detail report of mobile number 7879429035 vide Ex.P/27, certificate of Section 65-B of the Evidence Act, Ex.P/28 and covering letter Ex.P/29 in which signature of one Sanjeev Nema is there who is the Assistant Nodal Officer. The person who has generated the call details from his computer has not been examined. This witness has





stated in his deposition that the said document has not been generated or prepared by him. He further admitted that the documents customer application form Ex. P-26 and call detail P-27 have not been generated from his computer. P.W. 16, Pankaj Chandra, Supdt. Of Police, Cyber Cell, Raipur, has stated that his office is not able to collect information by access through server of the service provider company. He is unable to say as to who generated the CDR of Ex. P-50 and send it to Gudhiyari Police Station and the same is not generated by him. He also unable to say as to who, by which computer, on what date and from which place of his service provider company has taken the printout of CDR. There is no certificate of Section 65-B of Evidence Act alongwith the CDR Ex. P-50 from its service provider company Airtel. Likewise, PW-18, Pankaj Ramaiya, have stated that call detail report of mobile number 964444852, Ex.P/63, certificate of Section 65-B of the Evidence Act Ex.P/62 and covering letter Ex.P/64 was issued by the Nodal Officer Awadh Jain. The call detail report of mobile number 7089220000, Ex.P/65, was also issued by their Nodal Officer Awadh Jain. The said Nodal Officer Awadh Jain has not been examined by the prosecution. He has admitted that he has not generated the call details and certificate Ex.P/62 to P/65. He also denied generating of same in his presence. He also shows his unawareness as to who has generated the said call details, on what date, at which place and in which computer it was generated. He also states that there is no endorsement of IP address, file address or location of the server in the document Ex.P/62. The documentary evidence of an electronic





record under the Evidence Act, in view of Section 65-A can be proved only in accordance with the provisions of Section 65-B. An electronic record shall not be admitted in evidence unless requirement under Section 65-B is satisfied as discussed by Hon'ble Supreme Court in **2020 (7) SCC 1, Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors.**

45. The Supreme Court in case of **Kiriti Pal Vs. State of West Bengal, 2015(11) SCC 178** while considering with the issue of admissibility and relevancy of telephonic conversation made between the persons, as evidence, in paragraph 30 to 33 has observed as under:

“30. Apart from telephonic conversation, no other evidence was adduced by the prosecution to bring home that first accused hatched a conspiracy. There is no evidence to prove as to how the appellants 2 and 3 ( Siddique Mia and Mustaque Mia) had gone to the place of occurrence and what was their subsequent conduct. Their presence near the scene of occurrence could have been established by the prosecution either by examining some witnesses near and around the place of occurrence or by proving the location of the calls so as to establish the proximity of the accused with the scene of occurrence. Apart from the extract of the call records, no other evidence was adduced by the prosecution to establish the conspiracy.

31. Apart from telephonic conversation, prosecution also relied upon recoveries made pursuant to the confessional statement of the appellants 2 and 3 (Siddique Mia and Mustaque Mia). Pursuant to the statement of Siddique Mia one TVS Fiero red colour motor cycle bearing No. WB-54B/8245 with its key and nokia mobile handset (phone No.9932345230) were seized under Ext.17/3. Pursuant to the statement of Mustaque Mia nokia mobile handset having connection No. 9932705533, one gold finger ring in the shape of a flower with inscription of letter 'Anjali', and silver made chain with one Amethyst and red coral fitted with it were seized under Ext. 18/3. Recoveries made and seizure list were sought to be proved by examination of PW17-Uttam Mondal. PW17 had deposed that he knew deceased Anjali. PW17 was then employed in the hotel run by Bhagyadhar Dhibar which was owned by Anjali. In his evidence PW17 stated that in January 2009, two or three gentlemen came to his hotel and took his signature and that





he did not know why his signatures were being taken. Though PW17 identified his signatures in the seizure list, evidence of PW17 no way establishes recoveries being made at the instance of the accused 2 and 3. Evidence of PW17 is far from convincing and is not of much assistance to the prosecution as he has not clearly spoken about the recoveries and the seizure list. The gold ring and silver made chain recovered were also not shown to the other witnesses for being identified as that of Anjali. No other evidence was adduced by the prosecution to substantiate the recovery of objects and the seizure list.

32. So far as the complicity of fourth accused-Durga Sutradhar, the prosecution mainly relied upon the call record and judicial confession of Durga recorded by Judicial Magistrate, 2nd Court, Suri, Birbhum (Ext.26). Prosecution relied upon the recovery a notebook seized from the possession of appellant Durga Sutradhar where she has written Kiriti's phone number clandestinely coded as 'Dadu'. Ext. 30 call records of Kiriti Pal phone also revealed that there were number of calls from Kiriti Pal to fourth appellant. Like in the case of appellants No. 2 and 3 (Siddique Mia and Mustaque Mia) apart from telephone calls, no other evidence was adduced by the prosecution to bring home the guilt of fourth accused-Durga Sutradhar. Insofar as the judicial confessional statement recorded under Section 164 Cr.P.C., it is not an inculpatory statement; but it is only to the effect of showing the subsequent conduct of A-1 Kiriti Pal in threatening Durga Sutradhar-fourth appellant not to disclose anything to the police. In our view, neither the telephone calls between the first appellant-Kiriti Pal and Durga Sutradhar-fourth appellant nor her confessional statement by themselves would be sufficient to establish the guilt of fourth appellant.

33. In a case based on circumstantial evidence, the court must adopt a very conscious approach and should record conviction only if all the links in the chain are complete pointing to the guilt of the accused. All the links forming complete chain must be firmly established by the prosecution. Each link taken separately may just suggest suspicion but such suspicion itself may not take the place of proof and not sufficient to convict the accused. All the circumstances must be firmly established and must be consistent only with the hypothesis of the guilt. But that is not to say that the prosecution must meet each and every hypothesis put forward by the accused however farfetched it may be. As discussed earlier, the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion itself cannot take the place of proof. In our view, evidence adduced by the prosecution against appellants 2 and 3 (Siddique Mia and Mustaque Mia) do not form a complete chain connecting the accused with the crime and the conviction of the appellants under Section 302 IPC read with Section 120B IPC cannot be sustained and deserves to be set

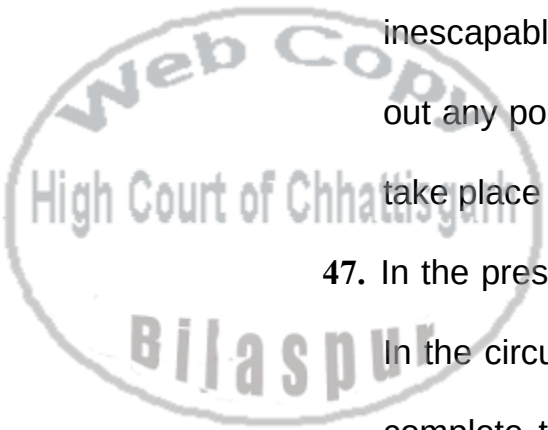




aside. Likewise, conviction of fourth appellant-Durga Sutradhar under Section 120B cannot be sustained and is liable to be set aside.”

46. The telephonic conversation, if disproves that the said conversation is between the accused persons, raises only suspicion and the suspicion however strong cannot take place the proof. The prosecution is required to prove each and every circumstance beyond reasonable doubt to complete the chain of circumstance to bring home the guilt of the accused persons. In a case of circumstantial evidence, it is for the prosecution to establish that all the links in the chain of circumstances are complete leading inescapably to the only hypothesis of the guilt of the accused leaving out any possibility of innocence. Suspicion howsoever strong cannot take place of proof.

47. In the present case, no motive has been proved by the prosecution. In the circumstantial evidence, motive becomes the essential link to complete the chain of circumstances. The prosecution has tried to bring the motive in the case that the appellant K. Vamasilata has intimacy with co-accused Lavkush Shukla, who was her tenant, and to eliminate her husband, she hatched conspiracy to commit murder of her husband for Rs. 5 Lakhs. The investigating officer P.W. 15, Sushanto Banerjee has admitted in his deposition that he has not collected any document with respect to ownership of the house of K. Vamasilata. Whether she was having Rs. 5 Lakhs or not, he has not collected any evidence. No transaction of money between the





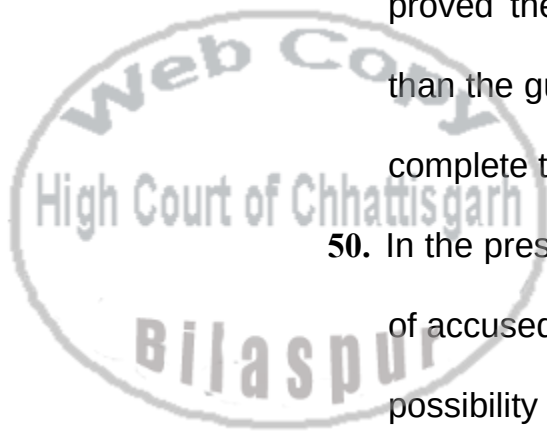
accused persons have been proved by the prosecution. Therefore, the motive is also not proved in the case.

48. The trial Court has further considered while passing its judgment of conviction that the accused persons have not given any explanation in their 313 CrPC statement regarding the material appears against them.

49. In the matter of **Shivaji Chintappa Patil Vs. State of Maharashtra, 2021 (5) SCC 626**, the Supreme Court has held that false explanation or non-explanation in 313 CrPC statement can only be used as an additional circumstance when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused. However, it cannot be used as a link to complete the chain of circumstance.

50. In the present case, the evidence come on record that mobile phone of accused K.Vamsilata was kept by the deceased and there is every possibility that on the particular date and time the deceased himself may have in conversation with the accused Lavkush Shukla because he was having grudge against him as he suspected that his wife is having relation with the said accused Lavkush Shukla. It has also come on record that deceased was an officer in Merchant Navy and occasionally come to his house at Raipur.

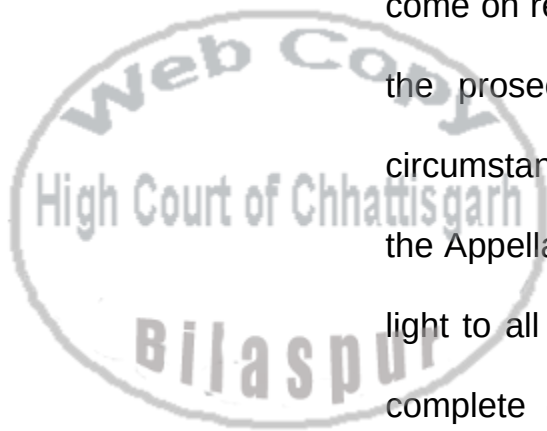
51. PW-13 Swati Kochuri, who is daughter of deceased as well as accused K. Vamasilata, have stated in paragraph 10 of her deposition that on the date of incident her mother was helping her in her studies up to 1:30 - 2 in the night. She has not stated that up to 1:30-2 in the night her mother has made any telephonic call to any





person. Rather, she has stated that mobile of her mother was taken by her father. The prosecution has not cross examined this witness against this part of her evidence whereas, the call details as produced by the prosecution shows that there was a conversation from the mobile phone of her mother and mobile phone of the co-accused before 1:30-2 in the night. Her father who kept the mobile phone of her mother was sleeping in another room. Therefore, possibility of his own engagement in conversation from the mobile phone of his wife to other accused persons cannot be ruled out.

52. Thus, from the overall consideration of the evidence which have come on record, it would reveal that there are a lot of broken links in the prosecution's case which does not complete the chain of circumstances for conclusively reaching to the conclusion that it was the Appellants alone to have committed murder of deceased. In the light to all the infirmities in the prosecution case and in absence of complete chain of events, it would be difficult for upholding the conviction of the appellants only on the basis of circumstantial evidence of strong suspicion which have come on record. In a case of circumstantial evidence, conviction cannot be based on suspicion.
53. It is settled principles of law that prosecution has Burden to prove its case beyond reasonable doubt and where two views are possible, arising on the basis of the same evidence, the view which is favoruable to the accused should be taken into consideration and the accused should be given benefit of doubt. (See Surendra Kumar Vs. State of Uttar Pradesh).





54. In the matter of **Digambar Vaishnav (Supra)** it has been held as under :

“19. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence [See Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808].

55. Thus, in view of the foregoing, we are of the considered opinion that there are various components which are missing from the chain of circumstantial evidence. By giving the benefit of doubt to the appellants, both the **Appeals are allowed**. The conviction of appellants for the offence under Sections 302 and 120-B IPC is set aside. The appellants are **acquitted** from all the charges. The appellants are reported to be in jail since 23.07.2019. They be released forthwith if not required in any other case.

56. Keeping in view the provisions of section 437-A of Cr.P.C., the appellants are directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of some of Rs. 25,000/- with one reliable surety in the like amount before the court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of special leave petition against the instant judgement or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.







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57. The lower court records along with a copy of this judgment be sent back immediately to the trial court, concerned for compliance and necessary action.

Sd/-  
(Ravindra Kumar Agrawal)  
**Judge**

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

inder

