



HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 717 of 2021

1. Vikas Jain S/o Late Santosh Jain Aged About 31 Years R/o Zonal Market, Shop No. 212, Sector 10, Bhilai, At Present Flat No.18, G-11, Chauhan Town, Junwani, Bhilai, District- Durg, Chhattisgarh.
2. Ajit Singh S/o Late Mehar Singh Aged About 47 Years R/o Street No. 12, Plot 80, Smriti Nagar, Bhilai, P.S. Supela, District- Durg, Chhattisgarh.

---- Appellants

Versus

State of Chhattisgarh Through SHO, Pulgaon, District- Durg, Chhattisgarh.

---- Respondent

Criminal Misc. Petition No. 816 of 2021

State of Chhattisgarh Through Police Station Pulgaon, District Durg Chhattisgarh

---- Petitioner

Versus

Smt. Kimshi Kambojh (Jain) W/o Vikas Jain Aged About 28 Years R/o Zonal Market, Shop No. 212, Sector 10, Bhilai, Flat No. 18-G-11 Chauhan Town, Junwani, Bhilai, District Durg Chhattisgarh.

---- Respondent

Acquittal Appeal No. 224 of 2021

I.P. Mishra S/o Late Shri S. P. Mishra Aged About 78 Years R/o 45-A/13, Nehru Nagar, West Bhilai, District Durg Chhattisgarh.

---- Appellant

Versus

1. Smt. Kimshi Kamboz (Jain) W/o Vikas Jain Aged About 28 Years R/o Zonal Market, Shop No. 212, Sector-10, Bhilai, Present R/o Flat No. 18-G, 11 Chouhan Town Junwani, Bhilai District Durg Chhattisgarh.
2. State of Chhattisgarh Through Station House Officer, Police Station Pulgaon District Durg Chhattisgarh.

---- Respondents

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|---------------------|---|
| For Appellant No.1: | Shri Vikas Jain, Appellant in person, appeared in police custody from jail. |
| For Appellant No.2: | Ms. Uma Bharti Sahu, Shri Anil Tawadkar and Shri Sushobhit Singh, Advocates. |
| For State : | Shri H.S. Ahluwalia, Dy. Advocate General. |
| For Complainant : | Shri Surendra Singh, Sr. Advocate along with Shri Manoj Paranjpe and Shri Shreyansh Agrawal, Advocates. |



-2-

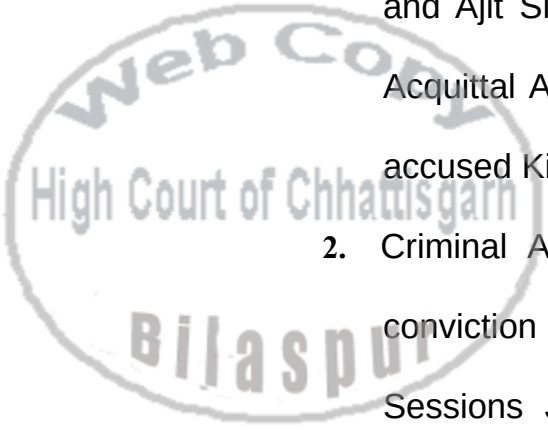
Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment Reserved on :05/12/2023

Judgment delivered on : 11/03/2024

Per Ravindra Kumar Agrawal, J

1. All the above Three Cases i.e. Criminal Appeal No. 717 of 2021, Criminal Misc. Petition No. 816 of 2021 and Acquittal Appeal No. 224 of 2021 are arising out of same Crime Number and Same Sessions Trial and therefore they are being decided together. The Criminal Appeal No. 717 of 2021 is against conviction of accused Vikas Jain and Ajit Singh. The Criminal Misc. Petition No. 816 of 2021 and Acquittal Appeal No. 224 of 2021 both are against acquittal of co-accused Kimshi Kamboj (Jain).
2. Criminal Appeal No.717 of 2021 arises out of the judgment of conviction and sentence dated 10/05/2021 passed by learned Sessions Judge, Durg, in Sessions Case No. 71/2016 whereby appellants Vikas Jain and Ajit Singh have been convicted for offences under Sections 302 read with Section 34, 120-B and 201 of the IPC and sentenced for R.I. for life till biological life with fine of Rs.5000/-, R.I. for 5 years with fine of Rs.5000/- and R.I. for 7 years with fine of Rs.5000/- respectively and in default of payment of fine further R.I. for 1-1 year respectively. All the sentences are directed to run concurrently.
3. Criminal Misc. Petition No. 816 of 2021 is an application Under Section 378 (3) of the Code of Criminal Procedure, 1973, for grant of





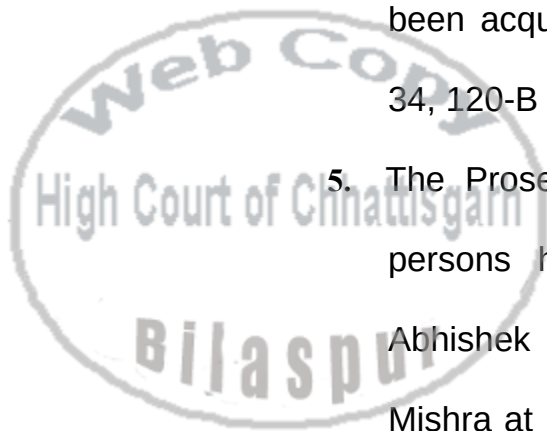
leave to appeal, has been filed by the State of Chhattisgarh, against the judgment of acquittal of co-accused Kimshi Kamboj (Jain) passed by the Sessions Judge, Durg, dated 10.05.2021, in Sessions Case No.71/2016 acquitting her from the offences under Section 302 read with Section 34, 120-B, 201 of the IPC.

4. Acquittal Appeal No. 224 of 2021 has been filed by the complainant/father of the deceased Under the proviso to 372 of The Code of Criminal Procedure, 1973, against the judgment dated 10.05.2021 passed by the Sessions Judge, Durg, in Sessions Case No.71/2016 whereby the co-accused Kimshi Kamboj (Jain) have been acquitted from charges under Section 302 read with Section 34, 120-B and 201 of the IPC.

5. The Prosecution's case in nutshell is that all the three accused persons have been hatched conspiracy to commit murder of Abhishek Mishra and in furtherance thereof they called Abhishek Mishra at Flat No.18, G-11, Chouhan Town, Bhilai, District Durg, for negotiation to the sponsorship of tennis league tournament and then assaulted him by iron rod on his head, gagged his mouth by clothes, wrapped his body by air bubble sheet, tied his hands and legs by rope and buried his dead body in the kitchen garden of House No. 12, Plot No. 80, Smriti Nagar, Bhilai.

6. Some of the undisputed facts of the case are that: -

(i) acquitted accused Kimshi Kamboj (Jain) is wife of accused Vikas Jain and accused Ajit Singh is uncle of the said acquitted accused Kimshi Kamboj (Jain),





- (ii) acquitted accused Kimshi Kamboj (Jain) was employee of the Shankaracharya Engineering College, Bhilai, of which the deceased (Abhishek Mishra) was Director,
- (iii) acquitted accused Kimshi Kamboj (Jain) has got married with accused Vikas Jain in the year 2014 and their marriage was inter-caste marriage,
- (iv) before the marriage, she had left the employment of the deceased by giving resignation. On the date of incident the acquitted accused Kimshi Kamboj (Jain) had telephonic calls with the deceased,
- (v) prior to the date of incident all the three accused persons have telephonic calls with each other,
- (vi) the acquitted accused Kimshi Kamboj (Jain) and accused Vikas Jain were residing at Flat No.18, G-11, Chouhan Town, Bhilai.

7. The brief facts of the case are that on 10.11.2015, the complainant I.P. Mishra (PW-2), father of the deceased, has lodged a missing report (Ex. P-5) at Police Outpost Jevra Sirasa, Police Station Pulgaon, District Durg, that his son Abhishek Mishra is missing since 09.11.2015 at about 5:00 p.m. when he left the college by maroon color Skoda car no. CG 07 M 0007 and wearing blue jeans pant, blue shirt and sandel. Police has recorded the missing report no. 70/2015 and started enquiry. During the enquiry, Skoda car bearing registration No. CG 07 MA 0007 belonging to deceased Abhishek Mishra was found by Telibandha, Raipur Police, in abandoned

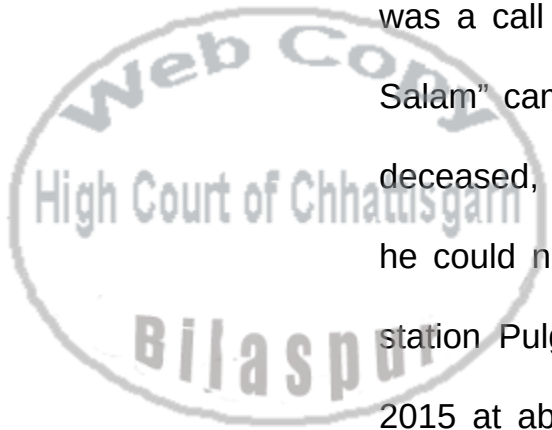




-5-

condition at V.I.P. road, Telibandha, Raipur, on 10.11.2015 at about 05.07 hrs. and the seizure memo Ex. P-58 has been prepared. On being search of the tower location of mobile number of the deceased it was found that his mobile is roaming nearby Smriti Nagar, Aditya Nagar and Sikola Bhatta and thereafter his location was running to Nehru Nagar, Sector 9, Ruabandha, Kumhari and then towards Telibandha, Lalpur, Raipur. Even after enquiry from his friends his whereabouts could not be traced.

On 22.12.2015, the brother-in-law of the deceased namely, Nishant Tripathi, has informed the police that on 10.11.2015 there was a call of ransom demand of Rs. 5 Crore in the name of "Lal Salam" came in the mobile phone no. 9826166940 of father of the deceased, from the mobile phone no. 9144039634, but due to fear he could not disclose it. The FIR Ex. P-1 was registered at police station Pulgaon, Durg, under Section 364-A of the IPC on 22-12-2015 at about 22-30 hrs. During enquiry, from the mobile location technically, it was found that the mobile tower location of the deceased is matching with the mobile tower location of accused Vikas Jain at the relevant point of time, which was running together from Nehru Nagar, Sector 9, Ruabandha, Kumhari towards Telibandha, Raipur. On suspicion accused Vikas Jain and Ajit Singh were interrogated and taken into custody. In presence of witnesses Munna Lal Patel (P.W. 34) and Raghunath Sahu (P.W. 5) memorandum statement of Vikas Jain (Ex. P-9) and Ajit Singh (Ex. P-10) were recorded on 23-12-2015 at about 05.00 hrs. and 05.15





hrs. respectively. In their memorandum statement, they disclosed the incident that accused Kimshi Kamboj (since acquitted) who is wife of accused Vikas Jain, was employed at Shankarcharya College which belongs to Abhishek Mishra (deceased) and Abhishek Mishra was pressurizing her for making physical relation with him and therefore, they made a plan to eliminate him. In furtherance of their plan on 06.11.2015 she called the deceased through mobile phone to her house for negotiation regarding sponsorship of tennis league tournament and he assured that he will come on 09.11.2015. In the meantime, accused Vikas Jain has purchased 4 numbers of pre-activated SIM of Videocon company from mobile shop of Lalpur and purchased 3 numbers of China mobile. After that, on 08.11.2015 appellant Vikas Jain and Ajit Singh have also purchased 100 Kg. of raw salt which were in 4 sacks (bags) from Amit Traders, Jalebi Chowk, Chhawani, by saying that it was to be used in earthing wire. Accused Ajit Singh who was residing in a rented house No. 80, Street No.12, Smriti Nagar, Bhilai, got dug a pit for the reason of earthing wire. On 09.11.2015 at about 6:00 p.m. when the deceased came to Chouhan Town by his Skoda car and parked his car in the parking of the building and went to Flat No. 18, in between that accused Kimshi Kamboj (Jain) had called the accused Vikas Jain and Ajit Singh who entered into her house secretly, along with iron rod and assaulted on head of the deceased by which he has got unconscious. Accused Vikas Jain and Ajit Singh have gaged his mouth by clothes and covered his face by cloths and fixed tape,

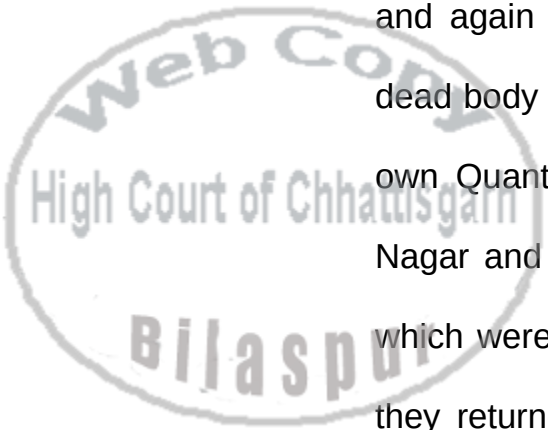




-7-

thereafter, again covered his head by air bubble sheet and tied his hands and legs. They cleaned blood lying on the floor by curtain, pillow cover and other clothes, taken out the purse and mobile of the deceased, took out keys of his car and dropped the accused Kimshi Kamboj and her child by his motorcycle by accused Ajit Singh to his house. Accused Vikas Jain has taken the Car of the deceased and came to V.I.P. road, Raipur via Ruabandha, Power House, Tatibandh, G.E. Road Telibandha and left his car along with the keys there and he came along with accused Ajit Singh in his motorcycle upto Pachpedi Naka and switched off the mobile phone of the deceased and again returned back to Chouhan Tower. Thereafter, they took dead body of the deceased in a sack (bag) and took the same in his own Quanto car, they firstly went to house of Ajit Singh at Smriti Nagar and put the dead body in a pre-dugged pit including the salt which were they already purchased and filled the pit by soil. Again, they returned back to Chouhan Town and washed the flat curtain, bed sheets and other clothes and took the clothes by his car, went to Rasmada by-pass road and thrown the said clothes and iron rod which was used in assaulting the deceased and his watch, finger ring and other blood stained clothes. Thereafter, they came near railway station and threw the purse and mobile of the deceased there.

On 10.11.2015 both the accused Vikas Jain and Ajit Singh went to Dhamtari and made a telephonic call from said pre-activated SIM which they have already purchased earlier by calling in the mobile phone of the father of the deceased and demanded ransom of

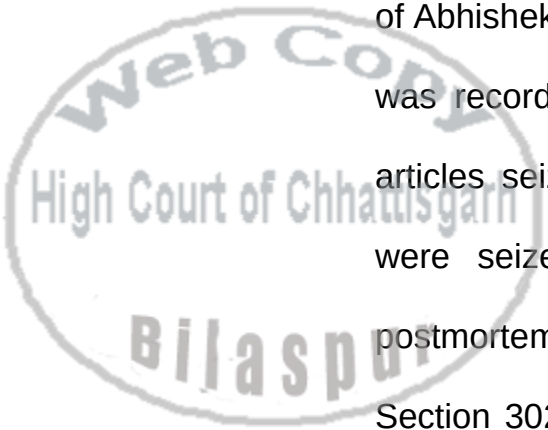




-8-

Rs. 5 Crore and gave their name as "Lal Salam". After demanding ransom from father of the deceased they have broken the SIM and thrown it on the road. When accused persons have disclosed these incidents in their memorandum statement, police proceeded to recover the dead body. After due permission for exhuming the dead body, they went on the spot. On the instance of accused Vikas Jain and Ajit Singh they exhumed the dead body from the pit by the laborers and the dead body was recovered which was kept in a jute bag. The dead body was identified by Nishant Tripathi, Shashi Bhushan Shukla, Prashant Tripathi and others that it was dead body of Abhishek Mishra. After recovery of the dead body, merg intimation was recorded and inquest was prepared. During investigation the articles seized during exhuming the dead body, and other articles were seized. The dead body of the deceased was sent for postmortem to Government Hospital Durg and then the FIR under Section 302, 120B, 201 of the IPC has been registered and all the accused persons were arrested.

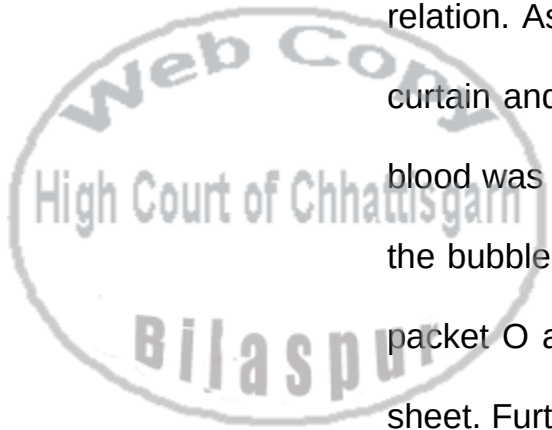
Since the dead body of the deceased was decomposed, it was referred to Medical College Raipur. After postmortem, viscera and other articles were seized. On the instance of accused Vikas Jain and Ajit Singh the Car which was used in the offence, motorcycle, iron rod, mobile and watch of the deceased and blood stained clothes were seized. The viscera seized from the Medical College Raipur was sent for FSL examination. Call details of the mobile phones of the accused persons as well as the deceased were





obtained along with certificate of 65B of the Evidence Act. The seized Quanto car bearing registration No.CG 07 AL 4477 and motorcycle Honda Dream bearing registration No. CG 07 AT 9588 was mechanically examined and the seized mobile phones were sent to CFSL Hyderabad.

The DNA report (Ex.-P/121) was also obtained from State FSL Raipur from which the Allelys of DNA profile obtained from bone sample of the deceased Ex.-A/087 was matched by Ex.-C/089 which was the DNA profile obtained from blood sample of the mother of the deceased, and it is found that Ex.-A and Ex.-C was having biological relation. As per the FSL report (Ex.-P/117) blood was found on the curtain and grass mate seized from accused Vikas Jain and human blood was found on curtain. Vide Ex.-P/118 which is also FSL report, the bubble sheet of packet B was matched with the bubble sheet of packet O and V and opined that they were same and part of same sheet. Further, the red colour cushion covers of packet C and T were also of same morphology and colour combination. From the Central FSL Hyderabad the report Ex.-P/122 was received and the contacts, chats, SMS messages and whatsapp messages etc. extracted from Q1MOB and the WhatsApp chat extracted from Mobile No.9806753397 were given in soft copy in DVD No. CAH-16-2016-DVD. The messages were also attached with the said DVD number and contacts, text messages and call log extracted from Q3SIM was annexed with Annexure-A. The contacts, call logs, WhatsApp chats and images extracted from Q4MOB and soft copy of WhatsApp chat

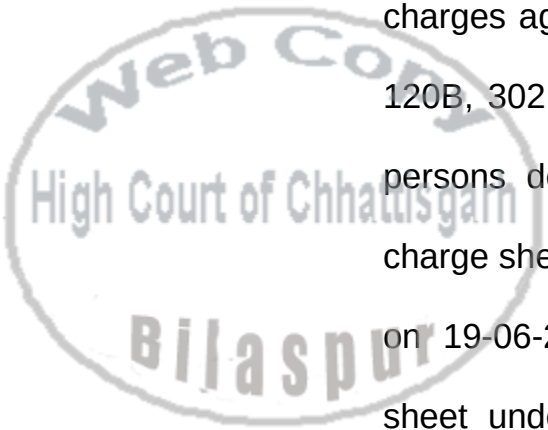




extracted from Mobile No.8349993222 were given in DVD No. CAH-16-2016-DVD. The contacts etc. which was extracted from Q4SIM were annexed with Annexure-A.

During investigation the statement under Section 161 of the Cr.P.C. of the witnesses have been recorded and after considering prima facie case proved against the accused persons the charge sheet for offence under Section 302 read with Section 34, 120B and 201 of the IPC was filed on 07.03.2016 before the JMFC Durg against three accused persons. The case was committed to Sessions Court for its trial on 04.05.2016. The trial Court framed charges against the accused persons for the offence under Section 120B, 302 read with Section 34 and 201 of the IPC. The accused persons denied the charges and claimed for trial. After filing of charge sheet and examination of some of the prosecution witnesses, on 19-06-2017, the prosecution has filed supplementary charge sheet under Section 173 (8) of Cr.P.C. along with statement of Sunita Agrawal, recorded under Section 161 of Cr.P.C. The supplementary charge sheet have taken on record on 05-01-2018 and tagged with the original charge sheet.

8. In order to bring home the charge the prosecution has examined 34 witnesses, namely, Nishant Tripathi (PW-1), I.P. Mishra (PW-2), Smt. Jaya Mishra (PW-3), Deepak Sharma (PW-4), Raghunath Sahu (PW-5), Saraju Rajput (PW-6), Gopal Rajput (PW-7), Raghu Nishad (PW-8), Anil Agrawal (PW-9), Abdul Hasib Khan (PW-10), Mo. Rijwan Khan (PW-11), Prateek Pandya (PW-12), K. Nageshwar Rao





(PW-13), Smt. Poonam Soni (PW-14), Smt. Rekha Shukla (PW-15), Hariom Dwivedi (PW-16), Ritikesh Agrawal (PW-17), Rakesh Yadav (PW-18), Ambresh Kumar Sahitya (PW-19), Birendra Tiwari (PW-20), Manish Soni (PW-21), Krishna Sharma (PW-22), Doctor Ulhas Gonnade (PW-23), R.P. Goutam (PW-24), Dilip Kumar Netam (PW-25), Ramchandra Kanwar (PW-26), Prabhat Kumar Verma (PW-27), Pankaj Ramaiyya (PW-28), Girish Mishra (PW-29), Sanjeet Vishwakarma (PW-30), Sunita Agrawal (PW-31), P.K. Sahu (PW-32), Naresh Patel (PW-33) and Munna Lal Patel (PW-34) and proved the documents Ex.-P/1 to Ex.-P/120. Out of these documents Ex.-P/98, Ex.-P/99 and Ex.-P/100 are mobile call details.

Statement of accused persons under Section 313 of the Cr.P.C. have also been recorded in which they have denied the material appeared against them, pleaded innocence and have submitted that they have been falsely implicated in the offence. Accused Vikas Jain has stated that he has not met with Abhishek Mishra at any point of time and has never talked with him. Accused Ajit Singh has stated that he does not know Abhishek Mishra. Acquitted accused Kimshi Kamboj (Jain) has examined herself as DW-1 and proved the documents Ex.-D/1 to D/42 in her defence.

9. After appreciation of oral as well as documentary evidence proved by the prosecution and also the defence, trial Court has acquitted accused Kimshi Kamboj (Jain) from all the charges and convicted accused Vikas Jain and Ajit Singh for the offence under Section 302





read with Section 34, 120B and 201 of the IPC and sentenced them as mentioned above. Hence, this appeal.

10. The accused/appellant Vikas Jain brought in person before the court from Central Jail, Durg, and he alongwith his counsel as well as the learned counsel for accused-appellants Ajit Singh have submitted that the prosecution has failed to prove its case beyond reasonable doubt. There is no eyewitness to the incident. The chain of circumstances has not been completed and important links are missing. There is no evidence on record that just before the incident the deceased was seen in the company of the accused-appellants or nearby their house. The memorandum statement of the accused-appellants are illegally recorded, the FIR has been registered on 22.12.2015 at about 10:30 in the night and the memorandum statement of Vikas Jain has been recored on 23.12.2015 at 5:00 a.m. and memorandum of Ajit Singh was recorded on 23.12.2015 at 5:15 a.m., whereas, they have been arrested on 23.12.2015 at about 13:30 hours. He would further submit that the anonymous phone call to the father of the deceased Abhishek Mishra by which the ransom was demanded, have not been interrogated by the police and no information has been obtained for the same. Although the police were in knowledge that the said mobile number was registered in the name of one Shiv Lal Goyal. There is no technical report obtained by the Investigating Officer with respect to some tower location of mobile numbers of the accused persons-appellants and the deceased. A day before the lodging of the FIR, the Investigating

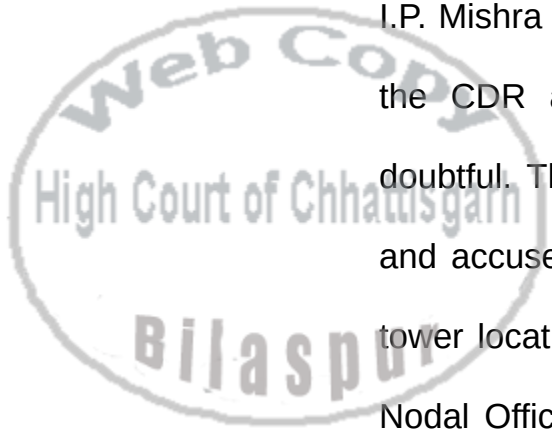




-13-

Officer obtained the mobile number by which the ransom was demanded and the same has not been explained by the Investigating Officer.

They would further submit that the mobile No.9144039634 by which the mobile call was made in the mobile number of I.P. Mishra, in whose name the SIM was allotted there is no any information in the technical report Ex.-D/14. They would further submit that witness Amresh Kumar (P.W. 19) who has been examined by the prosecution has not identified any of the accused persons. The above mentioned suspected mobile number was connected with the mobile number of I.P. Mishra and they had talk for about 33 minutes and before taking the CDR a technical report has been prepared which itself is doubtful. The mobile tower location of accused-appellant Ajit Singh and accused-appellant Vikas Jain has not matched with the mobile tower location of the deceased which has been proved by the then Nodal Officer of Idea Cellular Ltd., Pankaj Ramaiya (P.W. 28). The mobile phone which was being used by Ajit Singh was recorded in the name of one Paramjeet Kaur, but who is the said lady has not been investigated by the police. The mobile number of accused-appellant Vikas Jain was also registered in the name of his company in which 9-10 employees are working. On the date of incident who were using that mobile number, no evidence is collected by the prosecution. The Investigating Officer Naresh Patel (P.W. 33) who has prepared the technical report was not posted at P.S. Pulgaon





and he was never instructed by any other authority to get it prepared and therefore, the same is without any authority of law.

They have also submitted that the Raghunath Sahu (PW-5) and Munna Lal Patel (PW-34) who were employee of the educational institution run by father of the deceased and therefore, they are interested witnesses. The place from which the dead body was exhumed was an open place and accessible to everyone. As per the story of the prosecution, the allegation was that the accused-appellants have assaulted the deceased by an iron rod on his head, but the doctor who has conducted the postmortem of body of the deceased, PW-23, Doctor Ulhas Gonnade has not found any injury over body of the deceased which makes the case of prosecution doubtful. The Spot Map Ex.-P/31 is also incorrect.

The appellant Vikas Jain and the learned counsel for the accused-appellants would further submit that the prosecution has based its case on technical report Ex.-P/14 which was prepared by PW-33, Naresh Patel. In the report Ex.-P/14 the mobile No.9144039634 is mentioned because of the reason that on 10.11.2015 at about 12 in noon a suspected call was made in mobile phone of I.P. Mishra and demanded ransom which were come in the knowledge first time on 22.12.2015 at about 10:30 in the night when the FIR was being recorded. The said mobile number was registered in the name of Shiv Lal Goyal who is resident of Raipur and at the time of purchasing the SIM he has submitted his Adhar Card, Photo, PAN card and other documents which are available in the document





Ex.-D/21 and D/23 and no satisfactory explanation was given for the same by the Investigating Officer Naresh Patel and his statement has not been corroborated with the statement of PW-32 P.K. Sahu.

Further submission of learned counsel for the accused-appellants are that on 23.12.2015 at about 5 and 5:15 a.m. when the memorandum statements of the accused-appellants were recorded, they were not accused in any offence and therefore, the alleged memorandum and seizure are doubtful and not admissible. He would further submit that even before recording of their memorandum statement all incriminating facts of the case has already been published in daily newspaper on 23.12.2015 which is Ex.-D/1. The newspaper was published in the morning and the news items have been collected in the previous night upto 12 in the night and then only in the next morning the news was being published. As per the Rojnamcha Sanha made in the night of 23.12.2015 the accused-appellants Vikas Jain and Ajit Singh were taken into custody, but as per the statement of PW-32, P.K. Sahu who is the Investigating Officer, both these accused-appellants were taken into custody at about 4 a.m. by the crime branch police. Further, on 23.12.2015 in the night itself, the CSP Bhilai Nagar has made telephonic call to PW-27 Prabhat Kumar Verma who is police photographer and asked him to come to Smriti Nagar where exhumation process was to be carried out and till that time the memorandum statement of accused-appellants were not recorded which proves that all the state of affairs was well within knowledge of the police persons prior to 22.12.2015





at about 2 a.m. then the recovery of the dead body on the instance of accused-appellants and their memorandum statement itself is doubtful.

The prosecution has also not produced any material as to on what issue there was a telephonic call in between the deceased and accused Kimshi Kamboj (since acquitted), there is no transcription of their mobile calls.

It is also argued by learned counsel for the accused-appellants that the prosecution is connecting the accused-appellants in hatching criminal conspiracy by the mobile call details, but there are judgment passed by this Court as well as the Hon'ble Supreme Court that conspiracy cannot be proved by the call details until it has been proved by transcription of the said call details or SMS.

With respect to other circumstances as projected by the prosecution against the accused-appellants that they have purchased the salt, digging of pit, purchasing of 4 numbers of SIM card and 3 numbers of China mobile and also statement of Sunita Agrawal, it is submitted that the accused-appellants have not disclosed that they have purchased the salt from the shop of Anil Agrawal, whereas, Anil Agrawal has been examined as PW-9. How the police came to know name of shopkeeper has not been proved. Anil Agrawal has turned hostile and has not stated anything against the accused-appellants. The place from which the dead body was recovered after exhuming it was a open place although it was surrounded by 3-4 feet of wall, but there is every possibility of access





to anyone. The exclusive possession of the said place with accused-appellant Ajit Singh is also doubtful because PW-31 Sunita Agrawal has not identified accused-appellant Ajit Singh or his parents.

The test identification parade conducted by police vide Ex.-P/34 for identification of accused-appellant Ajit Singh is also lost its efficacy because the same was conducted through two witnesses on 15.02.2016 just after about 50 days after the date of incident. It is admitted fact that on the date when accused-appellant Ajit Singh was arrested, and his name and photographs have been published in daily newspaper and in the statement under Section 164 of the Cr.P.C. of the said two witnesses they have not stated anything against him.

Next argument advanced by learned counsel for the accused-appellants is that the prosecution has miserably failed to prove tower location of the deceased as well as accused-appellants are same. Merely they have parallel tower location on a common route does not give any presumption that they were conspired or having some nexus it may be a coincidence. The prosecution has disclosed the tower location of the mobile of accused-appellant Vikas Jain at Chandnidih on 09.11.2015 at 8:47:09 hours, whereas his tower location was said at Tatiband at 8:48:14, but the distance between Chandinidih and Tatibandh is about 12 km. and therefore, this type of tower location cannot be made basis for conviction or accusation of any accused person.





-18-

Learned counsel for the appellants would further argue that the seized articles have been sent for FSL examination on a highly belated stage and no explanation whatsoever was given by the prosecution for the same. From the evidence of prosecution, it appears that the deceased was not having good conduct and having affairs with several ladies and in that context the possibility of his murder by any other persons cannot be ruled out. He would further submit that the house of the appellants is situated in dense locality, but neither they have seen the locality at the relevant point of time nor any body seen them while taking the dead body from the house of the appellants as also while burying the dead body in a pit that too situated in a dense locality. The date of 10-11-2015 was the day of "Dhanteras" festival which is a part of Diwali festival, and the peoples are enjoying crackers outside of their houses. In a dense locality having more than 800 houses, that too in the festival time, it is not possible to dig a pit in the locality and buried the dead body there by bringing it from another place. He would further submit that no CCTV footage have been obtained by the police with respect to the fact that the deceased Abhishek Mishra has gone to the house of appellant. Even no CCTV footage has been obtained from the Toll Plaza from where the Car of the deceased have allegedly taken to Raipur because the route which has been shown by the prosecution is having Toll Plaza, but there is no investigation in that respect. At the cost of repetition, the counsel for the appellants submits that the chain of circumstances is not complete and certain important links





are missing and it is a case of circumstantial evidence and without there being any complete chain, unerringly pointing towards guilt of the appellants, they cannot be convicted. There may be some suspicion, however that cannot be the proved circumstance to bring home the charge against the same. Therefore, the appellants are entitled for acquittal.

11. On the other hand, learned counsel for the State as well as the learned counsel for the complainant opposes the submissions made by the appellant Vikas Jain and learned counsel for the appellants and have submitted that the prosecution has proved its case beyond reasonable doubt. The chain of circumstances has been completed and fully established by the prosecution witnesses right from the date of incident till recovery of dead body. The motive, memorandum statement of the appellants, recovery based on said memorandum statement, identification of the dead body, telephonic call at the relevant point of time between the accused persons and the deceased, recovery of the dead body at the instance of the accused persons all have duly proved by the prosecution witnesses which forms a complete chain to hold them guilty. Even if, there may be some minor omissions and contradictions, that itself cannot be said to be sufficient to discard the evidence of the prosecution witnesses. From the overall evidence led by the prosecution, the plan to commit murder of the deceased and hatching conspiracy has duly been proved which reflects the manner in which the deceased had done to his death by the accused persons.





They would further submit that the circumstances appear against the accused persons in the case have not been properly explained by them which again bring them towards their guilt. Therefore, the well-reasoned judgment of their conviction and sentence passed by the trial Court is justified and the same is liable to be maintained.

12. The following circumstances have been relied upon by the prosecution to prove the charge against the accused persons:

- ✓ The death of deceased is homicidal.
- ✓ The dead body of the deceased was recovered at the instance of appellants Vikas Jain and Ajit Singh as per their memorandum statement Ex. P/9 & P/10, which was seized from a 5 feet deep pit.
- ✓ The dead body of the deceased was found in the same condition as the appellants had narrated in their memorandum statement.
- ✓ 5 feet deep pit was being dug by labourer PW-6, Sarju Rajput and PW-7 Gopal Rajput at the instance of accused Ajit Singh.
- ✓ No explanation has been offered by the accused Ajit Singh regarding recovery of the dead body from his tenanted house at plot No.80.
- ✓ On the memorandum statement of accused Vikas Jain and Ajit Singh, one Rado wrist-watch, rod, curtain and Chunni was





seized from Rasmada over bridge, Ganiyari road which belongs to deceased Abhishek Mishra.

- ✓ The curtain which was seized from Rasmada Over Bridge on the memorandum statement of accused Vikas Jain in which presence of human bloods has not been explained by the appellant Vikas Jain.
- ✓ The purchase of 100 kgs raw salt has also been disclosed by the appellants from their memorandum statement and they have also purchased a sack.
- ✓ The bubble sheet which was found tied in the mouth of the deceased and the same nature and morphology was found in the bubble sheet seized from the tenanted flat No.80 Building No.G-11 belongs to accused Vikas Jain and he has not given any explanation about it.
- ✓ The blood found on the grass mat of Quanto Car Number CG-07-AL-4477 which was seized on the memorandum statement of accused persons have not been explained by them.
- ✓ On the memorandum statement of the accused persons the Car of the deceased bearing registration No.CG-07-NA-0007 has been seized from VIP Road, Raipur-Airport Road.
- ✓ On 09.11.2015, the mobile tower location of the accused Vikas Jain and deceased Abhishek Mishra was of the same route.
- ✓ The motive to commit murder of the deceased is that the deceased Abhishek Mishra was pressuring the accused





Kimshi for making physical relation with him and for this reason, the accused Vikas was having grudge against him.

13. The first and foremost question arises in the case is as to whether the death of deceased is homicidal or by any other reasons, and whether the dead body belongs to deceased Abhishek Mishra or not ?

14. On 23.12.2015, the dead body was sent for postmortem after its recovery from a pit situated at plot No.80, Smriti Nagar. The postmortem of the dead body was conducted by a team of doctors consists of Ulhas Gonnade, PW-23, Dr. Snigdha Jain and Dr. Bagh.

While conducting the postmortem, the doctors have noticed the following injuries:

“Dead body of male, body wrapped with black polythene, which is tightly tighten. with yellow rope at thorex, thigh Knee, Ankle region, foul Smell present on opening this both Ankle knee, were tightly bound together with hope.

[IDENTIFICATION:- height 5'8" foot Show) - 10" Scalp hair black 4cm long (article) - Mouli thread on it wrist, metallic ring on Rt. middle finger, a metallic chain with 2 locket on Neck black stained., Penis Not circumcised Internal Identification on dissecting left- Knee joint green coloured wire epibond "(used for ligament repairing) in situ.. Lt. eye open. Rt. Eye closed. Mouth open, teeth visible, lip apart. Tongue inside, fingers of both hand clenched at interphalangeal. Both Knee Flexed. at knee joint and Both upper limb Flexed at elbow joint. No rigormortis hypo stares, pm staining seen on body, Modified putrefaction in form of adipocere change seen, facial features well preserved and few parts shows mummification. following parts showing adipocere Changes both maxillary well pressed and few parts shows mummification. Following parts showing adipocere change: both maxillary region absence of nose, chin forehead, Rt Cheek, Rt ear, Nape of Neck. Left ear. Left Supraclavicular region Rt. And Lt. Shoulder Lt Arm 1/3rd part. Rt. Forarm, Rt. Hand, whole trunk, back upper 2/3rd part, Lt. thigh Pelvic parts including genitals which is intact. Following parts of body Showing mummification sign: - both side zygomatic region, glabella. upper lower lip corner of both side





of mouth. Ry side Thorex, mid. part. Lt. Thorex mid part. Rt. Shoulder, Lt. Mid 1/3rd part and Rt. Hypochondrial Region, periumblical region, both side Lumber region lower 1/3rd part of abdomen, and both buttock, lower 1/3rd part of Lt. Thigh. Lt. Shin Lt. foot Below Rt. Knee whole leg and Lt. thigh upper 1/3rd lateral aspect all over. Following parts showing Bluish Colour. :- Rt. Side groin region patches of blue wound on few parts of abdomen. Medial aspect upper 1/3rd part of thigh. Medial aspect of Rt. Thigh and both calf region. No evidence of prick of needle seen on body. Blue coloured stain on underwear face of Rt. Upper Lip size 5x5 cm and another blue coloured stain as lower lip till under surface of Rt. Angle of mouth. Gunny bag impression mark present on Rt. Chest Arm and chain mark impression on Neck. Impression of compression affects over Nasal, both peri orbital region. Both cheek, both Zygomatic region, Neck below thyroid region transverley.”

15. After conducting postmortem, the team of doctors have opined as under:

1. If antemortem gagging, strangulation or smothering may be the cause of death, the possibility of death due to this mechanism can not be ruled out.
2. Death due to drugs are under investigation.
3. Death due to poisoning are under investigation.
4. The possibility of death due to head injury is ruled out.
5. The Tibia bone (Lt). is preserved if required, use this bone for, Blood group DNA profiling, Diatomis test.
6. No definite opinion can be given at this stage regarding cause, mode, nature of death, as body showing sign of adipocere and mummification.
7. Duration of death not below 4 week.
8. Body is not skeletonised.
9. Scalp hair, teeth, articles, clothing tibia bone has been preserved for purpose of identification, if required.

16. Although the team of doctors have not found any injuries on the head of the deceased and the nature or cause of death could not be opined by the team of doctors, however it was admitted by PW-3, Dr. Ulhas Gonnade that no any injuries were found on the head of the deceased and there is no possibility of death due to head injury.





17. Although the doctor could not opine about the nature of cause of death, but the manner in which the dead body was taken out from a pit, the condition of the dead body, particularly that the fact that cloths were inserted in his mouth, the head was wrapped by plastic sheet from all the sides, the death could have been caused by smothering. The position of the dead body under which it has been found in a pit after exhuming it, and therefore, it can safely be hold that death of the deceased was homicidal in nature even after there is no specific opinion by the doctors in this regard.

18. Further, the dead body was recovered on 23.12.2015. PW-1, Nishant Tripathi, PW-4 Deepak Sharma, PW-5 Raghunath Sahu, and PW-34 Munnal Lal Patel are the witnesses in whose presence the dead body was taken out from the pit after exhuming it which was buried in a jute bag, his head was wrapped with bubble sheet, hand and legs were tied, mouth were gagged with clothes, rope were tied in neck and if a body was recovered in such a condition, no other presumption could be drawn except the death of the deceased was homicidal in nature, or else, the dead body cannot be found buried in such a condition.

19. So far as identification of the dead body is concerned, the prosecution has produced DNA report Ex.P/121. On 31.01.2017 the blood sample was taken from the mother of the deceased Smt. Sarita Mishra. PW-23 Dr. Ulhas Gonnade, have preserved Tibia bone, teeth, hairs of the head which were examined by the State FSL Raipur and after its DNA profile examination, it is found that the





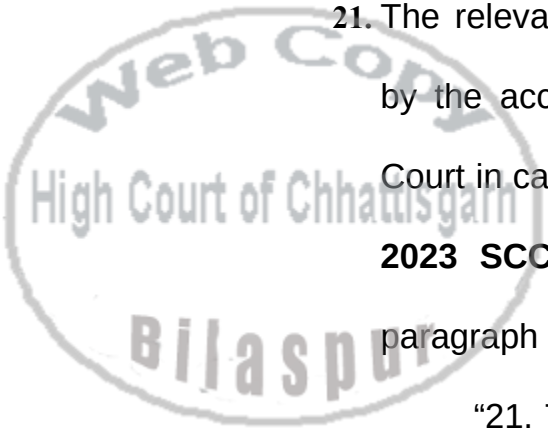
allyls of both the articles are matched and therefore they have opined that the mother of Abhishek Mishra is biological relative with that of the dead body i.e. Abhishek Mishra and proved that the dead body is of Abhishek Mishra. Therefore, the dead body found in the pit from Plot No. 80, Street No.12, Smriti Nagar, was of Abhishek Mishra and his death is homicidal in nature.

20. Now the second circumstances by which the prosecution and the trial Court has relied on is memorandum statement Ex. P-9 and P-10 and recovery of the dead body at the instance of the accused persons.

21. 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-Emperor⁴ 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 Chuckerburty⁵, to "lend assurance to other evidence against a coaccused". In Haricharan Kurmi vs. State of Bihar⁶, 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 Pradesh⁷ overturned the conviction under Section

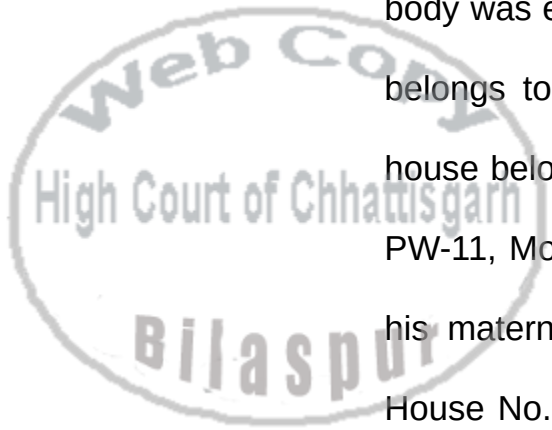




411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:

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.]”

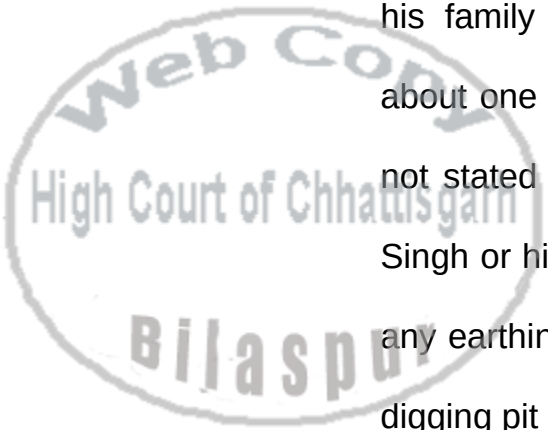
22. It is alleged by the prosecution that the place from where the dead body was exhumed which is Plot No. 80, Street No.12, Smriti Nagar, belongs to accused Ajit Singh who was a tenant over there. The house belongs to accused Ajit Singh is said to have been proved by PW-11, Mohd. Rizwan Khan, who have stated in his deposition that his maternal uncle Abdul Kalam Ansari is the owner of the said House No.80 who is presently residing at Saudi Arab. His maternal uncle has given a power of attorney to manage the property to his elder brother Abdul Salam Ansari and he too is taking care of the said property. The property of his maternal uncle was given on rent to one Pritpal Singh and he was residing there along with his wife, daughter, and brother Ajit Singh. The said house was having two floors. The first floor was given to Pritpal Singh on rent and the ground floor was given to another lady. Although he exhibited the rent agreement Ex.P/39, but admits that his signature is not there over the same. The signature is of his maternal uncle is there. In





cross examination, he admits that ground floor was given on rent to one Sunita Agrawal. The garden of the house was visible from the window. From the evidence of this witness, the prosecution has tried to establish that the house from where the dead body was recovered belongs to the accused Ajit Singh, whereas, it was double storied house, the ground floor was in possession of one Sunita Agrawal residing along with her children and that the garden from where the dead body was recovered was of common use and visible from the Window of ground floor. The first floor was given on rent to Pritpal Singh. There is no investigation or interrogation from Pritpal Singh or his family members. Sunita Agrawal has been interrogated after about one and half year. The owner of the house or caretaker have not stated that they have given any permission to the accused Ajit Singh or his brother Pritpal Singh for digging a pit for the purpose of any earthing wire and have not asked from them as to why they are digging pit on the garden. Even the tenant of the ground floor has not asked anything either from the accused Ajit Singh or Pritpal Singh or even PW-11 Mohd. Rizwan Khan. The persons who executed the rent agreement Ex.P/39 i.e. Mohd. Abdul Kalam Ansari or power of attorney holder Abdul Salam Ansari have not been examined in the case. The persons who were available but have not been examined would give adverse presumption against the prosecution for withholding the best evidence available with them.

23. The memorandum statement of accused Vikas Jain Ex. P/9 was recorded on 23.12.2015 at about 5 am at police Station Pulgaon





whereas, based on the said memorandum statement the alleged recovery of one iron rod, curtain, Chunri and Rado Watch was seized on 25.12.2015 at about 15:20 hours from Rasmada over bridge, Ganiyari road. The entire story, as projected in the memorandum statement, was published in daily news-paper on 23.12.2015 meaning thereby the entire story came into knowledge of the media persons on 22.12.2015 itself whereas, the accused Vikas Jain and Ajit Singh were taken into custody at about 4 a.m. on 23.12.2015 and about 5 am the memorandum of Vikas Jain and about 5:15 am the memorandum statement of accused Ajit Singh was recorded.

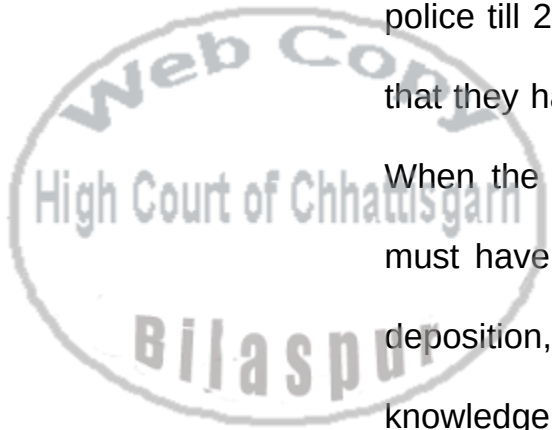
The appellants were taken into custody at about 4 am on 23.12.2015 has been proved by the investigating officer PW-32 PK Sahu, but prior to their custody & recording memorandum statements, all these facts were came into knowledge of media persons and published in daily newspaper in the morning, which itself creates doubt about recording of memorandum as well as discovery of any facts on the basis of alleged memorandum statement Ex. P/9 & P/10 of the accused persons. Further, the memorandum statement has been recorded on 23.12.2015 at about 5 am and 5:15 am whereas, the alleged recovery was made on 25.12.2015 at about 15:20 hours i.e. after about 2 and ½ days, giving sufficient time to implant evidence against the appellants. Further, the alleged articles which has been seized vide Ex. P/22 was thrown on 10.11.2015 and recovery of same is on 25.12.2015. None of the witnesses have stated that the articles were not in good condition or muddy. The articles were





allegedly recovered from an open place that too after about 45 days which itself creates doubt on its recovery.

24. On 09-11-2015, the deceased Abhishek Mishra was missing and missing report Ex. P-5 has been lodged by his father on 10-11-2015. In the said missing report, there is no mention about the ransom call made to the father of the deceased on 10-11-2015 but the same has been reported on 22-12-2015 that too by the Nishant Tripathi and not by I.P. Mishra. From the evidence of P.W. 1, Nishant Tripathi, it appears that the ransom call was well within the knowledge of the family members of the deceased, but they have not informed it to the police till 22-12-2015. In para 6 of his deposition, P.W. 1 has stated that they have waited for about 35 days for repeated call of ransom. When the whereabouts of the deceased was not traced out, they must have immediately informed it to the police. In para 58 of his deposition, he has stated that on 10-11-2015 itself, he came into knowledge of the ransom call. The entire story has been developed in between the period of 22-12-2015 from 22-30 hrs. to 23-12-2015 up to 5.00 a.m. when the memorandum statement of Vikas Jain is recorded. There is no investigation about mobile no. 9144039634 by which ransom call was said to have been made. P.W. 1 has further stated in his deposition that on 23-12-2015 in the morning, they went to house no. 80, street no. 12, Smriti Nagar, along with his brother, friends, and other persons. The media persons were also there. Thereafter, the appellants have pointed out the place and afterwards the Executive Magistrate came and called the laborers for

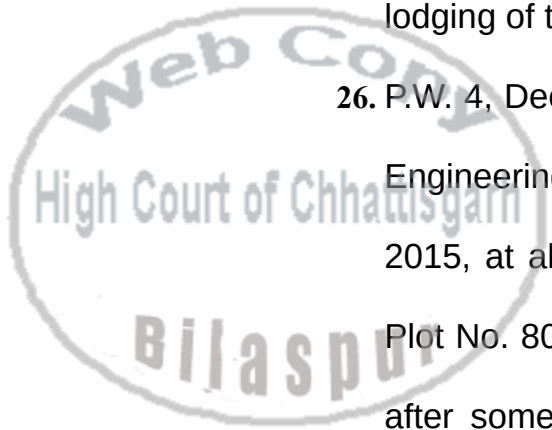




exhumation. After digging the pit, the sacs of raw salt were taken out and thereafter, the dead body wrapped in the plastic sheet was taken out from the pit. He was wearing blue jeans and chappal was also there in it. In para 24, this witness has stated that when he already proceeded from Raipur, he received the phone call from the police to come to Smriti Nagar.

25. The P.W. 2, I.P. Mishra, father of the deceased, have stated in his deposition that on 10-11-2015, at about 12.00 hrs. he received a ransom call for 5 Crore from the mobile no. 9144039634. They waited for about 44 days and then he sends his son-in-law for lodging of the report.

26. P.W. 4, Deepak Sharma, who is the Principal of the Shankaracharya Engineering College, have stated in his deposition that on 23-12-2015, at about 6.30 in the morning, he was called by the police at Plot No. 80, street no. 12, Smriti Nagar, Bhilai. When he went there, after some time police has come alongwith the accused persons. The faces of the accused persons were covered and for about 2 minuts, their cover of faces have removed and then he identified them as Vikas Jain and Ajit singh. Important here is the P.W. 1, who is also present on the spot at the time of exhuming the dead body, has not stated that the faces of the accused persons were covered. P.W. 1 has stated that a chappal was also found with the dead body whereas this witness P.W. 4 has stated that a sandal was found with the dead body. The P.W. 4 has stated in para 20 of his deposition that the police have not informed about the conspiracy and murder





by the accused persons and burying the dead body in the pit and if, it is there in his 161 Cr.P.C. statement (Ex. D-4), he could not tell the reason. The uncovering the faces of the accused persons has also not stated in his police statement. In para 25, he stated that the police persons have informed him that who is Vikas Jain and who is Ajit Singh. In para 63, this witness has stated that in the photograph, the faces of the accused persons are shown to be covered. He stated that the faces were shown to him by the police persons on earlier point of time.

27. P.W. 5, Raghunath Sahu, who is the memorandum witness, have stated in his deposition that on 23-12-2015, when he was going to Deosara, for treatment of his friend, he was being stopped by the police near Pulgaon police station. Then he stated about the proceeding which was done by the police up to the process of exhuming the dead body and recovery. He is also claiming to be the witness of various seizures. This witness in his cross examination has stated that the police persons have stopped in front of police station and not called by giving notice. If, it is written in his police statement Ex. D-5 that he was being called by giving notice, then he could not tell the reason. He admitted that the notice Ex. P-33 was given to him to appear at Smriti Nagar, but no time was mentioned in it. In para 40, he admitted that the police persons have got them identified about Vikas Jain and Ajit Singh. In para 41, he stated that the accused persons have given memorandum statement on being asked by and on instance of the police persons. The accused





persons were put in handcuff by the police. This witness has further stated in para 68 of his deposition that the fact of going Deosara for treatment was disclosed in his police statement and if it is not there, he could not tell the reason.

28. P.W. 6, Sarju Rajput, who is the witness who claims to be the person who dug the pit. He stated in his deposition that the name of accused Ajit Singh was informed to him by his sons after reading in newspaper. On the day of Dhanteras, he came to him for digging of the pit and he assured that he will dig the pit in the next day. In the next day, he dug the pit at street no. 12, Smriti Nagar. Again, Ajit Singh has called him and asked to send his son to fill the pit and he sent his son there in the next day. He further stated that he identified Ajit Singh at Durg Jail. In cross examination, he stated that the name of Ajit Singh has been informed to him by his son after reading in newspaper. He admitted that the place is visible to all. In para 42, he stated that five persons were put before him at the time of identification, but he could not tell their age. He could not identify other persons. He is unaware about the contents of document prepared in the Jail. He admitted in para 47 that even after coming into knowledge from news paper, he has not informed the police about digging the pit. He further denied some part of his 164 Cr.P.C. statement.

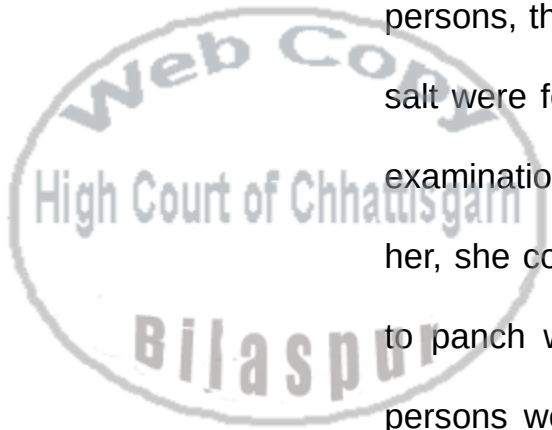
29. P.W. 7 Gopal, who is the son of P.W. 6, have stated in his deposition that he knew Ajit Singh. He came to his house for digging of pit from them. In the next day his father has dug the pit and in the next day





he filled it up. He and his father both had gone to jail for identification and identified Ajit Singh. In para 15, he has stated that he already knew Ajit Singh and therefore, he identified him. he denied that he informed about the incident to his father after coming into knowledge from news paper. He further stated in his cross examination that if the date of 07-11-2015 written in his police statement, he could not tell the reason.

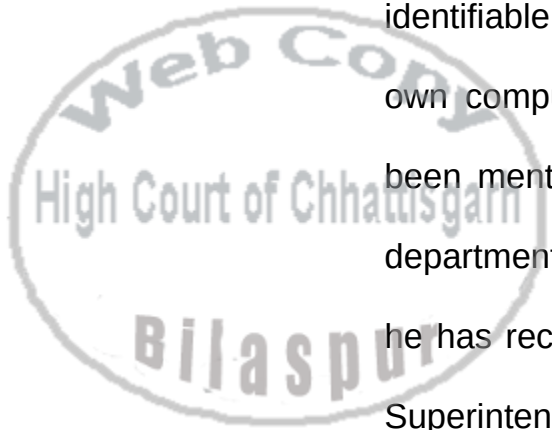
30. P.W. 14, Poonam Soni, who is the Executive Magistrate, and conducted the exhumation of the dead body have stated in her deposition that on being pointing out the place by the accused persons, the exhumation was started. From the pit, 4 empty bags of salt were found. Thereafter the dead body was recovered. In cross examination, she stated that at what time Ex. P-40 was received by her, she could not be endorsed in it. She has not issued any notice to panch witnesses. After her reaching on the spot, the accused persons were brought. It has not been written in Ex. P-2 that the place was pointing out by the accused persons. She admitted that from the photograph, the persons were covered their faces. She admitted in para 17 of her deposition that since, the faces of accused persons were covered, she could not identify them. In has also not been mentioned in it that on being asked, they have disclosed their names. She has not called the persons for digging the pit by giving them notice. In para 35, she admitted that when she reached on the spot, the accused persons were not brought by the police, but police persons and public were present there.





31. P.W. 27, Prabhat Kumar Verma, photographer in the police department, have stated in his deposition that on 23-12-2015, he was posted at police control room, Bhilai. On being information received, on 23-12-2015 at about 06;30 or 06;35 hrs. in the morning, he reached at police outpost Smriti Nagar, thereafter, he went to the spot. Senior Police officers and other police persons were there. At about 8.00 a.m., the accused persons were brought by the police and on being pointing out by them, the dead body was exhumed, and he has done videography. In cross examination he has stated that the faces of the accused persons were covered and not identifiable. He has prepared the C.D. of the videography from his own computer. He has admitted that the place and date has not been mentioned in the certificate Ex. P-71 neither any seal of his department is there in the said certificate. In para 14, he stated that he has received information on 2.00 a.m. in the night from the City Superintendent of Police, Bhilai Nagar. In para 16, he has stated that he has given the detailed evidence after seeing the C.D.

32. P.W. 30, Sanjeet Vishwakarma, who is photographer, have stated in his deposition that he has taken the photographs of the exhumation proceeding on 23-12-2015. In cross examination, he has stated that there is no mention about number of photographs which he has taken and even the date has not been mentioned in the certificate issued by him. he has not seen the faces of the persons who have covered their faces by Gamchha. He has got the printout of the photograph from colour lab. He has not saved the photographic





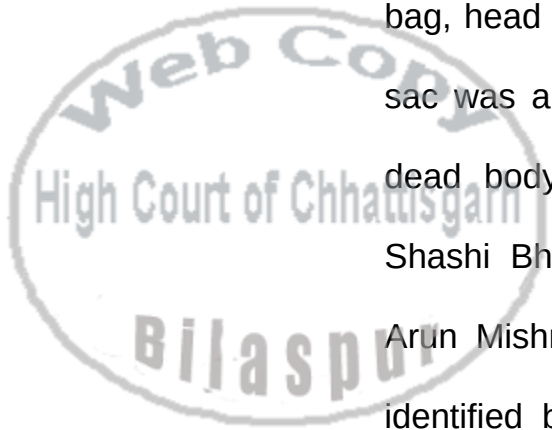
record about its location, model number/serial number of camera, crime number, time of photography etc. He has admitted that the photographs of the articles of inside the pit are not there. There is no photograph with respect to exhuming process of the dead body. He has also stated that the number of persons were gathered there. Police has not seized the memory card of the photographs.

33. The P.W. 32, P.K. Sahu, the investigating officer, has stated in his deposition that on 10-11-2015, the missing report has been given by I.P. Mishra, who is the father of Abhishek Mishra, and the missing report has been registered as 70/2015, thereafter, he started search of missing persons and send wireless message to various police team. On 10-11-2015 at about 12.00 in the noon, there was a ransom call to I.P. Mishra in the mobile number 9826166940 from the mobile number 9144039634 and at that time, the tower location of mobile number 9144039634 was at Dhamtari. During the inquiry, another mobile number 9144920219 was also found detected. During the inquiry, the call detail of the mobile number 9425236940 of the deceased Abhishek was also taken out and after inquiry, it was found that on 09-11-2015 at about 5.00 p.m., his location was at Shankaracharya College and thereafter, mobile location was closed. After that, his mobile location was at Smriti Nagar, Aditya Nagar, Sikola Bhata, Nehru Nagar, Sector 9, Ruabandha, Kumhari, Telibandha, Lalpur and Raipur and his mobile is switched off at 21.39 hrs. on 22-12-2015, on the oral report of Nishant Tripathi, the FIR Ex. P-1 was registered for the offence under Section 364-A of IPC. On





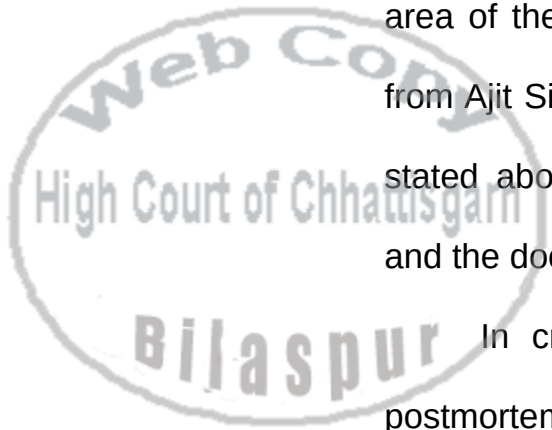
23-12-2015 at about 4.00 a.m., the two suspects of the crime Vikas Jain and Ajit Singh were brought before him and recorded his memorandum statement in presence of the witnesses. In their memorandum statement they have disclosed the commission of the offence and concealing the dead body and other articles. The memorandum statement of Vikas Jain is Ex. P-9 and Ajit Singh is Ex. P-10. Based on memorandum statement, the dead body was exhumed vide Ex. P-40, panchnama was prepared vide Ex. P-11, and P-12. By the permission and in presence of the Executive Magistrate, the dead body was exhumed which was found in a jute bag, head was wrapped in a plastic bubble sheet, the 4 nos. of salt sac was also found first when the dead body was exhuming. The dead body was identified by panch witnesses Nishant Tripathi, Shashi Bhushan Shukla, Prashant Tripathi, Deepak Sharma and Arun Mishra and the article belonging to the deceased was also identified by them. White bubble sheet, red color cushion cover, printed bed sheets, pillow covers, T-shirt, Ful shirt, chunri, sandals, injection syringe, another T-shirt were found with the dead body. All the articles were seized vide Ex. P-14. Out of 4 salt sacs seized from the pit, 2 sacs were endorsed by Iodized salt by red color and 2 sacs were by blue color. Dehati Merg was also recorded on the spot vide Ex. P-102 and body was sent for postmortem to District Hospital, Durg. At police Station Pulgaon, numbered merg Ex. P-104 was recorded and seized the mobile phone of accused Vikas which was of Sony company having IMEI No. 355819062357029 and





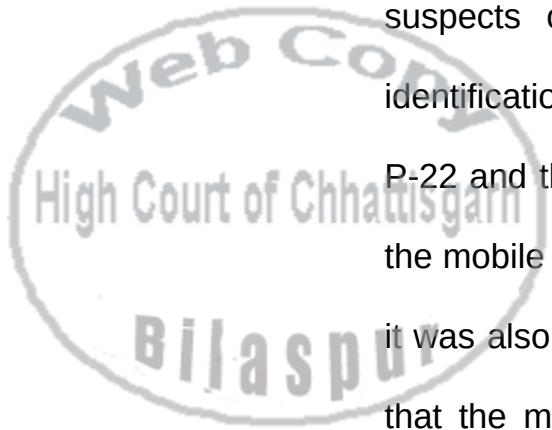
355819062357037 and having SIM of Idea company bearing no. 8349993222. Another mobile of Micromax company has been seized having IMEI no. 911442257764474 and 911442257764482, vide seizure memo Ex. P-15. From Ajit Singh, one Samsung mobile phone was seized having its IMEI no. 352155069659874 and 352156069659872 having Airtel SIM no. 9630518985 has been seized vide Ex. P-16. After broke open the lock of the house of Vikas Jain, one red color cushion, one pillow cover, one bubble sheet was seized vide Ex. P-19. The grass-mat from the car of the accused Vikas Jain was also seized from his car which was parked in parking area of the building vide Ex. P-20. A motor Cycle was also seized from Ajit Singh vide Ex. P-21. In chief examination, this witness has stated about the various seizures and proceeding of investigation and the documents have been marked and exhibited.

In cross examination, this witness has stated that in the postmortem report, there is no evidence in the postmortem report Ex. P-8 about assault by iron rod on the person of deceased. He further stated in para 36 of his deposition that he has not received the SIM and mobile phone from which the ransom call was made to the father of the deceased. He admitted that the CDR of the said SIM has not been seized and has not been made part of the investigation of the present case. He further admitted in para 37 that at the time of lodging of missing report, the father of the deceased has not disclosed about the ransom call and demand of Rs. 5 Crore. He further admitted that at the time of lodging the missing report, the





father of the deceased has not described the belonging of the deceased i.e. Apple i-phone, Rudraksh, Rado wrist watch, golden finger ring. Since, the mobile location of deceased Abhishek Mishra and accused Vikas Jain was on the same direction, on suspicion, he interrogated accused Vikas Jain and then Ajit Singh. Ex. D-14 is the technical report dated 21-12-2015 sent by Naresh Patel which has been received by him on 22-12-2015. On what basis the technical report was issued, has not been mentioned in it. He further stated that as per the technical report the mobile tower location of Vikas Jain and the deceased was in the same location and therefore, he suspects on him. he has not put the writ watch for its test identification. The said wrist-watch is seized on 22-12-2015 vide Ex. P-22 and the same was clean and not muddy. He has admitted that the mobile phone was seized from the running water of drainage, but it was also neat and clean. He admitted in para 45 of his deposition that the memorandum statement Ex. P-9 and P-10 are not in his handwriting and the same is scribed by his subordinate staff. He further admitted that the mobile and wrist watch are seized from open place. He has not got the car of the accused Vikas Jain examined by finger-print expert. The Forensic Team has examined the car, but no fingerprint was found there. He himself has not investigated about fingerprint in the house of the accused persons but the Forensic Team has investigated the same. He has further admitted in para 52 of his deposition that on the next day of arrest, the photograph of the accused Vikas Jain and Ajit Singh was





published in daily news paper which is Ex. D-1. He has further stated that in the memorandum statement, it has not been disclosed by the accused persons about digging of the pit and filling it by Gopal and Sarju Rajput and none of the witnesses have also stated the same during the investigation. He admitted that he has investigated the case on the basis of technical report Ex. D-14 and not on the basis of call details. He admitted that in the case diary, after memorandum, there is no endorsement of the names of Gopal and Sarju Rajput.

In para 58 of his cross examination, P.W. 32, has admitted that he has not collected the relevant document with respect to the ownership of Verbe Technology or the mobile phone belongs to Verbe Technology. He further admitted that the mobile no. 9630518985 is registered in the name of Paramjeet Kaur. He has not investigated about the said Paramjeet Kaur and her existence. He further admitted that the mobile number 9144039634 is registered in the name of Shiv Lal Goyal, but he has not investigated about the same. He has further stated that he has investigated about the CCTV footage of Kumhari Toll Plaza but has not found any incriminating evidence against the accused. There is no entry in his police diary and no panchnama was prepared for the same. He has shown his ignorance about the availability of CCTV at Chouhan Town. He admitted that except mobile phone, no evidence against her is collected. He further admitted that the conversation between the Kimshi and Abhishek was with respect to the sponsorship of tennis league tournament. He has further stated that on 23-12-2015





at about 12-20 in the night, the accused Vikas and Ajit were brought to the police station is mentioned in the Sanha no. 1. They have not brought at 4.00 by the crime branch police but have been taken into custody. He further admitted that till 22-12-2015, he was having no knowledge about the accused persons. The statement of the witnesses is not in his handwriting but the same is not endorsed in the case diary. He has further admitted that the notice of Ex. P-33 to Raghunath and Munnalal was issued after the memorandum statement.

In para 73 of his deposition, the P.W. 32, have stated that the memorandum statement of the accused persons was recorded after asking them by pressure. He further admitted that Kimshi and Abhishek were in frequent contact through mobile phone in between 09-10-2015 to 09-11-2015. He also admitted that the accused persons are relatives and regularly called each other. He shown his ignorance when he was asked that the distance between the mobile tower location of Abhishek and the accused persons was about 17 k.m. he has no knowledge about call details and tower location, but he has interrogated the accused persons on the basis of tower location and call details. He has not interrogated the watchman or neighbor of the accused persons and no in-out register of the colony was seized.

34. P.W. 33, Naresh Patel, who is also the investigating officer of the case and has come after P.W. 2, has stated in his deposition that on the instructions of his senior officers, he has prepared the report Ex.





D-14 and given it to the Pulgaon police after analyzing the tower data details. During the investigation, the seized articles have been sent to Medical College, Raipur, for its quarry report. The tenancy agreement has also been seized by him vide Ex. P-26 and P-27. He has seized the customer application forms, vide seizure memo Ex. P-72 and P-77. On 16-02-2016, he has sent the seized articles to FSL, Raipur, for its examination vide Ex. P-62, 63, 64 and 65. The vehicles i.e. the car of the accused Vikas Jain and motor cycle of Ajit Singh were also sent for mechanical report vide Ex. P-114 and its report is Ex. P-115 and 116. During the investigation, the statement of the witnesses under Section 161 Cr.P.C. have been recorded and also recorded statement of Sunita Agrawal and filed it along with supplementary charge sheet. He has also submitted the CDR of mobile nos. 9630518985, 9806753397, 8349993222 and 9425236940 and filed the charge sheet after completion of investigation.

In cross examination, this witness has stated that there is no document by which his senior officers have instructed him for analysis of tower data record. He has not maintained the case diary with this respect. He admitted that there is no record with respect to the same. He has obtained the training regarding cyber-crime but there is no document. He is unable to explain as to why the seized articles were not sent for its quarry or FSL examination and there is no entry in the case diary. There is no document in the record with respect to safe custody of the seized articles in the Malkhana of the



police station. He has admitted that in the technical report Ex. D-14, there is no endorsement about the mobile number of 9144039634 from which the ransom call was made to I.P. Mishra. The witness has stated that he has mentioned that that mobile number was given to Amresh Kumar Sahitya (SG Mobile) by Rakesh Yadav (Om Marketing) for its sale.

He further stated that the ransom call on 10-11-2015 made from the mobile no. 9144039634 to I.P.Mishra, was informed to him by the SHO, Pulgaon police station, after the registration of missing report. He admitted that before 21-12-2015, he has obtained the CDR of all the seven mobile numbers which reflects on Ex. D-14. He further admitted that the mobile no. 9144039634 is registered in the name of Shiv Lal Goyal. Ex. D-22 and D-23 is the document of ownership of said SIM card. He admitted that he has not interrogated Shiv Lal Goyal. He admitted that the mobile number 9144039634 was sold to Kanak Mobile by Om Marketing and from where it was sold to Shiv Lal Goyal. He further admitted that there is no document on the record by which the cellular companies were requested to issue CDR of the seized mobile numbers. He further admitted that Ajit Singh was arrested on 23-12-2015 and he was put for test identification parade on 15-02-2016. He admitted that after his arrest, there was news published in electronic and print media. The photograph of accused Ajit is published in daily news paper Ex. D-1. He further stated that the seized wrist watch was also put for test identification after about 52 days. He has explained the delay in





recording statement of Sunita Agrawal that she has left her given address. He further stated that the seized articles were sent for its FSL examination belatedly.

In para 30, he stated that on the date of incident, from Raipur to Durg, the other mobile numbers were not moving parallelly with the mobile number of the deceased but 8349993222 and 9630518985 were moving and thrice in the common tower location. The mobile number 9806753397 was also connected with the deceased. He further stated that one mobile tower range is about 500 meters to 1 ½ k.m. in air range.

35. Munna Lal Patel, P.W. 34, is the other witness of memorandum and seizures. He stated in his deposition that when he was going to Deosara, the Pulgaon police has stopped him and when he entered police station, he saw the accused persons sitting there. The accused Vikas Jain and Ajit Singh have given their memorandum statement in his presence and thereafter they proceeded to the place where the dead body was exhumed, and articles were seized. He was with the police party during the entire search and seizures. In his cross examination, he stated that he has signed the documents on the instruction of police persons and have not read over the same. He has stated that when he went to the place where the dead body was exhumed, the other police persons were already present. He has stated that the SHO Sahu had not gone to 5th floor of Chouhan Town.





36. The prosecution has filed the 161 Cr.P.C. statement of Sunita Agrawal, who was the tenant on the ground floor of the plot no. 80, street no. 12, Smriti Nagar, Bhilai, after about one and half year by filing supplementary charge sheet. PW-31, Sunita Agrawal, who is tenant of the ground floor of the said house No.80, Street No.12, Smriti Nagar, has deposed in her deposition that she is residing in the ground floor and in the first floor, the appellant Ajit Singh and parents of the accused Kimshi Kamboj and her sister were residing. Three years back at the time of Dhanteras festival, she saw digging of the pit in the adjoining plot of her house which was being used for growing vegetable, however, in the evening she went to her parents' house at Ambikapur. Thereafter, in the month of January, she vacated the said house and went to other house on rent. This witness has not stated that she saw the accused Ajit Singh instructing the labour to dig the pit there or there was any necessity to dig the pit for earthing wire. The police is required to interrogate this witness on very first occasion when the dead body was exhumed but her statement is recorded on 08-05-2017 which is after about one and half year. She has stated that she was returned from her parents' house on 15-11-2015 but she herself has not informed anything to the police nor the police have inquired from her despite the fact that she was came into knowledge of the incident while staying at Ambikapur itself. She even has not inquired from the person who were digging pit as to why they are digging pit there.





37. From the above discussion, the following are some of the points which makes the prosecution's case doubtful.

(1) when the ransom call was made on 10-11-2015 at about 12.00 in the noon, then why the same has not been informed to the police immediately that too even when the missing report (Ex. P-5) has been lodged on 10-11-2015 itself by the father of the deceased whereas, as per the evidence of P.W. 1 Nishant Tripathi, all the family members were in knowledge of said ransom call.

(2) The complainant as well as the family members of the deceased were kept quiet about ransom call till 22-12-2015 when the FIR was lodged after about 42 days, by Nishant Tripathi, P.W. 1.

(3) There is no inquiry about the mobile number of 9144039634 from which the ransom call was made to the father of the deceased, whereas the said mobile number is registered in the name of Shiv Lal Goyal.

(4) The ransom call was informed to the police first time on 22-12-2015 when the FIR under Section 364-A of IPC was registered but, a day prior to that, the technical report Ex. D-14 was prepared by the investigating officer P.W. 33 Naresh Patel. If, the mobile number of 9144039634 was came into knowledge on 22-12-2015 for the first time, how the same is mentioned in the technical report Ex. D-14





which has been prepared a day prior to the FIR that too without there being any written instructions.

(5) There is no suspicion upon the accused persons from 10-11-2015 to 22-12-2015 but immediately after lodging of the FIR on 22-12-2015 at about 10.30 in the night, they were taken into custody on 23-12-2015 at about 4.00 a.m. i.e. within 6 hours and their memorandum statement have been recorded and all the seizures have been made.

(6) The presence of the panch witnesses of memorandum and seizures are also doubtful as it was the winter season and early morning at about 4-5 a.m., their proceeding towards Deosara is also doubtful. What was his ailment has not been proved and there is no evidence about his ailment. The said memorandum statements are not in the handwriting of investigating officer P.W. 32.

(7) The police photographer P.W. 27, Prabhat Verma, have been informed about the incident on 23-12-2015 at about 2.00 a.m. by CSP, Bhilai Nagar, i.e. prior to disclosure statement of the accused persons. If, the police was already under the knowledge of the incident, then the memorandum statement and recovery based on it loses its significance.

(8) Prior to reaching the accused persons, various police authorities and other persons gathered on the spot which





itself shows that the place was well within the knowledge of the police prior to the disclosure statement.

- (9) The faces of the accused persons were covered and not identifiable.
- (10) On exhuming the dead body, the 04 nos. of salt sacs were taken out with raw salt, which is allegedly put on the date of burying the dead body but after about 42 days, the same may not be in its original form because it is soluble and as per the evidence came on record, there was cultivation of vegetables, then obviously due to watering of the plants, the salt should not be in its original form.
- (11) The identification of salt sacs is also makes the case doubtful because, the P.W. 9, Anil Agrawal, has stated in his deposition that there was no specific mark in the salt sacs which they have sold, whereas the salt sacs which were said to have been seized at the time of exhuming the dead body was having identification of "Iodized salt Yogendra Chemical Kharaghoda" was mentioned in red color in two sacs and in blue color in two sacs which proved by P.W. 23, Dr. Ulhas Gonade, also.
- (12) On 23-12-2015 at about 5.00 a.m. and 5.15 a.m. memorandum statements of the accused persons were said to have been recorded but based on it, the recoveries of clothes, mobile phone and wrist watch, have been made





on 25-12-2015 which is after about more than 2 days that too from an open place.

- (13) At the time of seizure of wrist watch and mobile phone from running drainage, it was already cleaned and not muddy which also create doubt.
- (14) The seized articles were sent for its FSL examination after about 2 months and safe custody of the articles has also not been proved.
- (15) No any CCTV footage with respect to coming the deceased to Chouhan Town, parking of his Car there or any person seen him at there.
- (16) There is no witness who have seen the accused persons taking the dead body in a sac from the house of accused Vikas Jain to the place at Smriti Nagar where the dead body was buried which is in distance of about 2 k.m.
- (17) The date of incident was the day of Dhanteras festival, and the peoples were enjoying festival by fireworks and they obviously celebrating the same outside of their house, but no one has seen them.
- (18) There is no any entry in the in-out register of the entry gate of Chouhan Town colony which consists of about 800-1000 houses.
- (19) How the police came to know the persons who dug the pit and fill it when their names have not been disclosed in the





alleged memorandum statement of the accused persons and there is no evidence with that respect.

(20) The place from where dead body was recovered is accessible to all and of common use.

(21) The statement under Section 161 Cr.P.C. of P.W. 31, Sunita Agrawal was recorded after about 1 and ½ year whereas she was the resident of adjoining house in the ground floor. She has also not disclosed about the incident to anyone despite she was in knowledge of the offence.

(22) There is no investigation about existence of Paramjeet Kaur, in whose name the mobile no. 9630518985 was registered.

(23) In the alleged memorandum statement, the assault is said to have been made by iron rod on the head of the deceased whereas in the post mortem report, there is no injury on the head of the deceased.

(24) There is no transcript of the call details of the accused persons and the deceased.

(25) The deceased and accused persons were not the strangers but have related and known to each other, therefore, they may have normal talk with each other or with respect to their business.

(26) The T.I.P. of Ajit Singh was conducted after about 50 days whereas his photo has already been published in the daily news paper immediately after recovery of the dead body.





(27) The custody of the accused persons are also doubtful because the P.W. 32 have stated in para 7 of his deposition that the accused persons have brought before him on 23-12-2015 at about 4.00 a.m. whereas in para 66, this witness have stated that the accused persons were not brought before him at about 4.00 a.m. by crime branch but the Rojnamcha entry no. 1 reflects that the accused persons were brought at police station on 23-12-2015 at about 12.20 a.m.

(28) As per the evidence of P.W. 28, Pankaj Ramaiya, nodal officer of the cellular company, the tower location of the mobile phone of the deceased as well as the accused persons were not matched consistently on the alleged day of incident.

(29) The IMEI number of the mobile phone of the deceased was 354441064655370 as per the evidence of P.W. 28, Pankaj Ramaiya, whereas, as per the Ex. P-25, the IMEI number of seized mobile was 354441064656374, which cannot be the typographical error because in number of places the same number is shown.

(30) Matching of the bubble sheet and cushion cover allegedly seized from the house of the accused Vikas Jain and the bubble sheet and cushion seized from the dead body is not conclusive piece of evidence because it is a common item which is easily available in the market.

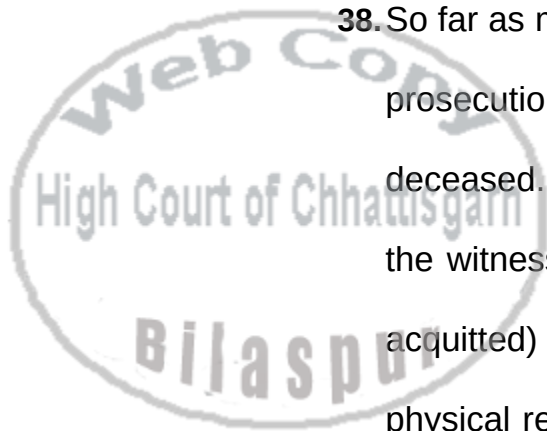




(31) Blood found on the grass mat allegedly seized from the car but there is no allegation that blood was oozing out from the dead body and while carrying the dead body, the blood was remained in the said grass mat. Even in the articles seized from the dead body, no blood stains were found on it as per the FSL report then how the blood was found on the curtain and grass mat of the car.

(32) The blood group could not be determined on the seized articles and therefore, the same are not the conclusive piece of evidence.

38. So far as motive is concerned, the trial Court itself has found that the prosecution has failed to prove the motive to commit murder of the deceased. Except memorandum statement Ex. P/9 & P/10, none of the witnesses have stated that the accused Kimshi Kambojh (since acquitted) was being pressurized by the deceased for making physical relation with him. From the memorandum statement, it only comes that when the appellant Vikas Jain entered into the room he saw that the deceased Abhishek Mishra was in half naked position. He was wearing his jeans pant and caught hold co-accused Kimshi and Kimshi Kambojh was trying to get out of his clutches. The memorandum statement of the accused persons is not the evidence of any conduct or any motive to commit murder of the deceased. In paragraph 135 of its judgment passed by the trial Court, it has been held that motive has not been proved by the prosecution. In the case





based on circumstantial evidence, the motive has an important role to bring home the charge against the accused persons.

39. The Supreme Court in ***Nathuni Yadav Vs. State of Bihar, 1978 (9)***

SCC 238 has held as under:

“Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in Reg v. Palmer (Shorthand Report at page 308 SCC May 1850; thus: "But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties". Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental Condition existed in She mind of the assailant.”

40. Further, in case of ***Pradeep Kumar Singh & Others Vs. State of***

Madhya Pradesh, 2009 CrLJ 770, in paragraph 21, the Supreme

Court has held as under:

“21. In the present case entire case of prosecution is silent on the motive part and there is no evidence in this regard. Though in order to prove charge under Section 302, I. P. C. motive part is insignificant when the case of prosecution is based on direct evidence, however, if the case is based on circumstantial evidence motive part assumes great significance inasmuch as its existence is an enlightening factor in a process of presumptive reasoning.”

41. In another case reported in **2010(6)SCC 525, Niranjan Panja Vs.**

State of West Bengal, in paragraph 10 of its judgment the Supreme



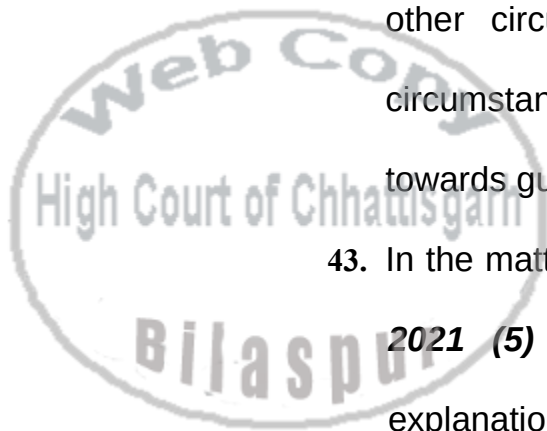


Court has held that motive has an important role in a case based on circumstantial evidence. Therefore, in the present case, a link of motive is missing to complete the chain of circumstantial evidence.

42. Further, the trial Court has considered that the accused persons have either given false explanation or not explained the circumstances appears against them in their 313 CrPC statement which connect the link of the circumstantial evidence. Merely non explanation or false explanation is not a connecting link to hold conviction in case of circumstantial evidence, but it can only be considered to be an additional circumstance in case where all the other circumstances has duly been proved and the chain of circumstantial evidence has been completed unerringly pointing towards guilt of the accused persons.

43. 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.

44. Further submission of appellant Vikas Jain is that that the mobile number 9144039634 by which the ransom call was being made to the father of the deceased have not been investigated by the police. Although from the documents Ex. D/21, D/22 and D/23 it has been proved by the defence that the mobile number 9144039634 by which





ransom call was made, is registered in the name of one Shival Goyal. The Sim of aforesaid mobile number was sold to one Amresh, PW-19 by Rakesh Yadav, PW-18 and subsequently PW-19 Amresh has sold it to other person. The prosecution could not find out who is Shival Goyal and how the aforesaid mobile number is registered in his name, whereas, customer application form, photographs and other required documentation with the mobile company was very much available with the mobile company, but the same has not been investigated by the police. The police started investigation from technical report Ex.D/14 which has been given by PW-33, Naresh Patel with respect to aforesaid mobile number 9144039634 by which ransom call is said to have been made to the father of the deceased. It is at that point of time, the police came into action and started investigation. Therefore, investigation with respect to said mobile number was very much important in the present case as to who was in possession of the Sim of the aforesaid mobile number who has allegedly made ransom call to the father of the deceased.

45. So far as seizure of mobile phone of the deceased is concerned, the prosecution has produced seizure memo Ex. P/25 whereby it is alleged that one Apple i-Phone belonging to the deceased was seized from the Nalla near Malviya Nagar Chowk, IMEI number 354441064656374 and having idea Sim number 89917870140200826022 H-2. The investigating officer PK Sahu, PW-32, have also stated that on being pointing out by the appellant

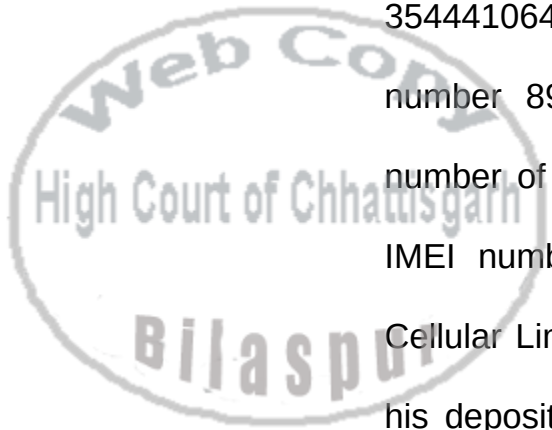




Vikas Jain, the said mobile has been seized from the Nalla which belongs to deceased Abhishek Mishra.

46. PW-28, Pankaj Ramaiya, Nodal Officer, Idea Cellular Limited Raipur, have stated that mobile number 9425236940 was being used by deceased Abhishek Mishra and its Sim number was 89917870140200826022 and the same Sim was being used in mobile phone having IMEI Number 3544410646553710 whereas, PW-32, PK Sahu, have deposed in his evidence that mobile phone which was allegedly seized at the instance of the appellant Vikas Jain vide Ex.P/25 from the Nalla was having its IMEI number 354441064656374 having a Sim of idea company bearing sim number 89917870140200826022H-2. There is variance of IMEI number of mobile seized from the Nalla vide Ex. P/25 with that of IMEI number of mobile extracted by the Nodal Officer of Idea Cellular Limited. PW-28, Pankaj Ramaiya, has stated in para 79 of his deposition that on 09.11.2015 the mobile number 9425236940 was being used in a mobile having its IMEI number 3544410646553710 whereas, the seized mobile was having different IMEI number bearing with the same Sim number as per the evidence of PW-32 made in para 23 of his evidence.

47. The said variance of IMEI number of the same Sim card has not been explained by the prosecution, but the trial Court has considered it as a typographical error in the Call Detail Report (CDR) which is absolutely unjustified in the offence like the present one. It is important to be noted here that the variance in the said IMEI number





is not only in a single place of their CDR, but in all the places of CDR the IMEI number was different. Therefore, it cannot be considered to be only a typographical error.

48. PW-28, Pankaj Ramaiya has further stated in his deposition that in the CDR which has been given by him to the police, except the CDR no voice call recording has been extracted by him so as to tell about their conversation. He further states that on 07.11.2015 the tower location of mobile number 8349993222 was not at Lalpur, Raipur, but was of different location at Raipur itself.

49. The next circumstances relied upon by the prosecution is that at the instance of appellant Vikas Jain, a curtain was seized from under bridge at Nagpura in which the human blood was found and which has not been explained by the appellant Vikas Jain.

50. PW-32, PK Sahu, the Investigating Officer, have stated that he has taken Vikas Jain into custody and at his instance the iron rod, bloodlike stained curtain, pillow cover, wrist watch and one Chunri was seized near Rasmada Ring Road vide Ex.P/22. The said curtain which was said to have been seized vide Ex.P/22 was sent for its FSL examination vide Ex.P/64, marked as "X" in its sealed packet and after its FSL examination, a report Ex.P/117 was received in which the human blood was found on the said curtain. The appellant Vikas Jain denied in his 313 CrPC statement that the said curtain was seized on his instance. The curtain was seized from an open place near Rasmada over bridge, Ganiyari road on 25.12.2015 vide Ex.P/22, that too after about 42 days from the date of incident. No

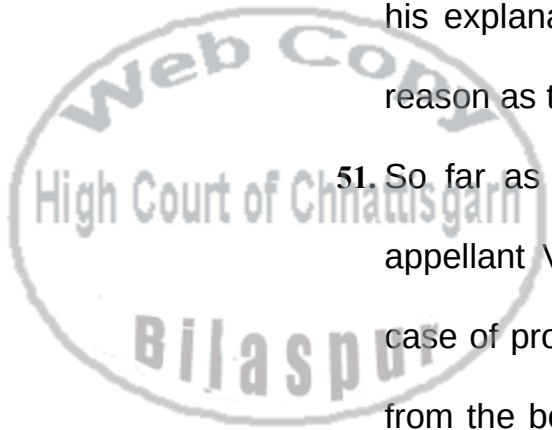




blood group was detected in the said curtain. Seizure of said curtain after about 42 days that too having no blood group matched with that of the blood group of the deceased, the same cannot be considered to be a connecting link having involvement of the appellant in crime in question even if seizure of said curtain found to be proved, although the same has not been proved because it is said to have been seized from an open and visible place. Merely non explanation in 313 CrPC statement cannot be a connecting link, but in the present case the appellant has denied that the said curtain has been seized from his instance. Since he denied its seizure at his instance, his explanation is sufficient, and he is not expected to explain the reason as to how human blood was found in the said curtain.

51. So far as the other circumstance that in the Dikki of Car of the appellant Vikas Jain blood was found, is concerned, in the entire case of prosecution there is no allegation that blood was oozing out from the body of the deceased. The doctor who has conducted the postmortem of the dead body of the deceased has also opined that no external injury was found on the body of the deceased. If blood was not oozing out from the body of the deceased, then how blood was found on the grass mat of the Dikki of the Car of the appellant Vikas Jain has not been properly investigated by the prosecution.

52. In the present case as per the allegation, the deceased was having telephonic conversation with the acquitted accused Kimshi and the mobile tower location of the mobile of the appellant Vikas Jain and the deceased Abhishek Mishra were the same on 09.11.2015. The





prosecution relied upon the CDRs, Ex.P/98, 99 and P/100 which is sought to be proved by Pankaj Ramaiya, PW-28. Except for two locations i.e. Smriti Nagar and Sikola Bhata, there is no similarity in the mobile tower location of the deceased as well as the appellant Vikas Jain. Both these locations are same as the workplace of the deceased and the residence of appellant Vikas Jain were at the same place and therefore, their mobile tower location reflects the same location.

53. The prosecution has relied upon the call details of acquitted accused Kimshi Kambojh, deceased Abhishek Mishra and also with the accused Vikas Jain to establish that accused persons have hatched conspiracy to commit murder of the deceased. The prosecution is raising their suspicion on the call details of acquitted accused Kimshi and deceased Abhishek between the period of 06.11.2015 to 09.11.2015. From the perusal of call details Ex.P/99 and P/100 which is call details of mobile of acquitted accused Kimshi and deceased Abhishek, it appears that there was frequent conversation between them much prior to the date of incident and details of which are as follows :

| Who made call to whom | Date | Time |
|------------------------------|-------------|-------------|
| By Kimshi to Abhishek | 03.10.2015 | 09.35.49 |
| By Abhishek to Kimshi | 09.10.2015 | 16.48.43 |
| By Abhishek to Kimshi | 09.10.2015 | 18.12.22 |
| By Abhishek to Kimshi | 09.10.2015 | 18.14.13 |
| By Kimshi to Abhishek | 09.10.2015 | 18.15.21 |
| By Kimshi to Abhishek | 09.10.2015 | 19.13.13 |
| By Abhishek to Kimshi | 22.10.2015 | 11.21.25 |



| | | |
|-----------------------|------------|----------|
| By Kimshi to Abhishek | 22.10.2015 | 11.43.28 |
| By Abhishek to Kimshi | 29.10.2015 | 18.05.08 |
| By Kimshi to Abhishek | 06.11.2015 | 20.13.04 |
| By Kimshi to Abhishek | 07.11.2015 | 18.11.29 |
| By Kimshi to Abhishek | 09.11.2015 | 11.45.16 |
| By Abhishek to Kimshi | 09.11.2015 | 17.33.37 |
| By Abhishek to Kimshi | 09.11.2015 | 17.47.39 |

54. Since the acquitted accused Kimshi was an employee of deceased Abhishek, there cannot be any surprise as to why they have made telephonic call and that cannot be made basis for hatching conspiracy. There is no transcript of their calls or conversation or any SMS report. Likewise, on 09.11.2015 at 17-47-39 hours Abhishek had talked to Kimshi as last time and thereafter no conversation by Abhishek with any other mobile phone to any other person whereas, from the calls details of the deceased Abhishek (Mobile No.9425236940) it appears that on 09.11.2015 after 17-47-39 hours he had various calls to other mobile numbers and details of which are given hereinbelow:

| Date | Time | Dialed number | Call duration |
|------------|----------|---------------------|---------------|
| 09.11.2015 | 17.47.39 | 9806753397 (Kimshi) | 28 second |
| 09.11.2015 | 18.04.04 | 8224000777 | 117 second |
| 09.11.2015 | 18.48.59 | 9301339333 | 278 second |
| 09.11.2015 | 18.55.15 | 9329622151 | 129 second |
| 09.11.2015 | 18.57.27 | 7714224218 | 69 second |
| 09.11.2015 | 20.51.50 | 9826166940 | SMS |

55. The aforesaid call details are the part of call details Ex.P/100. Further, the prosecution has tried to establish that on 09.11.2015 the





mobile tower location of the mobile phone of deceased Abhishek and mobile tower location of the accused Kimshi Kamboj and Vikas Jain were on the same location twice in which the location was shown at Sikola Bhata and Smriti Nagar. It is not in dispute in the case that the workplace of deceased i.e. Shankaracharya College and the residence of accused Kimshi and Vikas Jain was at Chouhan Town and both the places are situated at Junwani, Bhilai. There is no mobile tower of any company at Junwani Bhilai and the mobile network for the residence of Junwani Bhilai were obtained from the mobile towers fixed at Sikola Bhata and Smriti Nagar. Since the workplace of the deceased and residence of accused persons are under the same mobile tower location, therefore it is quite possible that their mobile tower location is shown to be the same tower location. Mobile tower location extracted from the call details Ex.P/98 and P/100 by which it has been shown that prior to the date of incident also, the mobile tower location of the accused and deceased were on same location which is extracted from the call details which is as below :

| Date | Mobile | Time | Location |
|-------------|---------------|-------------|-----------------|
| 07.11.2015 | Abhishek | 11.46.07 | Sikola |
| | Vikas | 12.00.18 | Sikola |
| 07.11.2015 | Abhishek | 12.25.16 | Sikola |
| | Vikas | 12.32.45 | Sikola |
| 06.11.2015 | Abhishek | 16.03.00 | Smriti Nagar |
| | Vikas | 16.00.15 | Smriti Nagar |
| 04.11.2015 | Abhishek | 10.08.56 | Smriti Nagar |
| | Vikas | 10.09.42 | Smriti Nagar |
| 04.11.2015 | Abhishek | 13.36.39 | Smriti Nagar |



| | | | |
|------------|----------|----------|--------------|
| | Vikas | 13.56.42 | Smriti Nagar |
| 03.11.2015 | Abhishek | 16.48.37 | Smriti Nagar |
| | Vikas | 16.52.06 | Smriti Nagar |
| 02.11.2015 | Abhishek | 10.42.20 | Sikola |
| | Vikas | 10.46.40 | Sikola |

56. PW-28 Pankaj Ramaiya have stated in para 68 of his deposition that mobile number of Abhishek Mishra 9425236940 was having tower location on 09.11.2015 at 19-54-56 hours at Infratel authority (MP 1109) Smriti Nagar, Kohinoor Building, Imam Bada Chowk, Bhilai. Thereafter at 19-58-23 hours the tower location was Vinayak Bansod, A-14, Vidya Vihar Colony, Nehru Nagar West, Bhilai. At about 20-11-36 hours the tower location was beside Airtel Tower Sector-9, Bhilai and at 20-30-58 hours the tower location of the same mobile number was near Chhattisgarh Sabji Mandi, Ruabandha Sector, Bhilai.

57. In paragraph 64, PW-28 have stated that on 09.11.2015 the mobile number of the appellant Vikas Jain 83499932222 at 19-16-07 to 20-32-24 hours was not having locations at Infratel Authority (MP 1109) Smriti Nagar, Kohinoor Building, Imam Bada Chowk, Bhilai, Vinayak Bansod A-14, Vidya Vihar Colony, Nehru Nagar West, Bhilai beside Airtel Tower Sector-9, Bhilai and near Chhattisgarh Sabji Mandi, Ruabandha Sector, Bhilai. Further, in paragraph 65, this witness have stated that mobile number 9425236940 belonging to deceased Abhishek Mishra was having its tower location on 09.11.2015 at 20-45-23 hours at Khasra No.359/56, MPHP Colony, Kumhari, Durg and at 21-23-00 hours the tower location was Telibandha, Ward No.113,





Ravigram, Khasra No.137/2, Raipur, at 21-38-53 hours the tower location was at Videocon authority CGRAI 0003, 4th Floor, Pujari Chambers, Pachpedi Naka Chowk, NH-43 Raipur, and at 21-39-58 hours the tower location of the same mobile number was Mr. Anil Oswal S/o late Lalchand Oswal, C-226, Near Budi Mata Chowk, Shailendra Nagar, Raipur. In paragraph 66, he has further stated that mobile number 8349993222 belonging to appellant Vikas Jain was not having tower locations on 09.11.2015 at 20-36-47 to 21-54-06 hours at Khasra No.359/56, MPHP Colony, Kumhari, Durg, Telibandha, Ward No.113, Ravigram, Khasra No.137/2, Raipur and Videocon authority CGRAI 0003, 4th Floor, Pujari Chambers, Pachpedi Naka Raipur. In para 68 he again stated that mobile number 8349993222 was not having its tower location on 09.11.2015 at 19-16-07 hours to 21-54-06 hours at Smriti Nagar, Bhilai, Nehru Nagar West, Sector-9, Bhilai, Ruabandha Sector, Kumhari, Telibandha, Pachpedi Naka and Shailendra Nagar, Raipur.

58. From the evidence of PW-28, Pankaj Ramaiya, the prosecution could not establish the fact that on 09.11.2015 from 19-16-07 hours to 21-54-06 hours, the mobile tower locations of the mobile phones of deceased Abhishek Mishra and the appellant Vikas Jain were same.

59. 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.”

60. 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.

61. The dead body was allegedly recovered from the kitchen garden area of Plot No.12, Smriti Nagar, Bhilai. Sunita Agrawal (PW-31) was tenant of the ground floor of the house, and it was alleged that the acquitted accused Kimshi Kambojh (Jain), her mother, father and uncle were tenants of first floor of the house of Plot No.80, Street No.12, Smriti Nagar on alleged date of incident was the day of Dhanteras festival. The place of incident is a dense locality and various adjoining houses are situated there. Despite having regular movement of the persons of the locality no one witnessed the digging of pit in the Plot No. 80 and no one has asked at to why the pit was being dug. Even Sunita Agrawal (PW-31) has not stated in her deposition that she had asked from the accused persons or informed her landlord about the digging of the pit there in the kitchen garden area. One more thing is important that the kitchen garden area is visible and adjoining to the window of the house of Sunita Agrawal (PW-31).

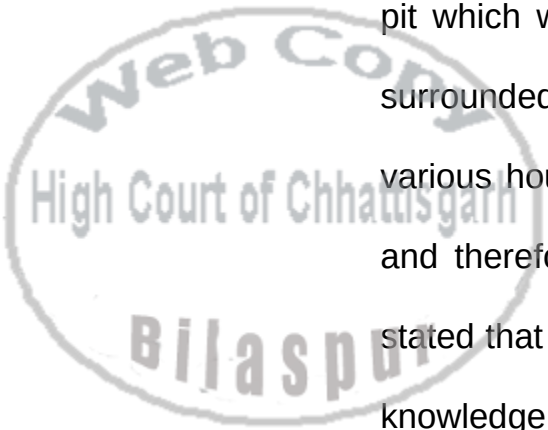
62. Saraju Rajput (PW-6) who is a laborer and allegedly digged the pit there has stated in his deposition that on the date of Dhanteras festival, accused Ajit Singh has come to his house and asked him to dig a pit for earthing. He came at about 4:00 p.m. and therefore, he has refused that he could not dig the pit on the same day. But, he was ready to dig it in the next day. On 9 he went to dig the pit there





at Street No.12, Smriti Nagar. Accused Ajit Singh has suggested the place where the pit is to be dug. He dug the pit with size of 4 x 5 x 5 feet. Thereafter, Ajit Singh has called him and asked to fill up the pit and sent his son there and then he sent his son because he was having some other work. His son had gone there to fill up the pit in the very next day. When he dug the pit. He has identified accused Ajit Singh at Central Jail Padmnabhpur and signed the document Ex.-P/34. In cross-examination he has stated that the name of accused appellant Ajit Singh was informed by his son after reading it in the newspaper. He further stated in his cross-examination that the pit which was dug by him is inside the boundary wall but has not surrounded by the houses of others. He further stated that there are various houses situated nearby the place. Since it was a black soil and therefore, low noise came in digging process. He has further stated that he himself had not gone to police station when came into knowledge about the incident from newspaper. He has further stated that he dug the pit for the purposes of earthing wire which he has dug for first time. He admitted in further cross-examination that he has not disclosed the name of the person in whose house he dug the pit.

63. Gopal Rajput (PW-7) has stated in his deposition that accused Ajit Singh has come to his house and asked for digging of a pit in the next day and in the next day his father had gone to the house of accused Ajit Singh along with pickaxe and spade. In the next day he again received telephonic call for filling up the pit which was



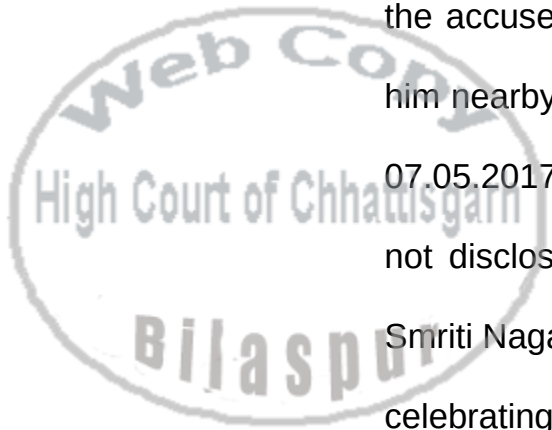


remained for about 1 feet and on being replied by his father he had gone to fill up the pit along with accused Ajit Singh and filled up the pit completely. He along with his father had gone to jail and identified accused Ajit Singh and he signed the document Ex.-P/34. In cross-examination he has stated that he has very well acquainted with accused Ajit Singh and therefore he immediately identified him in the jail. He admitted that his father has told him that pit was to be dug for earthing wire. When he went to the spot the pit was remained about 1 foot to be filled up. In further cross-examination he admitted that accused Ajit Singh has not informed him as to where he has to fill up the pit. His father had gone to dig the pit on 9 and he had gone on 10th to fill up the pit. He has stated further that in his police statement Ex.-D/7 he has not stated that accused Ajit Singh has come to his house on 07.11.2015 and if it is written in police statement Ex.-D/7 he could not tell the reason.

64. The digging of the pit inside the house has not been seen by any of the persons of the vicinity. As per the allegation the pit was to be dug for earthing purpose, but the person who dug the pit and who is having much experience in digging the pit has not informed him that 4x5x5 fit pit is not required for any kind of earthing wire that too in the middle of the kitchen garden. One can raise suspicion as to why the pit was required to be dug. Further when the dig was almost filled up for about 4 feet then why 1 foot pit was remained to be filled up because the person who has already filled up the pit up to 4 feet why he left it for about 1 foot and he could have fill up 1 foot also. Had the



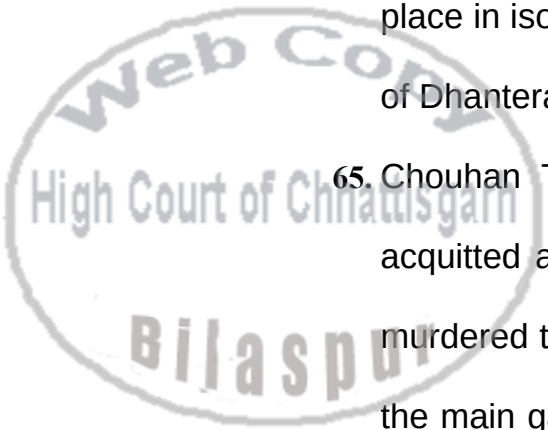
accused digged the pit or filled up the pit with intention to conceal the offence he would not have call the person to fill up the pit which remained only about 1 foot to fill up and to create evidence against him. If he would have filled up 4 feet of the pit then he had also been able to fill up remaining 1 foot. Further, none of the neighbors of the place have seen the digging of the pit or presence of accused Ajit Singh nearby the pit. Even Sunita Agrawal (PW-31) stated that the pit was digging by a person in the morning. The plot was being used by the family members of acquitted accused Kimshi Kamboj and they have grown up vegetables there. She has not stated that it is the accused Ajit Singh who has got digged the pit or she has seen him nearby the pit. Her 161 Cr.P.C. statement has been recorded on 07.05.2017 and the date of alleged incident is 09.11.2015. She has not disclosed about the digging of the pit. In a dense locality like Smriti Nagar that too on the date of Dhanteras festival the people are celebrating the festival outside their houses. The Dhanteras is first day of 5 days' celebration of Diwali festival and the people usually celebrate by bursting crackers that usually happens outside of their houses, even then Sunita Agrawal (PW-31) has not asked from the person of first floor as to why they are digging the pit. She has also admitted that in the place where the pit was digged, various adjoining houses are situated in which the persons are residing there. She further admitted in her deposition that when the police persons came to the place of incident at that time also, she has not disclosed to the police that she saw a person digging the pit. She





admitted that the pit adjoining to the house No. B-80 is open plot and accessible to anyone. She was also using the open plot of house No. B-80 for domestic purpose and the said open plot is inside the boundary wall of house No. B-80. It is further point of consideration that no one can dig a pit to conceal the evidence or dead body in the house of dense locality having adjoining house and window of that house because the purpose to conceal evidence to save himself from the offence, but a guilty mind cannot create evidence against him to dig a pit and to conceal dead body in a dense locality. Had he been so intended he would have taken the dead body to some other place in isolation instead taking it in the said place that too in the day of Dhanteras festival.

65. Chouhan Town colony from where the deceased was called by acquitted accused Kimshi Kamboj and the deceased was allegedly murdered there, is a big colony having about 800 to 1000 houses. In the main gate of the colony there was a guard room having security guard by 24 hours. He was maintaining in-out register and made entry of all visitors. There is no entry found or produced by the prosecution that the deceased has come there at Chouhan Tower. He allegedly came by his car, but no one has seen that he parked his car in any place in Chouhan Town. No one has seen deceased Abhishek Mishra to enter from the main gate of the colony to the house of accused persons on the fateful day. There was a CCTV fixed in the colony, but there is no CCTV footage produced by the





prosecution so as to prove that in fact the deceased had gone to the house of the accused persons at Chouhan Town, Bhilai.

66. Further allegation against present appellants is that on the memorandum statement of the accused Vikas Jain Car of the deceased was seized from VIP Road, Raipur. R.P. Goutam (PW-24) is Sub-Inspector at Police Station Telibandha, Raipur has stated in his deposition that on 10.11.2015 he was in night patrolling duty. During patrolling he was informed that one Scoda car bearing registration No.CG 07 MA 0007 is parked at VIP road, Telibandha, Raipur in abandoned condition. The door of the car was open, keys was there, and it was in running condition. Then he made seizure of the said car vide Ex.-P/58 on 10.11.2015 at about 5:07 a.m. and taken the car to Telibandha police station. From the evidence of this witness there is nothing that the said Skoda car was seized on the instance of accused Vikas Jain whereas it has been seized from an open place in abandoned condition.

67. The further circumstance relied upon by the prosecution is that the place from where the dead body was exhumed has been pointed out by the accused/appellants. Prabhat Kumar Verma (PW-27) who has done videography of the exhumation process, has stated in his deposition that on 23.12.2015 when he received information, he went to police station at about 6:30 or 6:35. He was informed by police persons about the place from where exhumation is to be done, then he went to the spot. On the spot senior police officers and S.H.O. Pulgaon were also there. At about 8:00 a.m. police have





taken the accused appellant Vikas Jain there and then on being pointed out by Vikas Jain the exhumation was done. The same thing has also been informed by other accused. He has made videography and given a certificate Ex.-P/71. The videography was taken into CD in its original form. In cross-examination he has stated that both those two persons who has pointed out the place of exhumation their faces were covered and were not identifiable from their faces. He has stated that on which date the certificate Ex.-P/71 was issued has not been mentioned in it. There is no seal in the said certificate of his department. He further stated that he has received information from first time at 2:00 a.m. in the night from office of CSP, Bhilai Nagar and it was intervening night of 22 and 23.12.2015.

68. The next circumstance relied upon by the prosecution is that the accused appellants have purchased 100 kg. of raw salt from the shop situated at Jalebi Chowk, Chhawani, which was found in the said pit from where the dead body was exhumed. The said raw salt was said to have been purchased on 09.11.2015, whereas the exhumation process was done on 23.12.2015. It is also come on record that the place where the body was exhumed was being used to cultivate vegetables and cauliflower was being grown up at that place. The kitchen garden regularly needs water which was being floated by person in whose possession the plot was. After about 42 days of the alleged incident, the raw salt was taken out in its original position and from itself creates doubt on the prosecution case because the salt is easily soluble to water and when it was put near





the pit and there was watering in seeds and crops then it naturally dissolved in the water and went in soil, but the same has been found in its original form and taken out from the pit, which further raised a doubt that some other person has digged the pit and concealed the dead body there just 1 or 2 day before the date of exhumation.

69. The Supreme Court in case of **Abdul Sattar Vs. Union Territory, Chandigarh, 1986 CrLJ 1072** has observed in para 4 of its judgment as under:

“.....the pant and the shirt had been removed from the body and hidden there. Recovery is said to have been made more than three weeks after the occurrence. Admittedly, the place from where these two things are said to have been recovered was a public place and appears to have been very much accessible to people of the locality. It is difficult to believe that these two had been so concealed that they were not noticed and were available to be collected from the very place such a long time after.”

70. Further, charge sheet against the accused persons were filed on 07.03.2016 and the case was committed to the Sessions Court on 04.05.2016. In the said charge sheet, witness Sunita Agrawal, PW-31 was not named whereas, on 19-06-2017 a supplementary charge sheet was filed in which she has been cited as a witness and her 161 CrPC statement has been filed by the prosecution which was allowed on 05-01-2018. Although, the prosecution has liberty to file supplementary charge sheet, but when initially the charge sheet was filed after completion of investigation Sunita Agrawal was not cited as the witness. PW-31, Sunita Agrawal, was a tenant on the ground floor and adjoining to the place from where the alleged recovery of dead body was shown to have been made, the police must have





interrogated her at the first instance, but after about 1 and ½ years, her 161 CrPC statement have been recorded which also creates doubt on the prosecution's case and pointing towards concoction of false case against the present appellants.

71. 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....”.

72. 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 Pradesh¹ 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 Sarda vs. State of Maharashtra*² 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.”

73. 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".

74. 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.”

75. 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 Sarda v. State of Maharashtra*², 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)”





76. 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 who have committed murder of the deceased. In the light of 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.

77. It is settled principles of law that prosecution has Burden to prove its case beyond reasonable doubt and where two views are possible, arising based on 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. 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].

78. 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, **Criminal Appeal No.717 of 2021 is allowed.** The



impugned judgement, to the extent of the conviction and sentences of appellants **Vikas Jain** and **Ajit Singh**, for the offence under Sections 302/34, 120-B and 201 IPC, is set aside. The appellant Vikas Jain and Ajit Singh (appellants in Cr.A. No. 717/2021) are **acquitted** from all the charges. The appellants are reported to be in jail since 23.12.2015. They be released forthwith if not required in any other case.

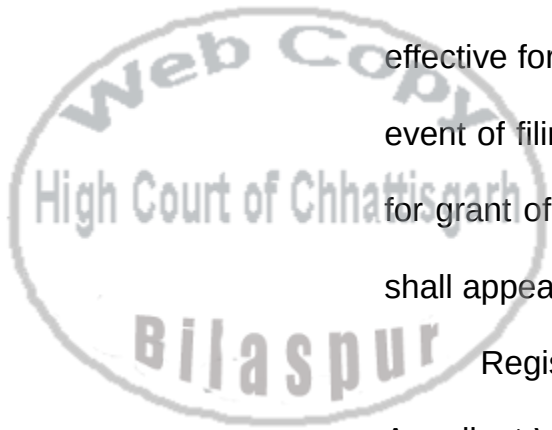
79. Keeping in view the provisions of section 437-A of Cr.P.C., the appellants Vikas Jain and Ajit Singh are directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of some of Rs. 25,000/- each with one reliable surety in the like amount before 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.

Registry is directed to supply a copy of this judgment to Appellant-Vikas Jain through the concerned Jail Superintendent.

Acquittal Appeal No. 224 of 2021 & CRMP No. 816 of 2021

80. Acquittal Appeal No. 224 of 2021 has been filed by the complainant/father of the deceased and Criminal Miscellaneous Petition No. 816 of 2021, has been filed by the State against the acquittal of co-accused Kimshi Kamboj from the charges of Section 302 read with Section 34, 120-B and 201 IPC.

81. Learned Senior Advocate appearing for the complainant in Acquittal Appeal No. 224/2021 have vehemently submitted that there is sufficient evidence on record regarding involvement of the respondent/accused





Kimshi in the offence in question and in conspiracy with the other accused persons. He would further submit that from the memorandum statement of the accused Vikas Jain, who is the husband of the acquitted accused Kimshi, it is clear that she is actively participated in commission of the offence. From perusal of the call details, it has been proved that she was in regular touch with the deceased which established the circumstance that she was the instrumental in hatching conspiracy of murder. The conduct of the acquitted accused Kimshi before and after the offence is also suspicious as before the incident, she was in discussion of tennis league tournament but after the incident she has not tried to meet him after the date of incident. The mobile tower location of the deceased was matched with the mobile tower location of the acquitted accused Kimshi and also the other co-accused persons in the same location. Therefore, there are ample evidence against the acquitted accused Kimshi and the learned trial court has ignored the relevant circumstance in the case. Therefore, the impugned judgement to the extent of acquittal of co-accused Kimshi, is liable to be reversed and she be convicted for the alleged offences in the case.

82. Learned counsel for the State have also submitted that the learned trial court has failed to appreciate evidence against the accused Kimshi and has acquitted her. From the memorandum of accused Vikas Jain, it comes that on the date of incident, the acquitted accused Kimshi called the deceased in her house and when he





reached in her house, accused Vikas and Ajit secretly entered into house and saw that the deceased was in half necked position. The acquitted accused Kimshi is the wife of co-accused Vikas Jain, but she has not explained as to where she was, at the relevant point of time. The mobile call details, tower location, motive, seizure of cushion cover and plastic bubble sheet from the house of the accused Vikas and acquitted accused Kimsi proves that she was also involved in the conspiracy and commission of murder of the deceased. The important evidence hasnot been taken care by the learned trial court and has erroneously acquitted the co-accused Kimsi. Therefore, the application for grant of leave to file acquittal appeal as well as the acquittal appeal may be allowed and the acquittal of acquitted accused Kimsi Kambhoj (Jain) is liable to be set-aside and she may be convicted and sentenced for the alleged offences.

83. The learned counsel for the respondent/acquitted accused Kimshi kambhoj (Jain) has submitted that except the call details, there is no evidence against her and the learned trial court has rightly acquitted her from all the charges. He has argued that the call details are not the conclusive piece of evidence so as to hold conviction on that basis alone. The chain of circumstances must have been proved by the prosecution and the call details may be an additional circumstance but in the instant case, no other evidence is available against her. There is no recovery of any incriminating article from her. He has further submitted that the acquitted accused herself has





examined as D.W. 1 and explain each and every circumstance against her. He has further submitted that it is settled law that where two views are possible, the benefit should have been extended to the accused and the learned trial court has rightly done with respect to the acquittal of the respondent. The prosecution has failed to prove their case against her beyond reasonable doubt and therefore the judgement of her acquittal needs no interference.

84. It is not in dispute in the aforesaid facts of the case that the respondent Kimshi Kamboj is the wife of appellant Vikas Jain who was earlier engaged in the employment of the deceased at Shankaracharya College and subsequently she left his employment and joined the firm of appellant Vikas Jain. From the evidence of PW-1 to PW-34, except phone call details, there is no other evidence produced by the prosecution to hold involvement of the respondent Kimshi Kambojh in the alleged offence. The prosecution has tried to connect the respondent Kimshi Kambojh in the alleged conspiracy with the other co-accused Vikas Jain and Ajit Singh through the memorandum statement Ex.P/9 & P/10. There is no transcript of telephonic calls made between the accused Kimshi Kambojh and the deceased as also with the other accused persons. Although she had telephonic calls with the deceased as well as other accused persons, but except from call details no other evidence is available against her.

85. The Supreme Court in the matter of **Mohd. Jamiluddin Nasir Vs. State of West Bengal, AIR 2014 SC 2587** in para 125 has held that





when the other overwhelming evidence independent of confession of the appellant is on record, then the phone call details may be a very relevant and admissible piece of evidence. As earlier held in **Kiriti Pal Vs. State of West Bengal, 2015(11) SCC 178** that phone call details are not the conclusive piece of evidence and it may be an additional link if the chain of circumstance has been proved without there being any missing link. But, in the present case there is no other evidence against the acquitted accused Kimshi Kamboj.

86. In case of **Haricharan Kurmi Vs. State of Bihar, AIR1964 SC 1182**,

the Supreme Court has held in paragraph 16 as under:

“16. It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense, the reading of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however grave, must not be allowed to take the place of proof. As we have already indicated, it, has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible, from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals.”





87. In *Panchu Vs. State of Haryana, AIR 2012 SC 523*, the Supreme

Court in para 16 as under:

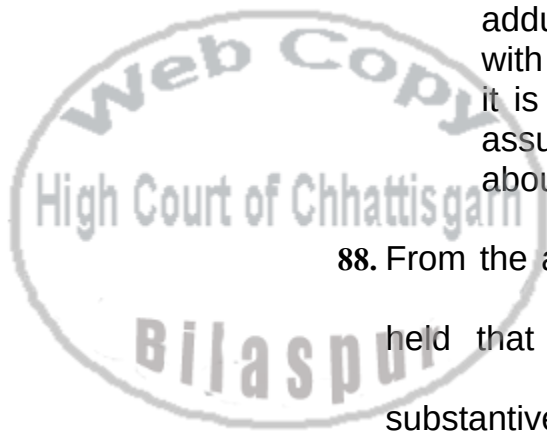
“16.This court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right. This Court clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence Act, the fact remains that it is not evidence as defined in Section 3 of the Evidence Act. Therefore, in dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.”

88. From the above two judgments passed by the Supreme Court, it is

held that the confession made by the co-accused cannot be substantive evidence against other co-accused if there is no other admissible evidence available on record. The contention of the memorandum statement of the present accused Vikas Jain and Ajit Kumar can be used against the co-accused Kimshi Kamboj only if there are other evidence available against her.

89. The trial Court itself has found that the motive to commit offence has

not been proved. The motive which is said to have been alleged by the prosecution is that the deceased was pressurized the co-accused Kimshi Kamboj, who is the wife of appellant Vikas Jain, for making physical relation with him, but the said motive has not been





proved. None of the witnesses have stated that the accused Kimshi Kamboj was having physical relation with the deceased. Neither any incriminating articles were seized on the instance of the accused Kimshi Kamboj or in any manner she involved in commission of murder of the deceased or concealing his dead body.

90. Further, this court has also considered the relevancy of the call details in the alleged offence, which is reported in **2012 CrLJ 2395, Punni Bai Kanoje and Others Vs. State of Chhattisgarh**, in which it has been held as under:-

10. “.....Merely on the proof of a talk by this mobile set to the mobile set which was seized from the possession of the father of the deceased, nothing incriminating would be established against the appellants. Moreover, nobody knows as to what conversation took place in the above calls and who, in fact, talked through the above numbers as per the said call details. Therefore, the said circumstance was capable of being explained and was not conclusive and it would hardly be incriminating against the appellants in the present facts and circumstances of the case.”

91. In the matter of **Jafarudheen and Others Vs. State of Kerala, 2022**

(8) SCC 440, the Supreme Court has considered the scope of interference in appeal against acquittal in paragraph 25 as under:

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”





92. In the present case, except for the call details no other legally admissible evidence has been produced by the prosecution against the accused Kimshi Kamboj to connect her in crime in question. Further, Kimshi Kamboj was examined as DW-1 and submitted a document Ex.D/24, which is her discharge certificate from Dhanwantari Hospital, Nehru Nagar, Bhilai. She has proved that on 12.10.2015 i.e. about 28 days prior to the date of alleged incident she delivered a male child through Cesarean operation at Dhanwantari Hospital, Nehru Nagar, Bhilai and discharged from the said hospital on 15.10.2015. A day before the date of incident when her son was not feeling well she has taken him to Dhanwantari Hospital on 09.11.2015 in the morning which is proved by Ex.D/40. It is very difficult to consider that a lady who delivered a child just before 28 days prior to date of incident, that too by Cesarean operation, can involve in the offence like present one and conspired with the other accused persons. There is no evidence on record that she was present at the place of occurrence on the date of incident.

93. Considering the fact that except for the phone call details no other legally admissible evidence was produced by the prosecution against the accused Kimshi Kamboj to connect her in crime in question, the trial Court has acquitted the accused Kimshi Kamboj by holding that merely on the basis of phone call details she cannot be convicted for the offence under Sections 302, 120-B and 201 IPC.

94. The trial Court has elaborately discussed the evidence led by the prosecution and after analyzing the entire evidence led by the





prosecution, acquitted the accused Kimshi Kamboj. There is sufficient reason of false implication of respondent/accused Kimshi Kamboj in the offence. After considering the material available on record as well as the elaborate judgment passed by the trial Court and being very much conscious of the existing legal position, as held in case of Jafarudheen (Supra) that in an appeal against acquittal, if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favorable to the accused, reversion of the findings of acquittal by the appellate court taking the other possible view into consideration, is not permissible in law. We are therefore, of the considered opinion that the judgment impugned acquitting the accused Kimshi Kamboj (Jain) is just and proper and does not call for any interference.

95. Accordingly, **Acquittal Appeal No.224 of 2021** filed by the complainant and **CRMP No.816 of 2021** filed by the State against acquittal of accused Kimshi Kamboj (Jain) from the aforesaid offences are hereby **dismissed**.

96. The trial 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