



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 01-05-2024

Judgment delivered on 08-05-2024

CRA No. 674 of 2021

(Arising out of judgment of conviction and order of sentence dated 22-6-2021 passed by the 1st Additional Sessions Judge, Raipur, in S.T. No.57/2018)

1. Bhojram Sahu S/o Bisahu Ram Aged About 42 Years R/o Village Dhaneli, P. S. Dharsiwa, District Raipur Chhattisgarh
2. Neera Sahu W/o Khubchand Sahu Aged About 35 Years R/o Village Dhaneli, P.S. Dharsiwa, District Raipur Chhattisgarh

---- Appellants

Versus

1. State Of Chhattisgarh Through Station House Officer, Police Station Dharsiwa, Civil And Revenue District Raipur Chhattisgarh

---- Respondent

For Appellants : Mr. Satya Prakash Verma, Advocate

For Respondent/State: Mr. R.K. Gupta, Addl. Advocate General with Ms Anuradha Jain, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri
Hon'ble Shri Justice Sanjay S. Agrawal

CAV Judgment

Per Goutam Bhaduri, J.

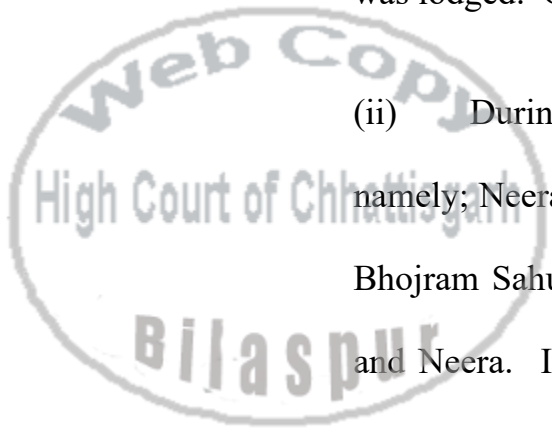
1. The present appeal is against the judgment of conviction and order of sentence dated 22-6-2021 passed by the 1st Additional Sessions Judge, Raipur, in S.T. No.57/2018 whereby the appellants have been convicted under Sections 302/34, 201 & 120-B of the Indian Penal Code (for short 'the IPC') and sentenced them to undergo life imprisonment; RI for 7 years; and RI for 5 years, respectively with



usual default stipulations. All the sentences were directed to run concurrently.

2. (i) Case of the prosecution, in brief, is that a missing report of Khubchand Sahu (since deceased) was lodged at Police Station Siltara by the accused No.2 namely; Neera Sahu, wife of the deceased, on 5-10-2017, stating that on 27-9-2017 her husband went out from the house at 10.00 pm and the description was given. She also stated that the deceased always used to remain in inebriated condition due to heavy drinking habit and when enquired about the deceased from the relatives his whereabouts were not found, therefore, a missing report was lodged. On the basis of the same, the police started investigation.

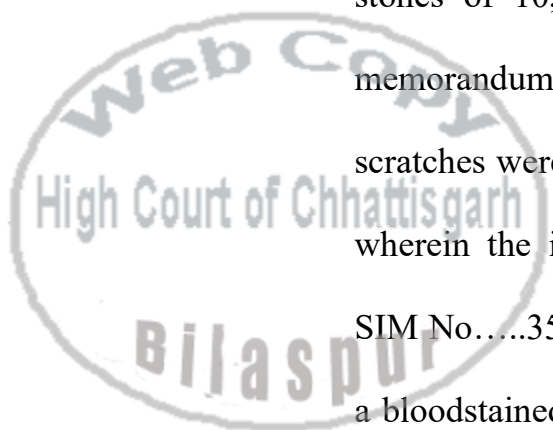
(ii) During investigation it was found that wife of the deceased namely; Neera Sahu had illicit relation with the accused No.1 namely; Bhojram Sahu of the same village and doubts were cast on Bhojram and Neera. It was further revealed that since Neera Sahu had illicit relation, it was objected by the husband deceased. In the intervening night of 27th & 28th September, 2017, the accused No.1 Bhojram along with one Ravi Soni reached the house of the deceased and while he was sleeping Neera Sahu caught hold of his leg; Ravi Soni tightly caught hold of his waist; while Bhojram was assaulting the deceased by a hammer on the head of the deceased several times by such severe assault, he died on the spot. In order to conceal the crime, the dead body of the deceased, bloodstained clothes and the wooden plank were taken on the motorcycle, which was in the house of the deceased. The dead body was taken near a well; it was kept in a bag, which was tied





with heavy stones and was thrown into the well. On enquiry the dead body was recovered and merg was registered vide Ex.P/47.

(iii) Against accused Neera Sahu & Bhojram, *dehati nalishi* bearing No.0/2017 for offence under Sections 302 & 201/34 of the IPC was registered vide Ex.P/48. Thereafter, FIR (Ex.P/57) was eventually registered. At the instance of Bhojram, the dead body was taken out from the well and panchnama (Ex.P/14) was prepared. Along with panchnama, site map was also prepared and the dead body was found which was tied with the heavy stones in a plastic bag by *Niwad* (निवार). The stones were weighed 20 & 25 kgs. and other stones of 10, 15, 20 kgs., respectively. Further on the basis of memorandum the incriminating articles were recovered and also the scratches were taken out from the almirah frame and wall of the room wherein the incident happened. Saree with bloodstains and mobile SIM No.....3504 were recovered from Neera. Further at her instance, a bloodstained mattress (गद्दा) and hammer were recovered. Likewise from Bhojram mobile No.....4032, a gents wallet with a photograph of his paramour Neera were recovered. Thereafter, from the house of Bhojram, a red coloured half T-shirt with bloodstains was also recovered. The motorcycle, which was used to carry the dead body, was also recovered and seized. The details of conversation made between mobile No.....3504 and 4032 were obtained. From the accused Ravi Soni, juvenile conflict with law, jeans pant, full shirt and cash of ₹ 500/- were recovered. Query report was also obtained in this regard that whether the death can be caused by use of such hammer ?





It was in positive. FSL report was also obtained. Thereafter, the charge sheet was filed for the offence under Sections 302, 201, 34, 120-B of the IPC.

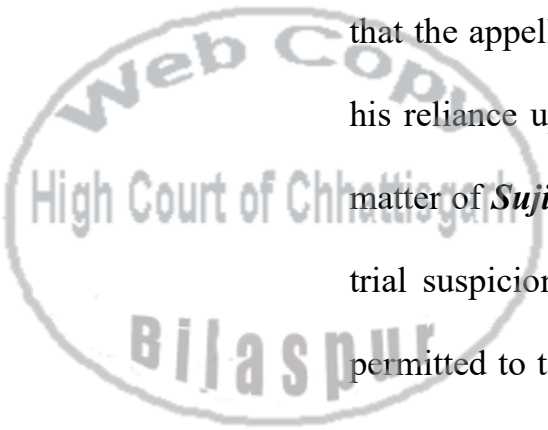
3. During trial the appellants/accused abjured their guilt and claimed to be tried. The prosecution examined as many as 17 witnesses and exhibited 68 documents. Upon appreciation of evidence, the trial Court came to a finding that the appellants have committed the offence and convicted & sentenced them as mentioned above. Thus, this appeal.

4. (A) Learned counsel appearing for the appellants would submit that the appellants have been convicted only on suspicion. He placed his reliance upon the decision rendered by the Supreme Court in the matter of *Sujit Biswas v State of Assam*¹ to submit that in a criminal trial suspicion no matter howsoever strong cannot and must not be permitted to take place of proof and the Court has duty to ensure that mere conjectures and suspicion do not take place of legal proof. He would further submit that the identification of the body, which was recovered, was that of the deceased and the death was homicidal in nature has not been established by the prosecution.

(B) Learned counsel would submit that as per the law laid down by this Court in the matter of *Shiv Prasad Sahu, etc. v State of Chhattisgarh*² when there is no evidence regarding homicidal death of deceased, genesis and cause for commission of offence would not be proved. He would also submit that as per the statement of PW-7

1 2014 (1) CCSC 41 (SC)

2 2020 (2) CDHC 847 (CG)





Ramkant Pyasi, the dead body was totally in decomposed state and the arrest of the appellants has been made on a subsequent point of time, therefore, the presence of dead body was already made known to the general public and it was from an open well and unless there is a more incriminating evidence on record, the same cannot be connected with the accused. He would submit that when the discovery on which the entire evidence of the prosecution is based and the memorandum was subsequent to recovery the said recovery cannot be attributed that the dead body was recovered at the instance of the accused persons.

(C) Learned counsel by placing reliance upon the decision of the Supreme Court rendered in the matter of *Ravishankar Tandon v State of Chhattisgarh*³ would submit that the statement made under Section 27 of the Indian Evidence Act, the memorandum cannot be taken out in information and it will relate distinctly to the fact thereby discovered that can be proved and nothing more and unless the said alleged weapon is further connected with the offence no allegation can be attributed. He would submit that though in the FSL report blood was found, but neither the group of said blood nor that of the deceased was identified. According to him in such case, recovery of certain article at the instance of accused with the allegation that it contained bloodstain would not be of any help to the prosecution.

(D) By placing reliance upon the decision of this Court rendered in the matter of *Bhim Mohd. v State of M.P.*⁴, learned counsel would submit that the evidence of the like nature would be hit by Sections 25

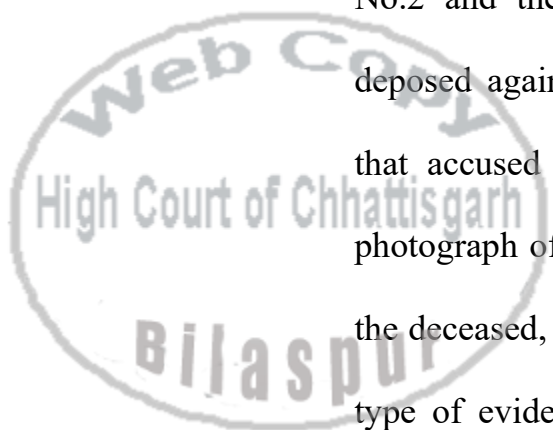
³ Cr.A. No.3869 of 2023 (decided on 10-4-2024)

⁴ 2000 (1) BLJ 36



& 26 of the Indian Evidence Act as the confession was made in presence of the police personnel. He would submit that if the recovery of incriminating article has been made prior to recording of memorandum, it loses its significance. Learned counsel would also submit that the entire conviction is based on the presumption and hence no conviction could have been passed on this evidence. Therefore, the appeal deserves to be allowed by setting aside the impugned judgment of conviction and order of sentence.

5. (I) Learned counsel appearing for the State, *per contra*, would submit that according to the prosecution, the daughter of the accused No.2 and the deceased namely; Rani @ Omin Sahu (PW-1) has deposed against her mother. Statement of PW-1 Rani would show that accused No.2 had conspired and when the search was made photograph of one of the accused i.e. Neera Sahu, who is the wife of the deceased, was found in the wallet of Bhojram, therefore, from this type of evidence, the conspiracy and conduct can be inferred. He would further submit that there are two set of memorandum i.e. Ex.P/1 & Ex.P/9. Recovery of dead body at the instance of accused from a well is also proved by PW-17 Likhan Singh Verma. He would submit that the panchnama of the spot was prepared and as per the statement, the dead body was tied with a heavy stone and *Newad* (निवार), which were found to be correct when the dead body was taken out from the water of well. Earlier it was not known to any one and in respect of identification, learned counsel would submit that the inquest report would itself show that the dead body was not so decomposed to the





extent that it cannot be identified and five of the villagers, as per the inquest report (Ex.P/6), have proved the identity.

(II) Learned State counsel would further submit that the postmortem report would show that the death was due to injury on the head and the seizure of the hammer was recovered at the instance of accused. He would submit that seizure from the spot wherein the incident had happened i.e. room of the deceased was also sent for FSL, which was also containing blood and the scratches, which were taken out from the wall, were also having blood. He would submit that wooden plank, pillow, knife, etc. were said to have thrown into the river and though search could not be made because of high flow of water, which would be evident from Ex.P/8. Hammer was seized vide Ex.P/12, which has proved by PW-5 Nageshwar. It was from the open plot and when it was sent for FSL, blood was found on it. The said incriminating articles connected the accused with the crime as no plausible explanation has been given by them.

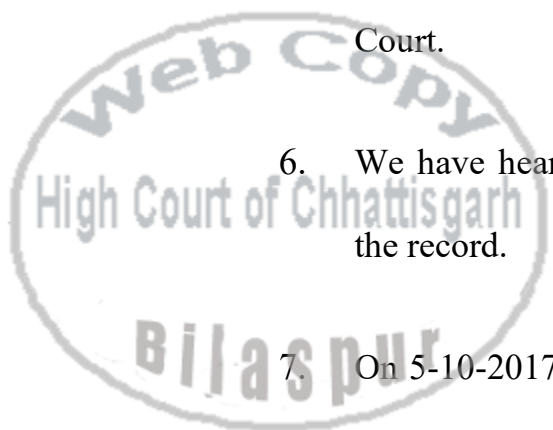
(III) With respect to nature of intimacy to prove the conspiracy, learned counsel would submit that mobile SIM No.....3504 though was purchased by Bhojram vide Ex.P/41, but was recovered from Neera vide Ex.P/21 and mobile SIM No....4032 was in hold of Bhojram, which he also purchased vide Ex.P/40. From the evidence of the daughter of the deceased PW-1 Rani, it would show that the accused had received frequent calls, which is proved by PW-15 Awadh Jain and the call records Ex.P/42 & Ex.P/43 would show that there has been numerous calls in between two phones. Therefore, if



the conduct of both the accused is evaluated with the circumstances it would show that accused were in conversation and when they saw PW-1 Rani they stopped and even when it was objected by her, the accused Bhojram extended threat to eliminate her. He would submit in the case like nature the conspiracy has to be gathered from the circumstances and in the instant case the chain of circumstances are completely proved about the happening of events, conspiracy and commission of crime. He would submit that the chain of circumstances clearly point out and establish the guilt of the accused without any doubt. Learned counsel would submit that the impugned judgment is well merited which do not call for any interference of this Court.

6. We have heard learned counsel for the parties at length and perused the record.

7. On 5-10-2017 information was given by Neera Sahu at Police Station Siltara that on 27-9-2017 without informing any one her husband Khubchand Sahu had gone out from his house. He speaks Hindi and Chhattisgarhi; always remains in intoxicated state; and after enquiry from the family members his whereabouts were not known. On the basis of the same, the police started investigation. According to the Investigating Officer PW-17 Likhan Singh Verma, a secret information revealed that Neera Sahu (Accused No.2) was having illicit relation with Bhojram Sahu (Accused No.1). The said relation was continued for the last four years and the same is resulted in dispute in between the husband (deceased) and wife (Neera Sahu).

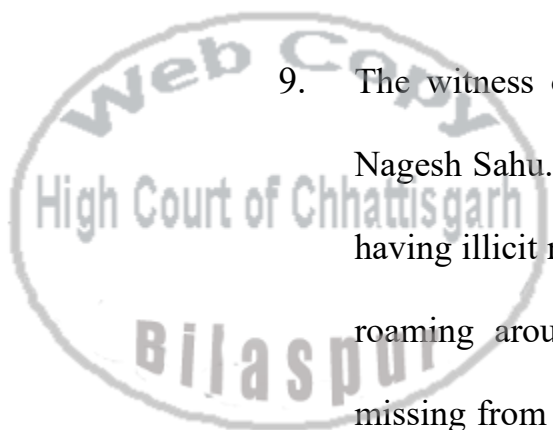




8. On 27-10-2017 at 9.20 am the memorandum of Bhojram was recorded vide Ex.P/11 wherein it was revealed that they assaulted on the head of the deceased by a hammer. Thereafter, the dead body was kept in a plastic fertilizer bag; 15-20 kgs. stones were tied with *Newad*; three punctures were made on the abdomen so that the dead body do not float; threw the dead body into the well; and came back. On the same date another memorandum of Neera Sahu was recorded vide Ex.P/12 wherein she also disclosed that after killing her husband the mattress & hammer were thrown into the open plot of Shanti Bai Gujrati; her saree was kept in almirah; and the cot on which the deceased was sleeping was dismantled and kept it in other place of the house.

9. The witness of the aforesaid memorandum is PW-5 Nageshwar @ Nagesh Sahu. He has stated that Neera Sahu and Bhojram Sahu were having illicit relation, which was known to all as the people saw them roaming around. He further stated that while the deceased was missing from 27-9-2017 he also went along with Neera Sahu to lodge a report. On 27-10-2017 he was called by the police and Bhojram Sahu, Neera Sahu and Ravi Soni were also interrogated. Thereafter, such memorandum was recorded. He affirms his signature on Ex.P/11, which is a memorandum of Bhojram and Ex.P/12 i.e. memorandum of Neera Sahu.

10. On the memorandum disclosure, the panchnama of spot was prepared vide Ex.P/14, which would show presence of well at an isolated place situated in 100 mtrs. inside the Highway and near an old dilapidated structure. When they saw inside, a small part of leg was visible in the

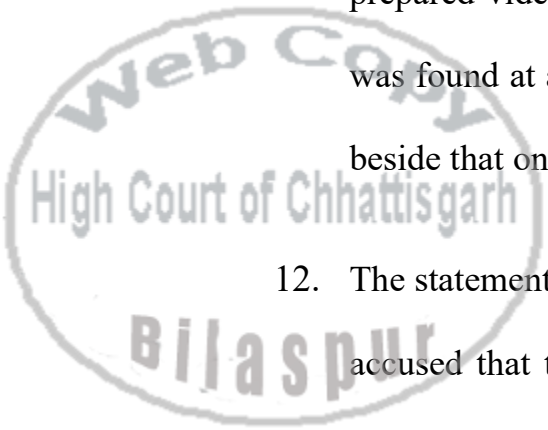




water. After the leg was visible, PW-7 Ramakant Pyasi was called who came along with Fireman Ramesh Yadav and the water from the well was taken out. According to PW-7 Ramakant after the water was taken out they saw a dead body of male person in the well. Thereafter, the dead body recovery panchnama was prepared vide Ex.P/15. From Ex.P/15 it is evident that the dead body was tied with a *Newad* many a times. The said Ex.P/15 was proved by PW-5 Nageshwar @ Nagesh Sahu.

11. PW-6 Dilip Kumar Nayak, Patwari, prepared the map of the said location as per the order of Tashildar (Ex.P/32) and the map was prepared vide Ex.P/31. Perusal of the map would show that the well was found at a side of a Highway and near a dilapidated structure and beside that one canal also existed.

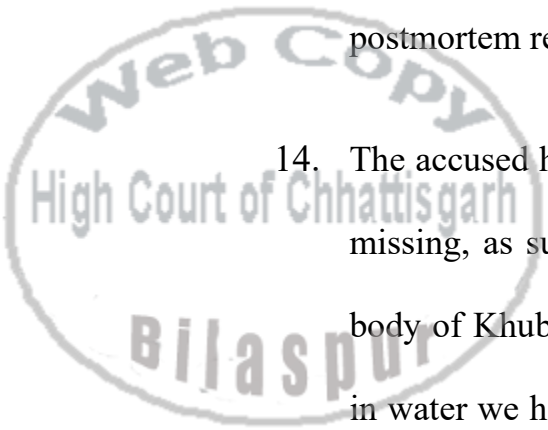
12. The statement of PW-13 Mohan Nishad admitted the suggestion of the accused that the dead body of the deceased was found near Dhaneli Canal besides Sardar Badi, old dilapidated structure in an isolated well. He further admitted the fact that while the dead body was taken out from well he was there. When the dead body was taken out from the well panchnama (Ex.P/16) was prepared. Statement of PW-13 Mohan Nishad also affirms the fact to negate the contention of the appellants that the dead body was not identified that of the deceased Khubchand Sahu and it is only on the basis of presumption the appellants have been inculpated.





13. Inquest report (Ex.P/6) would show that during such inquest when the dead body was taken out five witnesses were there including PW-13 Mohan Nishad and the suggestion of the accused in the cross-examination was that they themselves suggested that it was dead body of Khubchand. PW-2 Keshav, who was also present during such inquest, has also proved that they had identified the dead body of his brother. Further PW-16 Rakesh Sahu identified the dead body of deceased. Albeit this witness was declared hostile, but the dead body, which was putrefied, could be identified. The suggestion given to him in the cross-examination that he has not identified the dead body is further negated. The dead body was sent for postmortem. The postmortem report is Ex.P/33.

14. The accused had stated that the dead body was found after a month of missing, as such it could not have been identified that it was a dead body of Khubchand. To affirm our opinion in respect of putrefaction in water we have studied the opinion expressed in *Modi's Textbook of Medical Jurisprudence and Toxicology, 26th Edition, Chapter 15 – Post-Mortem Changes and Time since death.* At p.362, the treatise observe that rate of putrefaction of a body in water is more reliable than that of a body exposed to air. The reason behind this is that the temperature of the water is more uniform, and the body is protected from air, as long as it remains submerged in water. Ordinarily, a body takes twice as much time in water as in air to undergo the same degree of putrefaction. Putrefaction is retarded, when a body is lying in deep water and is well protected by clothing, while it is hastened in a body





lying in water contaminated with sewage. Putrefaction is accelerated, when the body is removed from water, as the tissues have imbibed much fluid. In such a body, decomposition is so rapid that the changes occurring in twenty-four hours exposure to the air will be more marked than those ordinarily resulting from a fortnight's further submersion.

15. The aforesaid phenomenon was also taken into note by the Supreme Court in the matter of *Irappa Siddappa Mugrannavar v State of Karnataka*⁵.

16. Further the Modi Medical Jurisprudence described the *Adipocere* (*Saponification*) At. p.364-365 that under certain conditions, the progress of putrefaction in a dead body is checked and is replaced by the formation of adipocere, which is a waxy looking substance having a greasy feel and a pure white or faint yellowish colour. It cuts soft and melts as a flame or burns with a feebly luminous flame, giving off a dull cheese like, but by no means disagreeable smell. It floats in water, as its specific gravity is less than water. It is more or less permanent lasting for several years, but becomes hard, brittle and yellow when exposed to air. It mostly consists of fatty acids like palmitic, oleic, stearic and hydroxystearic acids, formed from the body depot fats by post-mortem hydrolysis and hydrogenation. The presence of bacterial enzymes such as from *Clostridium welchii* and water is necessary for the formation of adipocere, so that the process takes places in bodies which have been submerged in water, buried in

5 (2022) 2 SCC 801

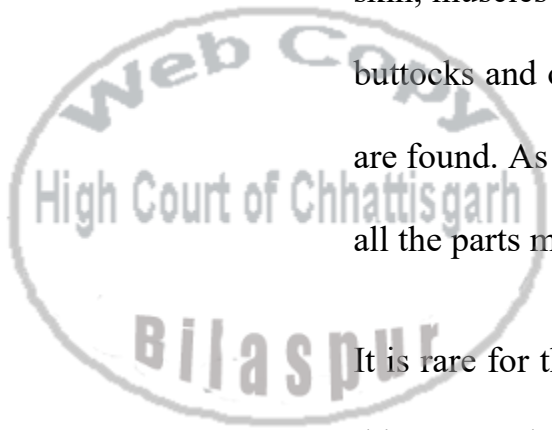


damp, clayey soils, or thrown into cesspools. It may, however, occur in bodies exposed to air, especially in hot and damp climates, but is retarded by cold. The medico-legal importance of adipocere lies in its ability to preserve the body to an extent which can permit identification long after death. It has been also observed that even intrinsic water content of the body may be sufficient for the development of adipocere in the body kept in lead sealed coffins. Bodies found in plastic bags which provide a moist environment may also be responsible for this formation.

Adipocere commences first in the subcutaneous fat, and then in the skin, muscles and organs. It occurs soon in the female breasts, cheeks, buttocks and other parts of the body, where large accumulations of fat are found. As fat is distributed extensively throughout the body, nearly all the parts may undergo this change.

It is rare for the whole body to be converted into adipocere, but when this occurs the body retains its natural form, outline and facial features so well that it may be easily identified years after death. Wounds inflicted on the body before death may also be easily recognised. The results of the chemical analysis in Modi's cases show that most of the adipocere consisted of free fatty acids namely, stearic and palmitic acid.

Time of Formation of Adipocere. The time required for the formation of adipocere varies according to the climate. In Europe, it ranges from three months to one year, though the change may occur in five weeks,





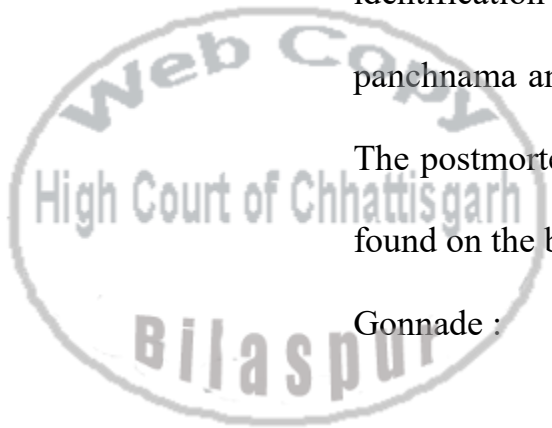
or may be delayed to three years. It is more rapid when a body is submerged in water than when it is buried in the earth. In India, Dr Coull Mackenzie found it occurring within three to fifteen days after death in bodies drowned in the Hooghly or buried in the damp soil of lower Bengal. Modi had observed adipocere taking place in seven to thirty five days after death in bodies submerged in wells or buried in shallow graves.

17. With such medico legal observation when the postmortem report (Ex.P/33) is examined it shows that adipocere change present meaning thereby the panchnama of the body which would eventually land into identification can be done and though the part of the dead body panchnama and it would not be a case that it would not be identified.

The postmortem report further shows that the following injuries were found on the body of the deceased, which is proved by PW-8 Dr. Ullas

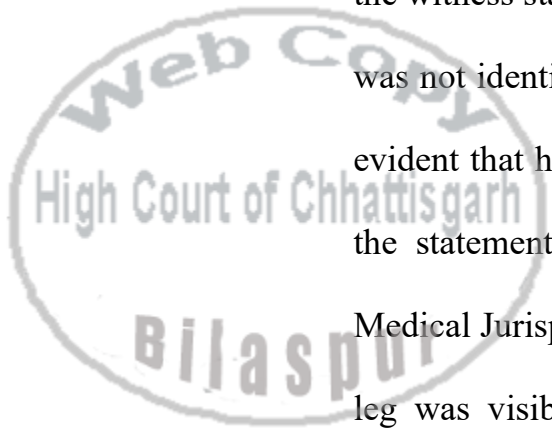
Gonnade :

- 1) Black Nevar tied at elbow level, both upper limb, 7 round at trunk and 1 round at ankle.
- 2) Multiple fracture with irregular opening of size 5cm x 4cm present on left side occipital bone.
- 3) Two number round & depressed skull fracture present anterior and posterior at short distance at left side of parietal bone, 3cm each.
- 4) Upper lateral incisor teeth directed inward or both left & right side of jaw. 16 teeth in each jaw
- 5) Patella has steel wire present in situ.
- 6) At left side of chest size 5cm x 2.5cm & mid part size 1cm x 1cm opening present near manubrium.





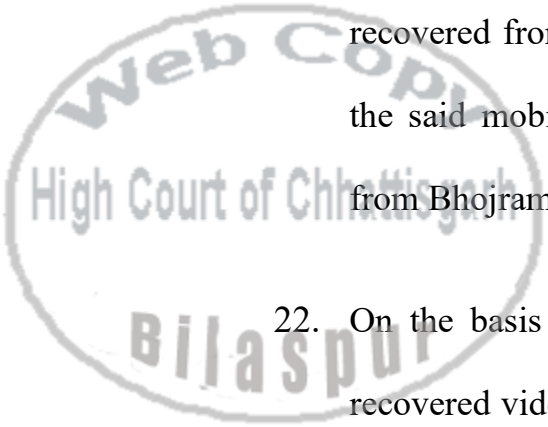
18. On an internal examination, PW-8 Dr. Ullas Gonnade found that if the injuries which were found on the head if are antemortem then it would have caused the death for respiratory failure and heart failure. According to the Doctor the said dead body was stated to be of Khubchand by PW-5 Nageshwar and one Balkishan.
19. PW-11 Vidya Sagar Pille, who went inside the well and saw that one dead body was found wherein the stones were tide with *Newad* on his chest and waist area. The dead body was that of a male. Thereafter, he cut off the rope and the dead body was taken out. He stated that it was whose dead body he do not know. In the cross-examination though the witness stated that the dead body was in putrefaction condition and was not identified by face, but the statement of PW-5 Nageshwar it is evident that he affirms the fact that he identified the dead body and if the statement of PW-5 Nageshwar is read along with the Modi's Medical Jurisprudence as the body was submerged into water and only leg was visible then identification of body cannot be a subject of question.
20. Now coming back to the memorandum again. On the basis of memorandum of Bhojram, the seizure of *Newad*, which was tied with the body of the deceased, plastic bag with two stones of 20-25 kgs. and another plastic bag with three stones 10-15-20 kgs. were seized on 27-10-2017. PW-5 Nageshwar has supported the said seizure.
21. Another memorandum of Bhojram was drawn by the police on 28-10-2017 at 11.00 am. T-shirt with bloodstains and full pant, which was





burnt, was recovered, which the accused stated that because of fear he did not disclose it earlier. On that basis the T-shirt was recovered from open plot near Lavkush Dal Mill on 28-10-2017. Therefore, at the instance of Bhojram the place wherein the dead body was thrown i.e. well was discovered. Subsequently the dead body found in the well and as per the memorandum the *Newad*, plastic bag, stones were also recovered. Apart from the aforesaid goods as per the memorandum one mobile No....3504, which was given to Neera Sahu by Bhojram and one mobile No....4032 through whom they used to talk was also recovered. Mobile No....3504 was recovered from Neera Sahu on 27-10-2017 vide Ex.P/21 and mobile No....4032 was recovered from Bhojram on the same date vide Ex.P/23. Apart from the said mobile on a personal search, a gents wallet was recovered from Bhojram with a passport size photograph of Neera Sahu.

22. On the basis of memorandum of Neera Sahu (Ex.P/12), saree was recovered vide Ex.P/21 from her room and hammer which was said to have been thrown along with mattress having the bloodstains was recovered vide Ex.P/22. The said recovery was made from the open plot of Shani Bai Gujarati. The wooden plank, pillow, blanket and knife, according to the memorandum (Ex.P/11) of Bhojram, were thrown into the river. Panchnama of river was prepared vide Ex.P/8 and it was found that there was heavy flow of water in it and even after search the said articles were not identified. Appellants stated that the recovery was made before they were arrested.

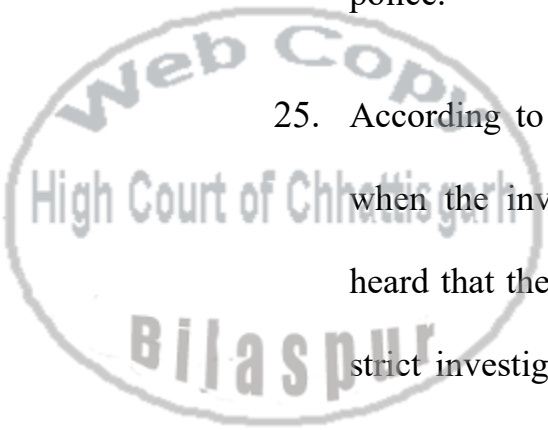




23. At the instance of another accused Ravi Soni, who was conflict with law, certain articles were recovered, for which a separate trial has taken place, therefore, we have not deliberated on it.
24. The Supreme Court in the matter of *Perumal Raja alias Perumal v State, Rep. By Inspector of Police*⁶ has defined the ‘custody’. It held that the expression “custody” under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.
25. According to the Investigating Officer PW-17 Likhan Singh Verma when the investigation in respect of missing person was made he heard that the appellants were having illicit relation and on that basis strict investigation was made, therefore, the memorandum statement made by both the accused vide Ex.P/9, Ex.P/11 & Ex.P/12 would be a memorandum under Section 27 of the Evidence Act. In the memorandum the narration of incident and commission of offence was made by the accused, however, such confessional statement would not be admissible in evidence. The finding of dead body inside the well would be the fact discovered, which would be relevant.
26. The Supreme Court in the matter of *Boby v State of Kerala*⁷ held that the basic idea embedded in Section 27 of the Evidence Act is the

6 2024 SCC OnLine SC 12

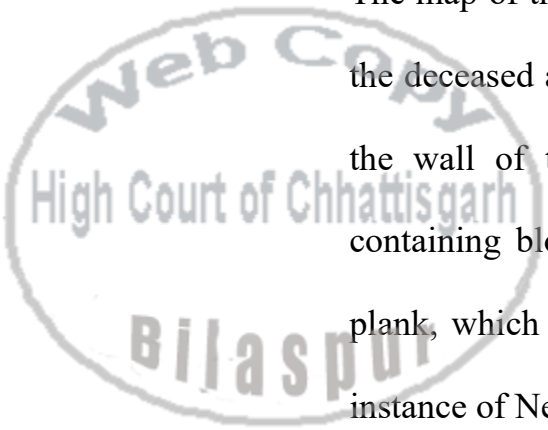
7 2023 SCC OnLine SC 50





doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. Section 27 puts a bar to use the confessional statement, but the fact that discovery and information which proved to reliable would be a circumstantial evidence.

27. According to the prosecution, the incident happened inside the room. The map of the place of incident is Ex.P/1. It shows that the room of the deceased and the room of Neera Sahu were separate. Scratches of the wall of the room of the deceased and frame of the almirah containing blood stains were recovered vide Ex.P/20. One wooden plank, which was alleged to be used in the crime, was seized at the instance of Neera Sahu vide Ex.P/21. The seized articles were sent for FSL. The hammer 'C'; Saree of Neera 'E'; scratches of the wall wherein the incident happened along with cement 'G'; wooden frame 'I'; T-Shirt 'M'; and full pant 'N' were having blood. FSL report is Ex.P/64. Though the statement is made that the group of the blood is not been given, but there is no plausible explanation under Section 313 CrPC and only simple denial has been made. How will the blood contain on the wall of the room & wooden frame of almirah has not been explained by the accused. These articles, which were sent for FSL, recovered from the spot in normal circumstances would not





contain the bloodstains.

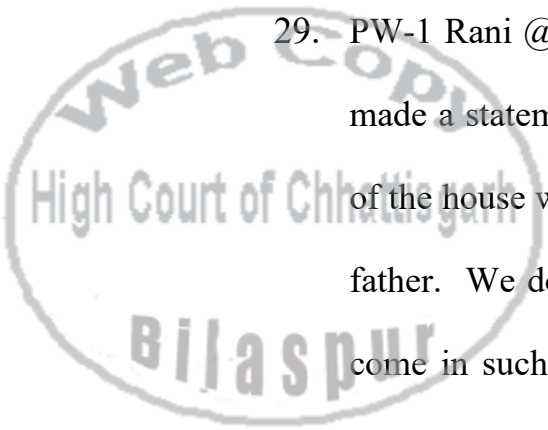
28. The Supreme Court in the matter of *State of Andhra Pradesh v Kanda Gopaludu*⁸ considered this aspect to hold that when the incriminating material against the seizure of shirt stained with blood and FSL report shows that it is a human blood, then it would be an incriminating circumstances and further as has been held in *Ganga Bai v State of Rajasthan*⁹, the appellant should have explained how the clothes and articles seized from them contained human blood and in Section 313 CrPC, the question is with respect to FSL, no explanation was offered and it was only denial.

29. PW-1 Rani @ Omin Sahu, daughter of the deceased and Neera Sahu, made a statement that after the incident while the last rituals cleaning of the house was made wherein she found the bloodstained shirt of her father. We do not see any reason to disbelieve how the blood would come in such articles including the hammer, which was thrown into the open plot and was in specific knowledge of the accused is not been made clear.

30. The case of the prosecution that the Bhojram was having an illicit relation with the wife of the deceased namely; Neera Sahu. PW-1 Rani, aged about 13 years, stated that her mother used to roam around Bhojram. She also used to go to cinemas, which was objected by her father Khubchand. This witness also stated that one day when her father objected, Bhojram came there and gave threat that he would be

8 AIR 2005 SC 3616

9 (2016) 15 SCC 645





eliminated. On 27-9-2017 her mother Neera Sahu, Bhojram and Ravi Soni were talking with each other. When she came out they stopped conversation. Thereafter she slept and morning when she asked whereabouts of the father, the mother could not explain. She further stated that in a grocery shop, Bhojram used to come and used to have a conversation with her mother. When the last rituals of the deceased were being performed on 4-11-2017 the house was cleaned and at that time she found the bloodstained shirt of her father.

31. The statement of PW-5 Nageshwar also is in the similar line, which shows that close proximity and intimacy of talking of both the accused. Recovery of photograph of a married lady (Neera Sahu) in the wallet of another male person (Bhojram), which was seized vide Ex.P/23, also raises a doubt.

32. The Supreme Court in the matter of *Mehboob Ali and Another v State of Rajasthan*¹⁰ had an occasion to deal such mental state of fact wherein the Court observed that for application of Section 27 of the Evidence Act, the admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the recovery, only that would be part of legal evidence and not the rest. Section 27 of the Evidence Act refers to the 'Fact'. The word 'Fact' has been defined in Section 3 of the Evidence Act which is reproduced hereunder:-

“Fact”—“Fact” means and includes—

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

¹⁰ (2016) 14 SCC 640



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

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

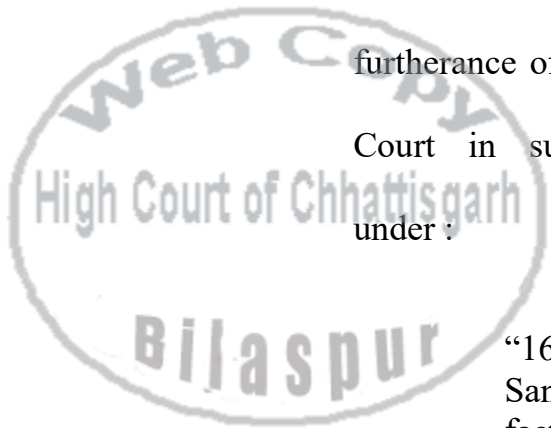
(e) That a man has a certain reputation, is a fact.”

33. The Supreme Court in the matter of *Mehboob Ali* (supra) has observed that the discovery of facts under Section 27 information regarding other accused persons, to establish charge of conspiracy, in furtherance of common intention would be admissible. The Supreme Court in such case at paras 16, 17 & 18 has held as under :

“16. This Court in *State (NCT of Delhi) v. Navjot Sandhu* has considered the question of discovery of a fact referred to in Section 27. This Court has considered plethora of decisions and explained the decision in [Pulukuri Kottaya V. Emperor](#) AIR 1947 PC 67] and held thus : (*Navjot Sandhu* (2005) 11 SCC 600, SCC p. 704, paras 125-27)

“125. We are of the view that Kottaya case [AIR 1947 PC 67] is an authority for the proposition that “discovery of fact” cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.

126. We now turn our attention to the precedents of this Court which followed the track of Kottaya case. The ratio of the decision in Kottaya case reflected in the underlined passage extracted supra was highlighted in several decisions of this Court.





127. The crux of the ratio in Kottaya case was explained by this Court in State of Maharashtra v. Damu, (2000) 6 SCC 269. Thomas J. observed that: (SCC p. 283, para 35)

'35 ...The decision of the Privy Council in Pulukuri Kottaya v. Emperor, AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.'

In Mohd. Inayatullah v. State of Maharashtra [1976 1 SCC 828], Sarkaria, J. while clarifying that the expression "fact discovered" in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in Pulukuri Kottaya case, AIR 1947 PC 67. The learned Judge, speaking for the Bench observed thus: (SCC p. 832, para 13)

'13...Now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Pulukuri Kottaya v. Emperor, AIR 1947 PC 67; Udai Bhan v. State of U.P. [1962 Supp (2) SCR 830]).'

17. In State of Maharashtra v. Damu [AIR 2000 SC 1691] the statement made by the accused that the dead body of the child was carried up to a particular spot and a broken glass piece recovered from the spot was found to be part of the tail lamp of the motorcycle of co-accused alleged to be used for the said purpose. The statement leading to the discovery of a fact that accused had carried dead body by a particular motorcycle up to the said spot would be admissible in evidence. This Court has laid down thus : (SCC pp. 282-83, paras 35-38)

"35. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is





true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of the Privy Council in Pulukuri Kottaya v. Emperor AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the “fact discovered” envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

36. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which “distinctly relates to the fact thereby discovered”. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In this case, the fact discovered by PW 44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motorcycle.

37. How did the particular information led to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the Investigating Officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot.

38. In view of the said discovery of the fact, we are inclined to hold that the information supplied by A-2 Guruji that the dead body of Dipak was carried on the motorcycle up to the particular spot is admissible in evidence. That information, therefore, proves the prosecution case to the abovementioned extent.”

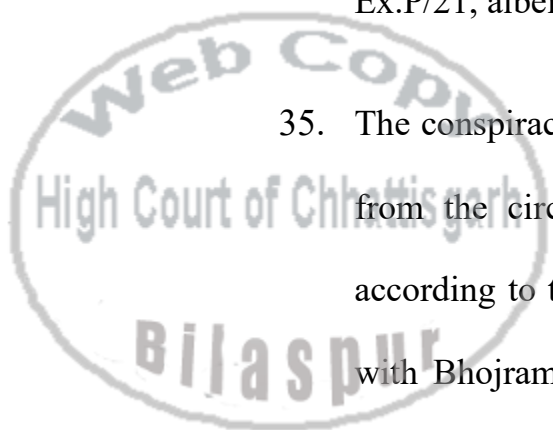




18. In Ismail v. Emperor [AIR 1946 Sind 43] it was held that where as a result of information given by the accused another co-accused was found by the police the statement by the accused made to the Police as to the whereabouts of the co-accused was held to be admissible under Section 27 as evidence against the accused.”

34. Further more call details have been made. They do not show that the nature of call details proved by Ex.P/43. Frequent calls were made and two calls were made on 27-9-2017, which is proved by Ex.P/42. Customer Application Form (Ex.P/40 & Ex.P/41) would show that both the mobile i.e. No....4032 & No....3504 were in the name of Bhojram. Mobile No.....3504 was recovered from Neera Sahu vide Ex.P/21, albeit it was purchased by Bhojram. It also creates a doubt.

35. The conspiracy is not hatched in an open place. It has to be gathered from the circumstances. The stepwise incidents which happened according to the witnesses is that Neera Sahu was in close proximity with Bhojram, which has even been stated by the family members. Evidence of PW-1 Rani, PW-2 Keshav and PW-5 Nageshwar would show that it can be inferred that Bhojram and Neera Sahu were in close proximity, which came to the knowledge of the deceased thereby a dispute aggravated. On the date of incident on 27-9-2017 the daughter PW-1 Rani when was going for Jagrata (जगराता) she saw Bhojram, Neera Sahu and Ravi Soni. Subsequently, her father was missing. When the missing report was being investigated by the police, the Investigating Officer PW-17 Likhan Singh Verma came to know about the illicit relation between Bhojram and Neera Sahu. Thereafter, the investigation was made by the police and on





pressurizing it was disclosed that the deceased was eliminated by causing injury on his head by hammer and the dead body was thrown into the well situated in an isolated place after being tied with *Newad* and the stones.

36. No doubt, in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

37. The Supreme Court in the matter of ***Ram Narayan Popli v Central Bureau of Investigation***¹¹ held thus at paras 344 & 345 :

344. In *Halsbury's Laws of England* (vide 4th Edn., Vol. 11, p. 44, para 58), the English law as to conspiracy has been stated thus:

“58. Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the court.

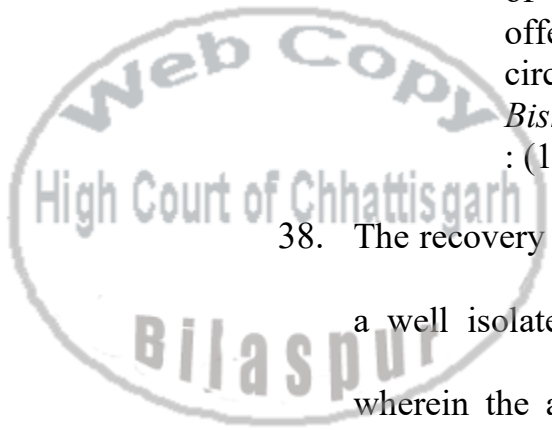
11 (2003) 3 SCC 641



The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.”

345. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence. It can be established by direct or circumstantial evidence. [See : *Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra* [AIR 1965 SC 682 : (1965) 1 Cri LJ 608] (AIR at p. 686).]

38. The recovery of dead body was not from an open place. It was inside a well isolated in a dilapidated structure away from the Highway wherein the access of normal people was not there and was not a public thoroughfare. More so the dead body was thrown into the well at the instance of Bhojram. When they went to the spot the well was found i.e. discovery of fact. Thereafter, only leg was seen and the remaining body of the deceased was submerged into water. When the water was pumped out it was found that the dead body was tied with *Newad* and stones. The said discovery of fact was made by Bhojram. Dead body having been taken out it was identified to be the dead body of Khubchand by PW-5 Nageshwar and PW-2 Keshav. Thereafter it was sent for postmortem. In the postmortem, PW-8 Dr. Ullas



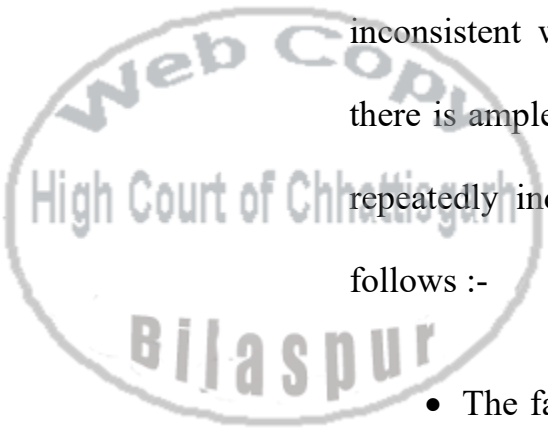


Gonnade opined that the injuries were on the head of the deceased and he opined that if it was antemortem that could have caused the death.

39. Recovery of hammer, T-shirt, which was thrown into the open place and the scratches of wall of room wherein the incident happened and wooden frame of almirah when were tested were having the bloodstains. The presence of blood on this articles has not been properly explained by the accused.

40. The law on conviction based upon the circumstantial evidence is quite clear which provides circumstantial evidence can be the basis of a conviction if it is consistent with the guilt of the accused and inconsistent with any other rational hypothesis. In the instant case there is ample of circumstances which forms a complete chain which repeatedly indicates towards the guilt of the accused which are as follows :-

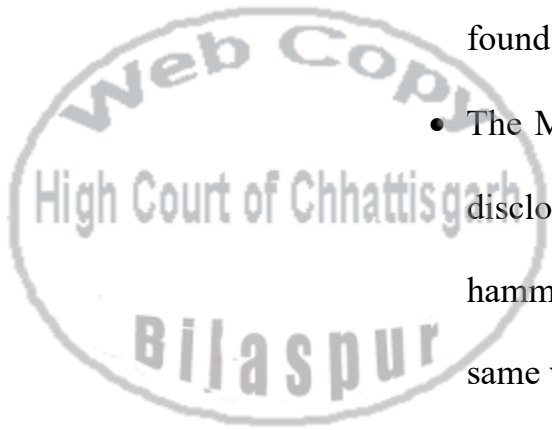
- The fact that the Bhojram Sahu has a, illicit relationship with Neera Sahu, which was known to her husband, who was repeatedly objecting to the continuation of such relationship. The said relation was continued for nearly four years and the same is resulted in dispute between the couple and the said fact was stated by the witness PW-5 Nageshwar, therefore, this fact provides strong motive for commission of crime.
- The statement of the daughter of Neera Sahu namely; PW-1 Rani would also show that when the appellant objected to the





relation between Neera Sahu and Bhojram Sahu, Bhojram has threatened to kill the deceased.

- The memorandum of Bhojram (Ex.P/11) would show that after committing the murder of the deceased the dead body was thrown into the well, which tied with the stones of 15 & 20 kgs with the *Newad*. The dead body was recovered from such abandoned well. The knowledge of Bhojram about the dead body in the abandoned well that too tied with the bags and filled up with the stones is a strong incriminating circumstance. The dead body was tied up with *Newad*, which is not ordinarily available and was special type of rope, was found around dead body and bag.
- The Memorandum of Neera Sahu (Ex.P/12) wherein she also disclosed that after killing her husband the mattress and hammer were thrown into the plot of Shanti Bai Gujrati and same was recovered by the police party.
- The another memorandum of the accused shows about the T-shirt with the bloodstain. No explanation in this regard has been offered by the accused as to how such blood stain has come in the T-Shirt of the accused.
- The mobile recovered from Neera & Bhojram has the call records of numerous calls which shows that they were frequently in touch, which is abnormal for the married women. Neera on many occasions has stated that her husband was the drunkard and the same is not said by any of the witness which shows her apathy and hatred towards her husband.





- Based upon the memorandum of Neera Sahu (Ex.P/12), her saree was recovered vide Ex.P/21 from her room and hammer which was said to have been thrown along with the mattress having the bloodstain was recovered vide Ex P/22, but no explanation about the bloodstain has been offered by Neera Sahu in her statement recorded under Section 313 CrPC. The statement of PW-1 Rani would show that the mattress on which the deceased used to sleep was missing from the date when the deceased gone missing from the house and the said mattress was recovered from the memorandum statement of Neera Sahu which indicates towards her guilt.
- The statement of PW-1 Rani would also show that when she is trying to inform the fact about missing of her father to her Uncle, her mother Neera Sahu was stopping her from informing the fact to the Uncle (brother of deceased).

41. All the aforesaid circumstances indicate towards the guilt of the accused which makes the conduct of the accused in most precise manner and completes the chain of circumstances.

42. The Supreme Court in the matter of *Suresh and Another v State of Haryana*¹² has observed that cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. The court at paras 41 and 42 has observed thus :

41. The aforesaid tests are aptly referred as *Panchsheel of proof in Circumstantial Cases* (refer to

12 (2018) 18 SCC 654



Prakash v. State of Rajasthan). The expectation is that the prosecution case should reflect careful portrayal of the factual circumstances and inferences thereof and their compatibility with a singular hypothesis wherein all the intermediate facts and the case itself are proved beyond reasonable doubt.

42. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of "chain link theory" and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the "chain link theory" since *Hanumant case*, which of course needs to be followed herein also.

43. Applying the aforesaid well settled principles of law and taking into the facts in totality and considering the facts and circumstances of the case, in our considered view the prosecution was able to establish the guilt of both the accused beyond reasonable doubt. The impugned judgment of conviction and order of sentence is just and proper warranting no interference of this Court.

44. In the result, the appeal, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Sanjay S. Agrawal)
Judge

Gowri



HEAD NOTE

The rate of putrefaction of the body in water is more reliable than that of a body exposed in the air for the reason that temperature of water is more uniform and body is protected from air as long as it is submerged in the water.

जल में शरीर के सड़न की दर वायु से संपर्क में आए शरीर की तुलना में अधिक विश्वसनीय है, इस कारण कि, पानी का तापमान अधिक स्थिर होता है, और जब तक शरीर जल में आधा रहता है तब तक वायु से सुरक्षित रहता है।

The custody under Section 27 of the Evidence Act is not only restricted to formal custody and it includes any kind of restriction restrain and even surveillance by the police.

साक्ष्य अधिनियम की धारा 27 के तहत अभिरक्षा मात्र औपचारिक अभिरक्षा तक ही सीमित नहीं है और इसमें किसी भी प्रकार का निर्बंधन अवरोध और यहाँ तक कि पुलिस द्वारा निगरानी भी शामिल है।

In cases of the circumstantial evidence the Courts are called upon to make inferences from the available evidence, which may lead to guilt of accused.

परिस्थितिजन्य साक्ष्य के मामलों में न्यायालयों से अपेक्षा की जाती है कि वे उपलब्ध साक्ष्य से निष्कर्ष निकाले, जिससे कि अभियुक्त का दोष सिद्ध हो सके।

