



2025:CGHC:18151-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 335 of 2021**

**1** - Akash Kosare S/o Chandrahas Aged About 18 Years R/o Village Daimar, P.S. Patan, District Durg Chhattisgarh.

**2** - Sanju Vaishnav S/o Dileshwar Vaishnav Aged About 22 Years R/o Village Daimar, P.S. Patan, District Durg Chhattisgarh.

**... Appellants**

**versus**

State of Chhattisgarh, through S.H.O. Police Station Nevai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

**... Respondent**

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For Appellants : Mr. B.P. Singh, Advocate

For Respondent/State : Mr. Shashank Thakur, Dy. Advocate General

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

**Hon'ble Shri Arvind Kumar Verma, Judge**

**Judgment on Board**

**Per Ramesh Sinha, C.J.**

**22.04.2025**

1. Mr. Rohan Sharma, learned counsel states that as appellant No.1 has moved an application i.e. No. 03 of 2025 for change of counsel, hence he has no instruction in the matter.
2. Mr. B. P. Singh, learned counsel, appearing for appellant No.2 states that he has also filed his power on behalf of appellant No.1 and is ready to argue the matter finally on his behalf also.

3. Mr. B.P. Singh, learned counsel is permitted to argue the matter finally on behalf of both the appellants.
4. Accordingly, I.A. No.03 of 2025 stands disposed of and the Court proceeds to hear the matter finally.
5. This criminal appeal preferred under Section 374(2) of the Code of Criminal Procedure (for short, 'CrPC') is directed against the impugned judgment of conviction and order of sentence dated 24.02.2021 passed by the learned Fourth Additional Sessions Judge, Durg, District- Durg (C.G.) in Sessions Trial No. 87/2019, whereby the trial Court has convicted and sentenced the appellants with a direction to run all the sentences concurrently in the following manner :

CONVICTION	SENTENCE
U/s 364/34 of IPC	R.I. for 7 years each and fine amount of Rs.500/-, in default of payment of fine, additional R.I. for 3 months.
U/s 394/34 of IPC	R.I. for 7 years each and fine amount of Rs.500/-, in default of payment of fine, additional R.I. for 3 months.
U/s 302/34 of IPC	R.I. for life each and fine amount of Rs.500/-, in default of payment of fine, additional R.I. for 5 months.
U/s 201/34 of IPC	R.I. for 5 years each and fine amount of Rs.500/-, in default of payment of fine, additional R.I. for 3 months.
U/s 120B of IPC	R.I. for 7 years each and fine amount of Rs.500/-, in default of payment of fine, additional R.I. for 3 months.

6. Case of the prosecution, in nutshell, is that on 18.01.2019, the complainant Anand Devangan went to Nevai police station and lodged a report that his father had gone to Patan by bicycle at 8.30 pm as usual and did not return home till evening. He could not be traced in the neighbourhood and hospital. On the complainant's report, missing person report number 03/2019 was registered and investigation proceedings were conducted. During investigation, on questioning the suspected accused Sanju Vaishnav, Akash Kosare, Suraj Sahu alias Sujju, Manish Sori, they accepted committing the crime and told that they had killed the deceased Hariprasad Devangan and kept the body in the field near village Khorpa Nala and burnt it with the help of paddy stick. According to their memorandum statements, the site panchnama was prepared and the ashes of the burnt paddy stick and the burnt remains of human bone at the scene were identified by the deceased Hariprasad Devangan's family from the ring worn by the deceased. On the basis of the memorandum of the accused, the mobile phone, tiffin box, bag of the deceased and the jewellery stolen from the shop of the deceased were seized at the pointing out of the accused.
7. On the report of the complainant, the crime was registered and investigation was taken up. During the investigation, a map of the crime scene was prepared. A Panchnama of the dead body was done after registering the death intimation. The dead body was

handed over after postmortem. Memorandum statement of the accused was recorded. Seizure proceedings were carried out on the basis of the memorandum. The seized items were sent to the Forensic Science Laboratory, Raipur for testing and blood samples of the deceased's sons were taken for DNA testing. The accused were arrested as per the arrest sheet. After recording the statements of the witnesses, the charge sheet was presented before the Judicial Magistrate First Class, Durg. On 14.05.2019, the case was surrendered and received by the Sessions Court, Durg for trial and from the Sessions Court, the case was received for trial on transfer to Court of Fourth Additional Sessions Judge, Durg on 27.05.2019.

8. In support of its case, prosecution has examined witnesses Ramkumar Singh (PW-1), Anant Dewangan (PW-2), Gaurav Swarnkar (PW-3), Panchram Dewangan (PW-4), Domar Sahu (PW-5), Satyajit Rawat (PW-6), Anil Jaiswal (PW-7), Nilesh Tiwari (PW-8), Chovaram Sahu (PW-9), Romnath Dewangan (PW-10), Anil Kumar Dewangan (PW-11), Mahavir Gendre (PW-12), Dr.Pradeep Kumar Chandrakar (PW-13), Krishnakumar Jaiswal (PW-14), Anupama Meshram (PW-15), Snigdha Jain (PW-16), Raju Mandavi (PW-17), Kundan Lal ASI (PW-18), Amit Kumar Beria (PW-(19) and Shekha Mohammad (PW-20).
9. The prosecution has also presented Merg Intimation (Ex.P-1), Identification Panchnama (Ex.P-2 & P-3), Recovery Panchnama (Ex.P-4), Identification Panchnama (Ex.P-5), Notice under Section

175 Cr.P.C. (Ex.P-6), Inquest Report (Ex.P-7), Property Seizure Memo (Ex.P-8), Identification Memo (Ex.P-9), Memorandum (Ex.P-10), Notice (Ex.P-11), Copy of Rojnamcha Sanha (Ex.P-12C), First Information Report (Ex.P-13), Crime Details Form (Ex.P-14), Property Seizure Memo (Ex.P-15), Search Panchnama (Ex.P-16), Panchnama of place of occurrence (Ex.P-17), Property Seizure Memo (Ex.P-18), Notice (Ex.P-19), Car Search Panchnama (Ex.P-20), Property Seizure Memos (Exs. P-21 & P-22), Police statement of witness Nilesh Tiwari (Ex.P-23), Memorandum (Exs.P-24 & P-25), Property Seizure Memos (Exs.P-26, P-27 & P-28), Police statement of witness Chowaram Sahu (Ex.P-29), Notice under Section 160 of CrPC (Ex.P-30), Police statement of witness Romnath Dewangan (Ex.P-31), Memorandum (Ex.P-32), Panchnama of place of occurrence (Ex.P-33, P-34 & P-35), Notice (Ex.P-36), Notice U/s 160 of CrPC (Ex.P-37), Crime Details Form (Ex.P-38), Memorandum (Ex.P-39), Property Seizure Memos (Ex.P-40, P-41 & P-42), Arrest/Court Surrender Memos (Ex.P-43 & 44), Vehicle Examination Report (Ex.P-45), Inspection report of the place of incident (Ex.P-46), Examination Report (Ex.P-47), Acknowledgement of notice issued for identification proceedings (Ex.P-48), Notice U/s 91 of CrPC (Ex.P-49), Memo to R.I. regarding providing of Spot Map (Ex.P-50), Memo to Tahsildar regarding providing of Spot Map (Ex.P-51), register of information regarding untimely and accidental death (Ex.P-52), Duty Certificates (Exs.P-53 to P-56), Notice (Ex.P-57), Property

Seizure Memo (Ex.P-58), Information regarding arrest (Ex.P-59 & P-60), Application for post mortem (Ex.P-61) which have been marked as exhibits before the trial Court. Along with this, photographs have marked as Article A-1 to A-52 and FSL/DNA report has been marked Ex.C-1.

10. The accused denied the charges levelled against them. In their trial under Section 313 of the Code of Criminal Procedure, 1973, the accused persons did not produce any witness in their defence, claiming innocence and being falsely implicated.
11. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 24.02.2021, convicted and sentenced the appellants as aforementioned, against which, this criminal appeal has been preferred.
12. Mr. B.P. Singh, learned counsel for the appellants would submit that in the present case, there is no any eye-witness and conviction of the appellants is based on the circumstantial evidence only. He would further submit that though Gaurav Swarnkar (PW-3) and Satyajeet Rawat (PW-6) are stated to be the witnesses of last seen together, but they both have not stated anything regarding the identification of the appellants as well as the deceased, despite of said fact, trial Court has convicted the appellants on the basis of statement of these witnesses. He would also submit that though on the basis of disclosure statements of the appellants, some articles have been seized which belongs to the deceased but only on that basis, the

conviction of the appellants is not sustainable. He argued that the learned trial Court has completely failed to see this fact that the body of the deceased was identified at any count because the DNA test was negative in respect of Blood as well as hair of the deceased so it is not sure that the bones which was seized from the land is of the deceased Hariprasad dewangan. The police has not conducted any identification from 2 material witnesses namely Gaurav Swarnakar (PW-3), and Satyajit Raawat (PW-6), and the memorandum witness Chowaram Sahu (PW-9) and Romnath Dewangan (PW-10) have not supported the case of the prosecution. The identification of the deceased was tried to identify with the help of photograph but that is not relevant. So far as the vehicle which was used in the crime, one witness Nilesh Tiwari (PW-8) is examined but the evidence of Nilesh Tiwari is not the trust worthy and after admitting this fact that on the date of incident the vehicle in question was in the possession of Nilesh Tiwari and moreover the owner of the vehicle is not Nilesh Tiwari or his mother or in the name of K.D. Tiwari and the colour of the vehicle was entirely different which was claimed by the witnesses in the Court are entirely different so there is no help to the prosecution on this aspect. So far as the last seen together, there is nothing on record to show that the deceased was found with the appellant. He further argued that the seizure was also not supported by the witnesses and the conviction is based on the evidence of Investigation Officer only which is not according to law. It has been argued that the memorandum statement taken

under Section 27 of the Evidence Act is not admissible as evidence for confession of crime.

13. Mr. Singh contended that the police has arrested the appellants in theft matter and thereafter concocted a story that they have committed murder of the deceased and thereafter they have burnt him with the help of paddy stick and then they went to the shop of deceased and stolen artificial golden and silver ornaments. The ornaments are not identified by the relatives of the deceased according to legal process i.e. Section 9 of the Evidence Act and the identification was done by the police even no proper identification of the deceased was conducted by the police and before memorandum, the articles have already been found and place of burial has already been disclosed and it is well within the knowledge of police officials and as such, the memorandum has lost its efficacy and even no any concrete evidence is collected by the prosecution to connect the appellants in the crime in question. The learned trial Court has completely failed to properly consider the evidence available in the case and the record and looking to the evidence which is available before learned trial Court there is nothing believable and trust worthy evidence to show that the appellants have abducted the deceased and committed murder and there is no any motive is proved and even then the learned trial Court has passed this order on the basis of circumstantial evidence and thus the motive take place very important role. The evidence available on the face of record are shaky in nature and



there are several contradictions and omissions are found in the statement of the witnesses and the same were not considered by the learned trial Court in proper manner, thus the conviction and sentence passed by the learned trial Court below is illegal. Therefore, the judgment of conviction recorded and sentence awarded deserves to be set aside.

14. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General, appearing for the State/respondent opposed the aforesaid submissions and would submit that would oppose the arguments advanced by the counsel for the appellants and submit that there is sufficient evidence available on record against the appellants. He would further argue that on the basis of disclosure statements of the appellants, not only ornaments of the deceased has been recovered but on the basis of said disclosure statement, bones of the deceased, one tiffin of deceased in burnt condition, one key and one wrist watch of the deceased were also seized. Further, referring to the statement of Nilesh Tiwari (PW-8), he would submit that according to the case of prosecution, deceased was an aged person and deceased was abducted and taken away by the appellants in a vehicle bearing registration number CG 04 LJ 9533 which belongs to Nilesh Tiwari (PW-8). As per the statement of Nilesh Tiwari, the vehicle was taken away by appellant No.2/Sanju Vaishnav and hair of an aged person has been seized from the said vehicle vide seizure memo Ex.P-22. Thus, the prosecution has tendered sufficient and credible

evidence for proving the commission of offence by the accused/appellants. The learned trial Court has appreciated the evidence in correct perspective and has recorded the finding of the guilt of accused as such, the trial Court has rightly convicted the appellants and therefore, the appeal deserves to be dismissed.

15. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
16. The first question for consideration would be whether Hariprasad dewangan has died and if yes, what is the nature of his death ? Witnesses Anant Dewangan (PW-2), Pancharam Dewangan (PW-4) and Anil Kumar Dewangan (PW-11) in their statements before the trial Court have stated that they knew Hariprasad and that he has died.
17. Regarding the death of Hariprasad, Domar Sahu (PW-5) has stated in his examination that on 18.01.2019 at 23.50 pm, the complainant Anand Devangan came to the police station and stated that his father Hariprasad Devangan has not returned from the Patan shop. He had searched in nearby hospitals and relatives. His father used to come with a Nokia mobile and gold & silver items from the jewellery shop and money from the shop. He interrogated the complainant and registered a Missing Person Case No. 3/19 and took action. He entered it in Ex.P.12's Diary Entry No.52, Page No.85 and its page portion. During of course of

investigation on 19.01.2019, on getting information that Hariprasad Dewangan's Patan shop shutter was open and items were stolen from there and Hariprasad Dewangan's bicycle was found in damaged condition in Risali Sector, on the suspicion of kidnapping, Anand Dewangan lodged a report, he registered a First Information Report Ex.P.12 against unknown accused under Section 365 IPC under Crime No. 21/2019 at Nevai police station. The witness has certified his signature on Ex.P.12.

18. Witness Anand Dewangan (PW-2) has stated in his examination that the deceased Hariprasad was his father. His father had a shop named Krishna Jewellers in Patan and his residence was in Risali. His father reached the shop at Patan at about 8.30 in the morning. He used to go on cycle and used to return by 8-8.30 pm. The witness has told that on 18.01.2019 his father did not return from Pahan at night, then he called on his father's mobile number. The mobile was switched off. He informed his brother Satish and Tarun and other family members that his father did not come at home and when they went to the place where his father used to go from Risali by cycle everyday and park his cycle at Tanki Maroda and go to Patan by bus and in the evening he used to return from Patan to Tanki Maroda by bus and return home by cycle. On the date of the incident when his father did not come home at night, they went to the place where his father used to keep his cycle. There he came to know that his father had left with his cycle. When they did not get any information on the matter,

they went to the police station Nevai and lodged a missing person report.

19. No dead body has been recovered in the prosecution case. In this case, it is said that bone fragments were recovered from the burnt paddy sticks and on the basis of that, adding circumstantial evidence, this case has been filed against the accused. No dead body of deceased Hariprasad has been recovered in the case due to which there is no direct evidence regarding his death. In this case, it has to be concluded on the basis of all circumstantial evidence whether Hariprasad's death has been caused. If yes, then whether he has been murdered and whether his murder has been caused by the accused with the intention of kidnapping and robbery?
20. The case of the prosecution is completely based on circumstantial evidence. There is no eyewitness to the incident. It has been consistently laid down by the Supreme Court 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 or the guilt of any other person. (See **Hukam Singh v. State of Rajasthan, AIR 1977 SC 1063; Eradu and Ors. v. State of Hyderabad, AIR 1956 SC 316; Earabhadrapa v. State of Karnataka, AIR 1983 SC 446; State of U.P. v. Sukhbasi and Ors., AIR 1985 SC 1224; Balwinder Singh v. State of Punjab, AIR 1987 SC 350; Ashok Kumar Chatterjee v. State of M.P.,**

**AIR 1989 SC 1890.** 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. In **Bhagat Ram v. State of Punjab, AIR 1954 SC 621**, it was laid down by the Supreme Court that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

21. We may also make a reference to a decision of the Hon'ble Supreme Court in **C. Chenga Reddy and Ors. v. State of A.P., (1996) 10 SCC 193**, wherein it has been observed thus:

“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....”.

22. In **Padala Veera Reddy v. State of A.P. and Ors., AIR 1990 SC 79**, it was laid down by the Supreme Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) 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

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

23. In **State of U.P. v. Ashok Kumar Srivastava, 1992 CrLJ 1104**, it was pointed out by the Supreme Court that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.
24. Sir Alfred Wills in his admirable book “Wills’ Circumstantial Evidence” (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum

probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted”.

25. Five golden principles which constitute *Panchseel* of proof of case based on circumstantial evidence have been laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, which state as under:-

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

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

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

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

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must

show that in all human probability the act must have been done by the accused.”

26. In the matter of **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 1 SCC 681**, the Supreme Court has held as under:-

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

27. The principles of circumstantial evidence is reiterated in **Nizam and another vs. State of Rajasthan, (2016) 1 SCC 550**, wherein the Supreme Court has held that:-

“8. Case of the prosecution is entirely based on the circumstantial evidence. In a case based on circumstantial evidence, 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, forming a chain 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 totally inconsistent with his innocence.”

28. In this case the prosecution presented the following circumstances against the accused :-

1. Confirmation of death of the deceased through FSL and DNA report,
2. Seizure of the deceased's bicycle, his belongings, his burnt bones and the jewellery looted from his shop, based on the memorandum of the accused.
3. Identification of seized items on the basis of memorandum,
4. Evidence of last seen .

29. Now if the circumstances stated by the prosecution are considered, then the Investigation Officer Amit Kumar Beriya (PW-19) has stated in his examination that on 18.01.2019, when the complainant Anand Dewangan informed the Nevai police station about the disappearance of his father Hariprasad Dewangan, a Missing Person Report was registered in the diary number 52 of Nevai police station and a missing person FIR No. 3/2019 was registered. When the missing person was not found during the search and there was a suspicion of kidnapping, as told by the complainant Anand Dewangan, on 20.01.2019, the Crime No. 21/2019 was registered in Nevai police station under section 365 against an unknown accused. Its investigation and missing person

investigation was being done by the police station's sub-inspector Domar Sahu.

30. Investigating Officer Amit Kumar Beriya (PW-19) has further stated in his examination that during the investigation of the crime number registered in Nevai police station, information was received at the police station that a broken mobile SIM was found in the liquor distillery on Utai Road. When he went to the spot and searched for the broken SIM, he did not find it. He had prepared search panchnama Ex.P-16 in this regard. He had prepared spot panchnama Ex.P-17 regarding the mobile found as per the statement of witness Amit Kumar Yadav. The witness has accepted his signature on Ex.P-17. He had seized a seal in the dustbin at the place where garbage was dumped and a mobile on the production of Anil Jaiswal as per Ex.P-18.
31. Investigating Officer Amit Kumar Beriya (PW-19) further stated in his investigation that during the investigation, while searching, the police station received information that a theft had taken place in Patan, in which some suspected accused have been arrested and some suspects have also committed theft in the shop of missing person Hariprasad Dewangan. On the above information, he had issued a Notice Ex.P-36 to Anil Kumar Dewangan, son of the deceased, for cooperation in the proceedings. He had also issued notice to witnesses Horilal Tiwari and Panchram Sahu to join the proceedings. After that, on the information, on 06.02.2019, he

reached Patan village along with the staff of Nevai police station and interrogated the suspects.

32. Anant Dewangan, son of the deceased, PW-2, has clearly stated in his examination that his father Hariprasad used to go to Tanki Maroda by cycle from his Risali residence every day, and after keeping his cycle there, he used to go to Patan by bus, after which he used to return to Maroda by bus in the night and come back to Risali by cycle. Anil Kumar Dewangan (PW-11) has also corroborated this fact and stated that his father Hariprasad Dewangan had a gold and silver shop in Patan in the name of Krishna Jewellers. His father used to live in Risali from where he used to go to Maroda by cycle every day and used to keep his cycle with Sitaram cycle shop owner and go to Patan by bus. When he used to return in the evening, he used to take his cycle came back home. This fact has not been disputed. It has also remained undisputed before the trial Court that on 18.01.2010 when his father did not return, after searching for him, they went to the Police Station Nevai and registered a missing person report.
33. Witness Anant Dewangan (PW-2) and Anil Devangan (PW-11) have also stated that on the second day, 19<sup>th</sup>, they received information on phone from Patan that the channel gate and shutter of their father's gold and silver shop in Patan was half open and the goods were scattered. When they went there, they saw that the goods in the shop were scattered and a theft had

taken place. The witness has also stated that they had then reported the incident to the Patan police station and the Patan police station started an investigation into the theft.

34. On this point the Investigation Officer, Amit Kumar Beriya (PW-19) has stated in his evidence that during the investigation he came to know that among the suspects arrested in the theft case at Patan, some of them had also committed theft in the shop of Hari Prasad Dewangan after which he interrogated those accused in front of witnesses.
35. Investigation Officer Amit Kumar Beriya (PW-19) has further stated in his examination that on 06.02.2019 at about 11.00 am in SDOP Office Patan, he had questioned accused Sanju Vaishnav in relation to the incident in presence of witnesses Anil Kumar Dewangan and Panchram Dewangan. During interrogation, accused Sanju gave information about the incident and told about killing Hariprasad Dewangan and burning the body. After burning the body, they came to the shop of deceased Krishna Jewelers Patan and stole silver items and told that he kept half of the stolen items with himself and gave the other half to accused Akash Kosare and got it recovered. During interrogation, he told that out of the Rs.30,000/- recovered from the bag of the deceased, Rs.5000/- each was to be given and Rs.15000/- was to be his share and the stolen items were to be given to Munir Khan of Raipur. Then, as told by the accused, his memorandum statement Ex.P-10 was recorded in front of witnesses.

36. Investigation Officer Amit Kumar Beriya (PW-19) has further stated in his examination that during the investigation work, he had questioned the accused Akash Kosare in front of witnesses in the SDOP office Patan itself. During the interrogation, the accused Akash Kosare gave information about the kidnapping and murder of the deceased Hariprasad Dewangan and told about dividing the silver jewellery stolen from Krishna Jewellers of the deceased in half, keeping the mobile of the deceased in front of the Utai Desi liquor distillery, throwing the keys of the deceased's shop in the pond and at the time of the incident, digging a pit near Daimar Canal Road and pressing the jewellery of the deceased's shop with a stone and getting it recovered. On which, as told by the accused, he had recorded the memorandum statement of the accused, Ex.P-32, in front of the witnesses.
37. Investigation Officer Amit Kumar Beriya (PW-19) further stated in his examination that he had taken memorandum statements of two other minor accused Manish Thakur and Sajju alias Suraj Sahu in the SDOP office itself. Thereafter, he along with the police staff, witnesses and the accused came to village Khorpa and visited at Kaushalrao's field. Senior Scientific Officer, Senior Medical Officer, Photographer went with him to the place of incident in village Khorma. On reaching there, they saw that paddy stick was lying in the field in burnt state of ashes. Some pieces of bones were also visible on the upper surface. Bone remains of various parts of the deceased's body, burnt paddy stick

ashes in which bones are mixed and burnt paddy stick and three rings of the deceased which were worn on his hand were found. He has also told that three burnt tiffin boxes, wrist watch worn by the deceased, a burnt buckle of the deceased's bag and half burnt medicine box were found from that place. Deceased family members identified the rings by saying that they belonged to the deceased. On which they prepared Identification Panchnama (Ex.P-3) on the spot itself. The witness has also stated that the family members of the deceased identified three burnt tiffin boxes, a wrist watch worn by the deceased, a burnt buckle of the deceased's bag and a half burnt medicine box and said that they belonged to the deceased Hariprasad Dewangan. This witness has authenticated his signature on Identification Panchnama (Ex.P-4). On finding ashes at the scene of incident, he seized it on the spot and packed it in a sealed condition in the presence of witnesses. He prepared the spot panchanama Ex.P-33 in the presence of witnesses at the spot of the incident.

38. Investigation Officer Amit Kumar Beriya (PW-19) has stated in his examination that as per the information given by the accused, he had reached Matiya Khet Road along with all the witnesses, officers and accused where as per the information given by all the accused, they had removed the burnt paddy stick and the ashes were removed by the family members themselves and burnt items were found, which were stated by the family members to be Hariprasad's belonging which included three burnt tiffin boxes of

deceased Hariprasad, burnt wrist watch worn by the deceased, a burnt buckle of the deceased's foot and a half burnt medicine box. The above items were identified by the family members of deceased and were stated to be of Hariprasad Dewangan. He had prepared the Identification Panchnama Ex.P. 4 on the spot itself. The witness has stated his signature on Ex.P-4. After that he had prepared the site panchnama Ex.P-34 in relation to the said items.

39. Investigating Officer Amit Kumar Beriya (PW-19) has stated in his examination that during the investigation, on the basis of memorandum statements given by the accused, he went to the canal road of village Daimar along with his staff, senior officers, witnesses and the accused. After removing the stone at the place told by the accused, a black coloured cloth was found tied. On opening it, 8 pieces of gold coloured bangles, 5 pieces of gold coloured earrings, 10 pieces of gold coloured rings, 3 pieces of black guniya mala with ladiwala, including two broken necklaces, four wick mangalsutra, two lockets of artificial jeweller and 30 pieces of silver rings, 80 pieces of toe rings were found. He had prepared the Identification Panchnama Ex.P-5 regarding the identification of the jewellery found at the spot. He had prepared the panchnama Ex.P-35 in this regard.
40. Investigating Officer Amit Kumar Beriya (PW-19) has stated in his examination that on 06.02.2019 at 14.30 hrs., he had seized and sealed the remains of bones of various body parts of deceased

Hariprasad Dewangan, burnt paddy stick ashes from the place of occurrence, two rings and one ring of deceased Hariprasad Dewangan from village Khorpa Kaushalrao's field *Kotharihar* in presence of witnesses as per seizure memo Ex.P-40. The witness has further stated that on the same date at 15.30 hrs. a thing tied in a black cloth and pressed with a stone was recovered from accused Akash Kosare in village Daimar in front of the witnesses. On being presented at the pointing out of the accused, he had seized it as per seizure memo Ex.P-41. He had seized 8 pieces of gold colour artificial bangles, 5 pairs of jhumkas, 2 pairs of earrings, 10 pieces of rings, 2 pieces of three-stranded bangle, 2 pieces of small necklace, 5 pieces of Kalaguniya garland which had 5 lockets and mangalsutra lockets, silver ring of thirty nagar, toe rings of different model colours and prepared seizure memo Ex.P-41.

41. Investigating Officer Amit Kumar Beriya (PW-19) has stated in his examination that he had given notice to constable Santosh Kumar to make him PM in Government Hospital Patan. He had issued work certificate Ex.P.54 to constable Yuvraj for depositing the seized remains or bones in Medical College Raipur, on which his signature is there. Similarly, constable Yuvraj Bandhe was issued a work certificate Ex.P 55 for getting bedhead ticket of Medical College Raipur, on which his signature is there.
42. Investigation Officer Amit Kumar Beriya (PW-19) has stated in his examination that notice Ex.P-37 was issued to witness Anil Kumar



Dewangan for questioning him in connection with incident. The witness has stated that he has signed the said notice Ex.P-37. He had prepared a map of the crime scene on 06.02.2019 at 16.00 hrs. in the presence of witness Anil Dewangan at the crime scene. In which place 'A' is Kaushalrao's field near Sonpur Nala where Hariprasad Dewangan was murdered and burnt in paddy stick and about 250 meters south of 'A' is 'B' Main Road. The said crime scene has been marked 'A' in red colour. 'P' which has been marked in red colour is the road from Patan to Tarrighat. 'C' which has been marked in red colour is Sonpur Nala and is about 200 meters southeast of 'A'. 'B' which has been marked in red colour is Kotharikhar where farming is done. The said Crime Detail Form is Ex.P. 38 on which his signature is there. He had prepared the search panchnama Ex.P. 20.

43. From the above statements of the Investigating Officer, it is clear that when the Investigating Officer received information that some known missing persons have been arrested in connection with the theft at Hariprasad's jewellery shop in Patan, he started interrogating those suspects. During the interrogation, he recorded the memorandum statements of the accused.
44. So far as the argument made by learned counsel for the appellants that the memorandum statement taken under Section 27 of the Evidence Act is not admissible as evidence for confession of crime is concerned, the same is completely true, but the most important requirement for Section 27 of the Evidence Act

is that the statement of the accused should reveal such isolated knowledge of his which is related to the commission of the said crime and such disclosure has been made from the isolated knowledge of the accused.

45. The Hon'ble Supreme Court in the matter of **Mehboob Ali & Anr. v. State of Rajasthan** (2016) 14 SCC 640 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 para 16, 17 & 18 has held as under:-

“16. This Court in *State (NCT of Delhi) v. Navjot Sandhu* (2005) 11 SCC 600 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 Kottayha v. King 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. King 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. King 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 Section 27 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.”

46. Investigation officer Amit Kumar Beriya (PW-19) further stated in his examination that on the basis of the memorandum, the witnesses had gone to the field of Kaushal Rao in village Khorpa along with the accused. On reaching there, they saw that the fodder was lying burnt in the field in a state of ashes. Some pieces of bones were visible on the upper surface. Three rings, which the deceased used to wear on his fingers, were found in the fodder.
47. Anant Kumar Dewangan (PW-02), witness of the memorandum and seizure, in his examination, confirming the memorandum and seizure proceedings of the Investigating Officer, has stated that on 06.02.2019, on being called by the police, they reached the office of the Sub-Divisional Officer of Police Patan where all the officers were present. The police officers told them that in connection with their father's case, they have arrested 4 people who have to be questioned in front of them. The witness has told that Sanju Vaishnav was questioned in front of him. The things told in the questioning were recorded by the police station in-charge Amit Kumar Beriya who was present and was writing. In the same interrogation, accused Sanju had told that after killing his father, to hide the dead body, they went to Kotri Khar of village Khorpa and burnt the dead body of his father in the haystack of the field. He has told that he had reached Kotri Khar near Khorpa Sonpur Nala along with his brothers, policemen and the four accused. On removing the burnt paddy stick at that place, pieces of human

bones and a horse shoe ring and two silver rings were found. The witness has told that the burnt rings belonged to his father. This witness identified the tiffin box, burnt wrist watch, medicine bottles, bag buckle used by his father and told that it was used by his father. This fact has also been corroborated by witness Anil Kumar Dewangan (PW-11) and he has admitted that he has signed the Panchnama proceedings in which Exs.P-3 and P-4 were identified.

48. Another witness of the seizure and memorandum, Pancharam Dewangan, PW-4, has stated in his examination that on 06.02.2019, they went to the SDOP office Patan on being called. Four boys were sitting there, among whom accused Akash Kosare and Sanju Vaishnav were also present. The witness has told that police had questioned Sanju Vaishnav. During the questioning, the accused had told about burning Hariprasad in the field in haystack near Khorpa village. Memorandum Ex.P-10 of which was written by the police. The witness has certified his signature on Ex.P10.
49. On this point, detailed cross-examination of both the witnesses including the Investigating Officer has been done on behalf of the accused. Investigating Officer Amit Kumar Beriya, on being asked in his cross-examination, has told that on the basis of the memorandum of the suspected accused, he came to know about the place of incident being Kothari Khar in the field of Kaushal Rao at village Khorpa. The witness has accepted that the

memorandum statement of Ex.P.10, which is of accused Sanju Vaishnav and the memorandum statement of Ex.P.32, which is said to be of Akash Kosare, does not mention "Kothari Khar, field of village Khorpa Kaushal Rao". But the Investigating Officer himself has told that the place is near Koshalnala.

50. It is clear from the perusal of Ex.P. 10 that it mentions a field near Sonpur Nala. Both the witnesses of the memorandum and seizure have stated that the place from where the bones and ashes were found is a field near village Khorpanala. The map of the said place (Ex.P-38) is said to be prepared by Amit Kumar Beriya. On observing Ex.P-38, it is clear that the place is 250 meters inside the main road which is the way from Patan to Tarrighat which is near Sonpurnala and is a Kotharikhar where farming is done. Certainly, that place is not a public place where every person can know about the presence of burnt bones. The bones have been seized from that place only after being told by the accused. It is also an important fact that it is a Kotharikhar where farming is done and it is not a place where burnt bones are easily available.
51. The Investigating Officer has stated in his examination that three rings and one bracelet were seized from that haystack which were identified by Anil Kumar Dewangan. He has stated that he had prepared the Identification Panchanama (Ex.P-3) on the spot and had signed it himself. Anil Kumar Dewangan (PW-2), the witness of Ex.P-3, while accepting his signature in the said document, has



stated that when they removed the burnt ashes of the haystack, they found a horse shoe ring and two silver rings there. He had identified the said rings because they belonged to his father and were made in his shop. Thus, it cannot be believed that the said memorandum and seizure are illegal.

52. The Investigation Officer has stated in his examination that he had sealed the remains of the seized bone and the ashes of the burnt paddy stick and sent it for forensic examination. In this case, senior scientist Anupama Meshram has been examined. Anupama Meshram, (PW-15), has stated in her examination that she was informed about the site inspection of crime number 21/19 of Police Station Nevai by the Additional Superintendent of Police Gilai on 06.02.2019 over the phone. On 06.02.2019 itself, at 9.00 am, she reached the site of the incident, village Khorpa Kotharikhar and the site inspection was done in the presence of Superintendent of Police, Durg Additional Superintendent of Police Milai and other officers. Farm owner Kaushal Rao and the family members of the deceased and other villagers were present at the site of the incident. The site of the incident is Kaushalrao's field in village Khorpa.
53. Anupama Meshram (PW-15) has stated in her examination that the farm owner Kaushal Rao told him that after harvesting paddy, the straw was kept in a heap in his field. The accused accepted that they had placed the body of the deceased on this heap and burnt it. On removing the ashes of the burnt straw were carefully

and examining the sticks, many small pieces bones were found burnt. All of them were collected in a cartoon box. No big bones were found in it. A stone studded ring and a plain ring of the deceased were found from the burnt ashes which were identified by the sons of the deceased at the scene of the incident itself. She directed the Investigating Officer to pack the half burnt pieces of bones, ring, hair found in the car etc. found at the scene of the incident in a proper manner and send them to Medical College Raipur and FSL Raipur. He had prepared a report regarding the inspection of the scene of the incident which is Ex.P-46.

54. In front of the trial Court, Dr. Snigdha Jain (PW-16), who is the head of the Forensic Medical Department, was examined by the prosecution. In her examination, she has stated that on 07.02.2019, a cloth bag was brought to the department in front of her in which three sealed bags were found. There were plastic jars bearing the seal of Medical Officer Patan Durg and two white labels were affixed on each one. The witness further stated in his examination that from among the material received for examination, samples of the following materials were kept safe-

01. One premolar, one molar, one canine tooth and a piece of radius bone and talus bone were preserved for DNA.

02. All the remaining bones, ashes, soil and straw were sealed in plastic jars and forwarded to FSL for chemical testing. All the secured articles were sealed, signed and labelled and handed over to the concerned constable.

55. According to opinion of Dr. Snigdha Jain (PW-16), all the bone fragments belong to a single human male (found in recognizable skull and long bones). Only part of one suture was present in which the age of the deceased was found to be above 60 years. Porosity was present in all the long born pieces. No opinion has been given about the corrugation of the bones as most of the bones were small in size, fragments and were charred and were not apposed to each other. No opinion has given on the cause of death, but it cannot be said whether signs of burning were present, ante mortem or post mortem. The witness has certified his signature on his report Ex.P-47.
56. From the said forensic evidence, the prosecution has brought out the fact that on the basis of the memorandum of the accused, the burnt bone pieces which were seized from the Kotharikhar field near the drain belonged to deceased. Although the witness of the forensic report, Dr. Snigdha Jain (PW16) has not given her clear opinion but has confirmed that all the bone pieces belonged to a human being whose age was above 60 years.
57. The aforesaid suggestion was put to Dr. Snigdha Jain (PW16) in cross-examination on behalf of the accused, she has clearly stated that it is not the case that she had received only one piece of skull bone for examination. Although the witness has accepted the possibility of 5 years increase or decrease in the age of the suture, but this mere suggestion does not disprove the fact that the opinion given by her on the basis of the suture that the bones

belong to a human being and that the age of that man is more than 60 years is not correct.

58. From the above investigation in the case, it is evident that on the basis of the memorandum of the accused, the pieces of bones were seized from the farm Kotharikhar of Kaushal Rao. After forensic examination of the pieces, it was found that the pieces were of a human being and that man was more than 60 years of age. Now the question to be considered in this case is whether the person in respect of whom the forensic report has been received is the deceased Hariprasad?
59. In this case, the report of DNA Unit of State Forensic Science Laboratory, Ex.C-1 has been presented. Although the said document has not been produced by calling the witness. But under section 293 Cr.P.C., the chemical examiner is exempted from appearing for evidence, that is, the document produced by him is admissible in evidence till the other party applies to call that witness to contradict it. In this case, no objection has been raised by the accused to produce the document and a request was made not to call the Senior Scientific Chemical Examiner for evidence.
60. Dr. Pradeep Kumar Chandrakar, PW-13, has stated in his examination that he is working as a pathologist in the District Hospital, Durg. He has taken the blood samples Anant Kumar and Satish Kumar Dewangan for DNA test in his presence and sealed in a bottle which was seized by the police as per seizure memo of Ex.P-42. Witness Kundanlal (PW-18) has stated this fact in his

examination and has accepted his signature on Ex.P. 42 and has stated that the seizure was done from Dr. Chandrakar. In cross-examination, he has accepted that he did not receive any written complaint directly from the police station but while clarifying, the witness has stated that a letter was written to the Civil Surgeon by the Nevai police station and through the Civil Surgeon he was directed to take blood.

61. Perusal of the test report of Ex.C-1 goes to show that a definite result cannot be given due to non-availability of DNA profile. From the perusal of the said report, it is clear that blood samples were sent along with the hair from the head for which DNA test was called.
62. So far allegations of the accused that the bones seized at the pointing out of the accused were not sent for DNA testing is concerned, the entire circumstances cannot be ignored on the basis of not getting any conclusive result due to DNA profile not being generated. There is no direct evidence in this case and the case is based on circumstantial evidence.
63. In criminal cases, although it is necessary to prove the charge of crime that evidence regarding the death of the person suspected to have died should be disclosed, but there are many cases where the Courts have imposed death sentence even when the dead body has not been recovered or has not been identified. There the Court has to establish a strong circumstantial evidence and such presumptions should be made which cannot be

rebutted. The Hon'ble Supreme Court has held in ***Raghav Prapanna Tripathi v. State of U.P.* 1963 (3) SCR 239** that the circumstances which were disclosed before the Court should be proved by the Court. It only pointed towards the murder being committed by the accused. In murder cases it is not always necessary to establish all the elements for "corpus delicti". The fact of death of the deceased should be established like other circumstances. In many cases it is difficult to establish "corpus delicti". If the emphasis is always on recovery of the body then the accused will try very hard to destroy the body after the murder and completely escape from conviction. The Hon'ble Supreme Court has held that therefore, in a case of murder, conviction should be based on such evidence which is admissible in the Court. This should be done on the basis of direct and circumstantial evidence even in the event of non-recovery of the dead body. In this regard, the judgment of the Hon'ble Supreme Court in ***Daily Administration v. Tribhuvan Nath* 1996 (8) SCC 250** is noteworthy. While there was a situation of riot after the assassination of the former Prime Minister Indira Gandhi, a Sikh was murdered and his body was burnt and thrown in a nearby flowing drain. In this case the Hon'ble Supreme Court had held that Non Production of "Corpus delicti" was not fatal to the prosecution case.

64. Now it is to be considered that how the accused are involved in the crime and whether the human bones of the dead body which

has been burnt are of the deceased Hariprasad. In this regard, an important link of the prosecution is the last time the deceased was seen with the accused.

65. On this point, Domar Sahu, PW-5, has stated in his examination that after the missing person case, during the investigation on 19.01.2019, when he got the information that the shutter of Hariprasad Dewangan's shop in Patan was open and the goods were stolen and when Hariprasad Dewangan's bicycle was found in damaged condition in Risali Sector and Anand Dewangan lodged a report on the suspicion of kidnapping, he had lodged the First Information Report (FIR) of Ex.P-13 in relation to crime number 21/2019.
66. Witness Domar Sahu (PW-5) further stated in his examination that on 20.01.2019, on receiving information about missing person Hariprasad's bicycle being found in Risali Sector, he went to Risali Sector Block No. 321 where the bicycle lying there was identified as Hariprasad's bicycle by witnesses Virendra Dewangan and Satish Dewangan. The witness has stated that on seeing a grey coloured cloth under the seat of the said bicycle, he identified the missing person. The said cycle was identified by Anand, son of Isan. Whose identification panchanama is Ex.P-2. The witness has certified his signature on Ex.P.2 and has stated that he had seized the said cycle on the spot in Risali Sector in front of witnesses as per the seizure memo of Ex.P-15.

67. In cross-examination, it has been suggested by the accused that in Ex.P-12C, which is the diary of missing person information, there is no mention of the bicycle being Herojet Gold Green in colour, 22 inches and having grey cloth behind the seat, which the witness has accepted. He has also accepted that on 20.01.2019, no one had come to Nevai police station and lodged a report under Section 365 IPC. But the witness has clarified that on the second day of the incident, on being suspicious about the information of missing person Hariprasad Dewangan's shop being found open with the shutter open and the bicycle being found in an abandoned condition, he had lodged a report under Ex.P-13 on the written request of the son of the missing person. Although it is accepted that the name of the informant is not mentioned in Ex.P-13, but on this basis alone it cannot be believed that the bicycle was not seized from the designated place.
68. So far as the bicycle belonging to the deceased is concerned, witness Anil Kumar Dewangan (PW-11) has stated in his examination that he had received information about a bicycle kept in Risali Sector. There the bicycle was seized and his brother Anant Dewangan had identified it. Anant Dewangan (PW-2) has corroborated this fact in his examination-in-chief and has stated that he received information on phone that a bicycle has been found near Risali Sector and it has to be identified. Then he had gone to Police Station Nevai with his brothers and along with the police he had gone to the place where the bicycle was found,



Risali Sector Block No. 321. The said bicycle was lying near a tree. Herojet was written on it and it was a green-coloured bicycle. The witness has clearly stated that he had identified it to be his father's bicycle because of the grey coloured cloth lying under the seat because his father used to wipe the bicycle with a grey coloured cloth only. The witness has certified his signature on Ex.P-2. In cross-examination though he has admitted that Herojet 22 inch cycle is easily available in green colour in the market, however it is a common situation that when a person buys something then he or his family members using a bicycle for a long time, then they can easily identify their belongings among many similar items. Here the complainant has clearly stated that his father used to wipe the bicycle with the grey cloth kept under the seat. This is certainly a sign of the bicycle's unique identity.

69. The counsel for the accused has argued that the identification proceedings were conducted in the presence of the police, which is not sustainable. Anant Dewangan (PW-2) has admitted the presence of policemen during the identification proceedings, but on this basis alone the identification proceedings conducted by him cannot be considered tainted. Otherwise also the seizure of the bicycle has not been done on the identification of the accused, due to which recovery from a public place does not contaminate its recovery.
70. From the analysis of evidence so far in the case, it is proved that the cycle on which the complainant's father used to commute was

seized from Risali Sector Block No. 321. In the case, the prosecution has presented evidence of the last time the deceased was seen with the accused, which is an important situation. In this regard, witness Gaurav Swarnkar (PW-3) has been examined. Gaurav Swarnkar (PW-3) has told in his main examination that on the date of incident, at around 7-8 pm, he was going on a two-wheeler Bullet near Shitala temple to drink tea with his friend Satyajit Rawat. During that time his friend told that someone had been hit by a four-wheeler. When they got closer they saw that the car had stopped and the cyclist had been hit by the car. Some people from the car answered and picked up the person who had fallen from the bicycle and put him in the car. It has been told that he and his friend were in the driver's side. The driver of the car had told that they were taking the cyclist to the hospital. After that he picked up the cycle and kept it in the front of block. The witness has told that the cycle was in a damaged state. Later the police had questioned him and asked him to identify the photographs of some people. The witness has accepted his signature in the identification sheet Ex.P-9. Although this witness has denied any action before him, but on being asked he has clearly accepted that the car which hit the cyclist on the date of the incident was a KUV. The witness has also accepted that after the accident he had told his friend Satyajit to drive fast and let us see. He has also accepted that when they reached near the car the car driver was smoking a cigarette. He has also accepted that he had also told his friend that how the driver is smoking a

cigarette comfortably even after causing an accident. This witness has accepted that the injured elderly person was lifted and made to sit in the car by the persons sitting behind the car. He has also accepted that at that time they were about to call on 112 number and the driver of the car told them not to call, they are taking him to hospital. On being asked about the identification proceedings, the witness has accepted that he knows councilor Raju Mandavi. The witness has also accepted that he was called to the councilor's office and was shown photographs of 4-5 people. He has also accepted that he identified the photograph of the person riding a bicycle on the day of the accident from the said photograph. Regarding the same photograph, identification memo of Ex.P-9 was prepared on which he signed. The witness has also accepted that during the identification his friend Satyajit Rawat was also present and in this regard he had taken his statement after enquiring.

71. In his cross-examination, he has accepted the suggestion that the photograph of the person riding the cycle was published in the newspaper many times. The witness has also accepted that he was not given any written notice to give statement in the Nevai police station. Another witness of the last seen, Satyajit Rawat (PW-6) has also stated in his main examination that the incident took place in the month of January 2019. On the date of incident, at about 7 o'clock, when he was going along with his friend Gaurav Swarnkar to Sheetla Mandir, Maroda to have tea, he saw

that a car accident had taken place a little before Sheetla Mandir. The witness has told that they saw that the car driver had hit the cyclist. When they reached the accident spot, the car was standing there. They stopped the car driver and took the car keys from the car. The witness has told that at the same time two people sitting in the back of the car got down and picked up the cyclist injured in the accident and kept him in the car and said that they will take him to the hospital. After getting into the car, those people said that they had made a mistake, they are taking him to the hospital, so give them the keys. The witness has further told that then he gave the car keys to those people and kept the bicycle of the injured old man in front of the BSP quarters situated in front of the accident spot.

72. In his cross-examination, witness Satyajit Rawat (PW-8) has stated that he is not aware of any further proceedings, but he has accepted his signature on the identification memo of Ex.P-9. On being asked by the prosecution, this important independent witness also accepted that when they reached after the accident, they saw that the car driver was smoking a cigarette. On which his friend Gaurav Swarnkar had told him that he was smoking cigarettes comfortably after the accident. It has also been told that he had asked the driver how he was driving. This witness has also admitted that when they reached the spot the injured person was moaning. This witness has admitted that when he asked to call

112, the car driver folded his hands and said, don't call, we are taking him to the hospital.

73. Witness Satyajit Rao, PW 8, has also admitted that he recognizes ward councilor Raju Mandavi. On 03.05.2019, when he was called in the councilor's office in Maroda for identification proceedings, after seeing the photo, he told that it is the photo of the person injured on the date of the accident. While accepting the presence of Gaurav Swarnakar during that process, the witness has accepted his signature on identification process Ex.P-9 and it was transcribed by the councillor.
74. In cross-examination, it was suggested to this witness on behalf of the accused that posters of missing person were put up at various places and Newai Police showed him the posters before identification. It was also suggested to this witness that only one photograph was shown to him but he clarified that photographs of the old man were shown.
75. Raju Madavi (PW-17), who got the identification proceedings done, although has accepted his signature on Ex.P-9 in the main examination, but said that he does not remember the proceedings as they are 3 years old. On being suggested, he has admitted that his councillor office is located in Mohari Maroda Ward No. 44. The proceedings were held in his councillor office on 03.05.2019. On that day, a photograph of a person was brought to the councillor office, who was identified by the witnesses present there. This witness has also admitted that during the identification

proceedings, the persons who did the identification, after seeing the photograph, had said that the said photograph was of the deceased person named Hariprasad Dewangan. He has also admitted that during the identification proceedings, accused Satyajit Rawat, Gaurav Swarnkar etc. were present. He has also accepted that after identifying the photograph in the councillor's office, the identity panchanama of Ex.P-9 was prepared in his handwriting. He has also accepted that after the identification proceedings, the signatures of all the people present there were taken by him and after preparing the identification panchanama, he handed over the document to the police. The witness said that before the identification proceedings, the SHO of Nevai had issued him a notice of Ex.P-48 for identification, on which his signature is there and during the identification proceedings, information was issued to the witnesses, the acknowledgement of which was given to him.

76. All the three witnesses of the identification proceedings have said to sign at the police station and have accepted that they did not know the deceased or other witnesses in any previous way. Many times it happens that when the witnesses appear in the Court, they do not understand and answer the questions asked in the examination and cross-examination. No witness has made any such statement in the cross-examination that during the identification proceedings whom they had identified as old person was not a cyclist who they are saying had an accident with a car

on the date of the incident. In the cross-examination on behalf of the accused, they have clearly stated that they did not know the deceased or his family beforehand. In such a situation, what is the reason that they are identifying that person and claiming that he is the deceased. No explanation has been given by the accused. Thus, the prosecution's identification proceedings cannot be considered to be tainted merely because the photograph was published in the newspapers.

77. In such a case, it becomes clear from the above evidence that on the date of the incident, the deceased Hariprasad had an accident with a car in Risali Sector while he was riding a bicycle and the driver of the car and the people sitting in it had told the important witness who saw him for the last time that they had taken the elderly Hariprasad to the hospital in the car. These witnesses have made it clear that they had picked up the injured bicycle which was in damaged condition and kept it in front of the block. In this case, the map of Ex.P.14 has been presented. Witness Domar Sahu (PW-5) who had seized the bicycle from that place has stated in his examination that he had seized the bicycle from Block No. 321 of Risali Sector in front of witnesses. That bicycle belonged to the deceased Hariprasad has been identified and certified by his son. The witness has certified the map of Ex.P-14 as made at the place where Hariprasad's bicycle was found and has signed it. On examining the map of Ex.P-14, it is clear that the place where the accident took place is near Sheetla Mandir and

there is a road going from Maroda to Risali Basti. The accident at the same place has been confirmed by the witnesses Gaurav Swarnkar (PW-3) and Satyajit Rawat (PW-6) who had seen it for the last time. Both these witnesses have stated with full force that they had picked up the damaged cycle and kept it in the block in front and the seizure proceedings were carried out from the same place. In such a situation, there is another link in the prosecution's evidence that accident with deceased Hariprasad's cycle was occurred due to the collision and the deceased was taken away in the same car by the people in the car.

78. Nilesh Tiwari (PW-8) has stated in his examination that he knows accused Sanju Vaishnav. His father late Kaushal Prasad Tiwari had employed Sanju Vaishnav as a driver for site and field work. His father passed away on 06.05.2018. His father had a Mahindra KUV-100 metallic colour car number CG 04 LJ-9533 in his name. He is using it after his father's death. The witness has stated that at the time of the incident he was out and the accused came and talked to his family and took the vehicle saying that he was taking it to his family and brought it back after 3-4 days and parked it at his house. The witness has stated that after a few days the police came and questioned him and then he informed the police about Sanju Vaishnav taking the car. He admitted his signature on witness notice Ex.P-19, car search panchnama Ex.P-20, seizure memo Exs.P-21, 22. On being asked by the prosecution, he has accepted that Sanju Vaishnav was driving his father's car since



2017. Although the witness has said that he does not remember Sanju taking the car on 06.01.2019 and bringing it back on 07.01.2019, again taking it on 15.01.2019 and bringing it back on 20.01.2019, but he has stated on his own that on 16.01.2019, accused Sanju had taken his car. This witness has accepted that the police had seized his car. First, this witness has denied finding pieces of hair from the car, but then he has accepted that the small milky hair pieces found from the car were seized by the police as per Ex.P-22. This witness has also accepted that the police did not pressurize him to sign any document.

79. In cross-examination, Nilesh Tiwari (PW-8) has admitted that his car is not in the name of K.D. Tiwari. He has also admitted that on 15.01.2019 he was in Delhi but on the suggestion that on 15.01.2019 Sanju In response to the question that Vaishnav did not ask for his car to go to Bilaspur for a wedding, the witness has said that he had asked for it from his mother, who had given the car to Sanju Vaishnav after asking him. Arguing on this fact, the accused's lawyer has said that in his statement under Section 161 80 CrPC, the witness has said that he had asked for the vehicle on rent from him, whereas before the court he has said that he had asked for it from his mother. But on the basis of this one discrepancy alone, the entire statement of this witness does not become unreliable. It becomes clear from the statements of this witness that on 15.01.2019, the accused Sanju Vaishnav had taken Nilesh Tiwari's car KUV 100, which belonged to Mahindra

Company, on rent. Witness Gaurav Swarnkar has also confirmed that the car with which the deceased Hariprasad the cyclist was hit was a KUV. The examiner of the vehicle Mahaveer Gendre (PW-12) has stated in his examination that on 06.02.2012, on being called by the Nevai Police Station, he went to the Nevai Police Station and examined the Mahindra Company's vehicle CG 04 LJ-9533. There was a sketch in the front dashboard of the vehicle and the panel was flattened. The vehicle was in working condition and there was no fault in it. The witness has stated his signature on Ex.P.45.

80. The most important point in this case that the deceased was last seen being picked up in the car which was hired by the accused Sanju Vaishnav from Nilesh Tiwari on the date of incident. In the light of this theory, the accused is liable to explain that what had happened after he was last seen. No explanation of any circumstances has been given by the accused. In the case it is proved that on his indication burnt pieces of bones were recovered and along with them the ring worn by deceased Hariprasad and the watch used by him, tiffin etc. have also been seized. The prosecution has also proved the fact that accused Sanju Vaishnav had brought Nilesh Tiwari's Mahindra car on the date of the incident. Hariprasad who was going on a bicycle was hit by that car near Risali Sector Sheetla Mandir. The last witness seen has also proved that the cyclist who was hit by the said Mahindra car was deceased Hariprasad. No explanation of this

circumstance has been given by the accused that on the date of the incident when they were in the Mahindra car, when Hari Prasad was put in the car to be taken to the hospital, how did the items used by Hari Prasad and the burnt remains of bones reach to farm at Kotharikhar?

81. During the arguments, the learned counsel for the accused has also expressed that conviction cannot be made on the basis of last seen unless the death is proved to be of homicide in nature. If we consider the present case, then in this case, burnt bones of a human being have been found in haystack, whose identity has been established by the prosecution as the deceased Hari Prasad. Certainly, the situation of burning a person to ashes in a haystack cannot be considered different from homicidal nature.
82. In the present case, the fact of recovery on the identification of the accused has been fully proved by the evidence of the prosecution and the chain of circumstances has also been linked to the evidence. In such a situation, the accused does not get the benefit of it.
83. In this case, it has also been argued on behalf of the accused that no motive for the murder has been explained. Motive is a mental state in which the person who commits the crime can tell in the most accurate manner why he has committed the crime, but such an expectation is not imaginable from the accused who commits the crime. In murder cases, many times the proof of motive is not found but it is not fatal for the prosecution.

84. In such a situation, the prosecution has proved all the circumstances mentioned against the accused beyond doubt with circumstantial evidence. The prosecution has proved before the its evidence that the accused on the date of the incident dashed the deceased Hariprasad by a car and made him fall, after that kidnapped him in a car and committed robbery in his jewellery shop. The accused killed Hariprasad and then with the intention of destroying the evidence, burnt his body in the haystack in Kaushal Rao's field and also burnt his belongings. The accused have also been convicted under Section 120B IPC. In this case, evidence has been given regarding everyone's involvement in kidnapping deceased Hari Prasad and killing him and then with the intention of destroying the evidence, burnt his body in the haystack in Kaushal Rao's field and also burnt his belongings and also that the looted goods have been divided by all the accused.
85. From the above analysis, we are of the considered opinion that the prosecution has been successful in proving its case beyond reasonable doubt and the learned trial Court has not committed any legal or factual error in arriving at the finding with regard to the guilt of the appellants.
86. Accordingly, the appeal being devoid of merit is liable to be and is hereby **dismissed**.
87. The accused / appellants are stated to be in jail. They shall serve out the sentence awarded by the trial Court by means of the

impugned judgment of conviction and order of sentence dated 24.02.2021.

88. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-  
**(Arvind Kumar Verma)**  
Judge

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

**Head-Note**

In a case of murder, conviction should be based on such evidence which is admissible in the Court and this should be done on the basis of direct and circumstantial evidence even in the event of non-recovery of the dead body.