



2025:CGHC:20054-DB

**AFR**

## **HIGH COURT OF CHHATTISGARH AT BILASPUR**

### **CRA No. 145 of 2021**

**1** - Kumari Megha Goyal D/o. Mohan Goyal Aged About 20 Years R/o. Dayalband, Gurunanak School, Near Fci Godown, Lingiyadih, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

**--- appellants(s)**

**versus**

**1** - State Of Chhattisgarh Through Police Station Sarkanda, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

**--- Respondent(s)**

### **CRA No. 437 of 2021**

**1** - Smt. Baby Mandle W/o Balaram Mandle Aged About 40 Years R/o Village Amne, Police Station Kota, District Bilaspur Chhattisgarh, Present Address Near Gurughasidas Mandir, Tarbahar, Police Station Tarbahar, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

**2** - Yogesh Mandle S/o Balaram Mandle Aged About 26 Years R/o Village Amne, Police Station Kota, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

**3** - Balaram Mandle S/o Late Sahasram Mandle Aged About 46 Years R/o Village Amne, Police Station Kota, District Bilaspur Chhattisgarh, Present Address Rajkishore Nagar, Police Station Sarkanda, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

**4 -** Abhishek Mandle S/o Balaram Mandle Aged About 21 Years R/o Near Gurughasidas Mandir Tarbahar, Police Station Tarbahar, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---**appellants(s)**

**Versus**

**1 -** State Of Chhattisgarh Through Station House Officer Police Station Sarkanda, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

...**Respondent(s)**

---

**In CRA No. 145/2021**

For appellants	:	Mr. Siddhant Tiwari, Advocate.
For Respondent/State	:	Mr. S.S. Baghel, Dy. G.A.

**In CRA No. 437/2021**

For appellantss	:	Mr. Shivendu Pandya, Advocate
For Respondent/State	:	Mr. S.S. Baghel, Dy. G.A.

---

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

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

**Judgment on Board**

**Per Arvind Kumar Verma, Judge**

**01.05.2025**

**1.** Heard Mr. Siddhant Tiwari, learned counsel for appellants in CRA No. 145/2021 and Mr. Shivendu Pandya, learned counsel for the appellantss in CRA No. 437/2021. Also heard Mr. S. S. Baghel, Dy. G.A., appearing for the respondent/State.

**2.** This criminal appeal filed by the appellantss/accused under Section 374(2) of the Code of Criminal Procedure, 1973 (now Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023) is directed against the impugned judgment of conviction and order of sentence dated 19.01.2021,

passed by Court of learned 1<sup>st</sup> Additional Sessions Judge, Bilaspur District Bilaspur (C.G.) in Sessions Case No. 66/2019, whereby the appellantss have been convicted and sentenced as under:-

<b>Conviction under Sections</b>	<b>Sentence</b>
Section 364 of the Indian Penal Code ( <i>for short, 'IPC'</i> )	Rigorous imprisonment ( <i>for short, 'R.I.'</i> ) for 10 years (for all the appellantss) and fine of Rs. 500/-, in default of payment of fine, one month additional R.I. to each appellantss
Section 328 of the Indian Penal Code ( <i>for short, 'IPC'</i> )	Rigorous imprisonment for 10 years (for all the appellantss) and fine of Rs. 500/-, in default of payment of fine, one month additional R.I. to each appellantss
Section 302 read with Section 120-B of the Indian Penal Code ( <i>for short, 'IPC'</i> )	Rigorous imprisonment for life (for all the appellantss) and fine of Rs. 500/-, in default of payment of fine, one month additional R.I. to each appellantss
Section 201 of the Indian Penal Code ( <i>for short, 'IPC'</i> )	Rigorous imprisonment for 3 years (for all the appellantss) and fine of Rs. 500/-, in default of payment of fine, one month additional R.I. to each appellantss

**3.** Case of the prosecution, in brief, is that missing report was registered as Missing Report No. 01/2019 in Police Station Sarkanda, District Bilaspur (C.G.) by complainant Rajkumari Ratde stating inter-alia that her son Tarun Ratde went to his work of Computer Operator at Traffic Police Station Bilaspur on 01.01.2019 at about 2:00pm and when he did not returned back till 10:00pm, the family members inquired about him and when no information was received, a missing complaint was filed before P.S. Sarkanda bearing missing person complaint No. 1/19 on 02.01.2019 wherein suspicion was raised against the co-accused Baby Mandle.

**4.** On the basis of memorandum statement of Balaram, the body was recovered (Ex.P-12), Merg intimation was recorded vide Ex.P45 and FIR under Section 365/34, 120 IPC bearing No. 9/2019 was registered vide Ex.P/46 &. Ex.P47. Spot map (Ex.P/27) was prepared by the Patwari. The accused was taken into custody vide Ex.P/ 20 to 24, and Property seizure memo vide Ex.P/ 32, 35, 41 & 42. A crime details form was prepared by the Police vide Ex.P/50. The seized property was sent to the State Forensic Laboratory for examination vide Ex.P/51 and the report was received. Investigation Officer left for scene of occurrence and after summoning the witnesses, inquest over the dead body of deceased was prepared.

**5.** Dead body of the deceased was sent for postmortem to the Community Health Centre, Kota, District Bilaspur (C.G.). Dr. Pradeep Agrawal (PW-19) conducted postmortem vide Ex.P-44 and found following injuries :-

(i) The external examination of the dead body, it was found that neck and legs of the deceased were bent and tied towards the front. Both hands were tied at the back with a rope and dupatta. Both legs were tied near the heels with a green towel and a white dupatta was tied around neck, which was pasted with leucoplast.

(ii) There was no post mortem stiffness on the dead body, there was bleeding from nose and mouth, face was swollen, eyes was closed, cornea of the eye had turned white, conjunctiva was congested and blood had accumulated beneath it, eyeballs were protruding out, mouth was half open, tongue was out and it was chewed between the teeth, face was congested, nails were congested, stomach was bloated, skin was peeling off from chest at many places, upper part of chest was more congested, on removing ligature from the neck, skin of neck was torn from the front side, ligature mark was present on the back side of the neck. Salt was present on the clothes.

He opined that cause of death was Asphyxia caused by throttling and death was homicidal in nature.

**6.** Statements of the witnesses were recorded under Section 161 of the Cr.P.C. After investigation, it was found that Tarun Ratde died on account of Asphyxia caused by throttling by the accused/appellants. The accused was arrested for offence under Sections 302, 201, 365, 120B, 328, 342, 364 of IPC, 1860 and arrest/court surrender memo was prepared vide Ex.P/20 to

24. Thereafter, charge-sheet was filed before the 1<sup>st</sup> Additional Session Judge, Bilaspur District Bilaspur (C.G.) for hearing and disposal in accordance with law.

7. The accused/appellants abjured the guilt and entered into witness. In order to bring home the offence, the prosecution examined as many as 30 witnesses and exhibited 70 documents. The defence has neither examined any witness nor has exhibited any document.

8. The trial Court upon appreciation of oral and documentary evidence on record and considering that it is the appellantss who has committed the murder of her husband, convicted and sentenced her under Section 302 r/w 120 B, 201, 328, 364 of the IPC, against which the instant appeal under Section 374(2) of the Cr.P.C. has been preferred.

**Relation between the appellantss and family of deceased:-**

S. No.	Particular	Relation
1	Baby Mandle (accused No. 1) (appellants No. 1 herein)	<ul style="list-style-type: none"> <li>wife of Balram Mandle (accused / appellants No. 3 herein)</li> <li>Mother of Nilesh Mandle (died), Yogesh Mandle (accused / appellants No. 2) &amp; Abhishek Mandle (accused/ appellants No. 4)</li> <li>Second wife of Shantanu Ratde (PW-2)</li> <li>Step mother of deceased "Tarun Ratde"</li> </ul>
2	Megha Goyal (accused No. 05)	<ul style="list-style-type: none"> <li>Allegedly earlier was in love relation with Nilesh Mandle (died)</li> <li>Allegedly had an love relation with the deceased "Tarun</li> </ul>

		Ratde”
3	Tarun Ratede (deceased)	<ul style="list-style-type: none"> <li>• Son of Shantanu Ratde (PW-2) &amp; Rajkumari Ratde (PW-1)</li> <li>• Brother of Pooja Ratde (PW-3)</li> <li>• Step son of Baby Mandle (accused No. 1)</li> </ul>

9. Mr. Siddhant Tiwari, learned counsel for appellants and Mr. Shivendu Pandya, learned counsel for the appellantss argued jointly that the story of the prosecution is based on the fact that the chloroform was purchased from the shop of Mehta by producing her adhar card, however the owner of the shop PW-16 has specifically stated that the police did not seize any document apart from a bottle of chloroform and the purchase bill. As per the seizure memo (Ex.P-19), a glass bottle with a tag in English stating chloroform was seized from co-accused Baby Mandle, however the Investigating Officer (PW-23) has specifically stated in his cross examination that the bottle had a tag with a name Glycerin. The mobile number used during the time of offence i.e. 7440882496 belonged to PW-10 and the prosecution has not been able to prove that how the same came to be used by the present appellants.

10. Learned counsels further submit that on the basis of suspicion the accused persons were implication in crime in question only on the basis of memorandum statement of witnesses and seizure. The most important witness of the complainant Rajkumari Ratde gave a contradictory statement before the learned trial Court to her statement under Section 161 of Code of Criminal Procedure, therefore her statement cannot be relied upon and the case of the prosecution became highly doubtful. Moreover, they submit that the investigating officer produced a CD (article 1) with the charge-sheet con-

taining photographs and video of crime scene but the same could not be relied upon as the same has not been supported by a certificate under Section 65-B of the Indian Evidence Act, 1875.

11. Learned counsels for the appellants submit that there is no eye witness or last seen in the instant matter and the entire case is based on circumstantial evidence but the chain of circumstances to implicate the present appellants with the aforesaid crime could not be completed by the prosecution. It is well settled principles of law laid down by the Hon'ble Supreme Court in the matter of ***Vijay Shankar v. State of Haryana*** (2015) 12 SCC 644 stating that when there is no eyewitness to the occurrence and the entire case is based upon circumstantial evidence. The normal principle is that in a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these 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 of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence. Therefore, the present appellants are entitled to be acquitted from crime in question. Therefore, even if the entire case is taken at its face value, the case would not travel beyond Section 304 Part-II of the IPC. Evidence adduced on behalf of the prosecution is suspicious in nature and same is not safe for placing reliance that too for conviction of the appellants for commission of heinous offence of murder, therefore, the appellants are entitled for benefit of doubt. He further submits that seizure witness (PW-7) has



turned hostile. The prosecution has failed to prove by cell phone location that the present appellants was involved in commission of the offence.

**12.** On the other hand, Mr. Wasim Miyan, learned Panel Lawyer, appearing for the respondent/State, supports the impugned judgment and submits that the statement of the prosecution witnesses namely Smt. Rajkumari Ratde (PW-1), Shantanu Ratde (PW-2), Pooja Ratde (PW-3), Viplav Yadav (PW-4), Imran (PW-7), SI R.A. Yadav (PW-23), Dilip Tiwari (PW-17), Manoj Kumar Garewal (PW-18), Dr. Pradeep Agrawal (PW-19), Dr. Sandeep Dwivedi (PW-20), ASI Naresh Sahu (PW-25), Ramesh Kumar (PW-9) clearly proved that the deceased has been murdered by the accused/present appellant. The accused/appellants has failed to explain the death of the deceased. The FIR of the incident was lodged by Rajkumari Ratde (PW-1) mother of the deceased. He contended that the prosecution has been able to bring home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellants for offence under Section 302 r/w 120 B, 201, 328, 364 of the IPC and therefore, the appeal deserves to be dismissed.

**13.** In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.

**14.** The first question for consideration would be, whether the trial Court was justified in holding that death of deceased Tarun Ratde was homicidal in nature ?

**15.** The trial Court, relying upon the statement of Dr. Pradeep Agrawal (PW-19), who has conducted postmortem on the body of deceased Tarun Ratde, vide Ex.P/44, has clearly come to the conclusion that death of de-

ceased Tarun Ratde was homicidal in nature due to strangulation. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellants. We hereby affirm the said finding.

**16.** The next question for consideration would be, whether the trial Court has rightly held that the appellants are author of the crime by relying upon the following circumstances:- (i) Homicidal death was proved by the prosecution as per postmortem report (Ex.P/44) of Dr. Pradeep Agrawal (PW-19), who conducted postmortem. (ii) As per the case of the prosecution, the fact of death of deceased Tarun Ratde was within the knowledge of the appellants, however, there was no any explanation given by the appellants in their statement under Section 313 of the Cr.P.C. Thus, burden of proof was on the appellants to explain such circumstance, which they failed to explain.

**21.** In the present case, homicidal death as a result of strangulation has not been substantially disputed on behalf of the appellants. On the other hand, it is also established by the evidence of accused/appellants in their memorandum statements, Investigating Officer R. A. Yadav (PW-23), FIR (Ex.P/12), Dr. Pradeep Agrawal (PW-19) and the postmortem report (Ex.P/44) that the death of deceased Tarun Ratde was homicidal in nature.

**17.** As regards complicity of the appellants in crime in question, conviction of the appellants is substantially based on the evidence of Rajkumari Ratde (PW-1) Viplov Yadav (PW-4), Investigating Officer R. A. Yadav (PW-19) and Dr. Pradeep Agrawal (PW-19) Viplav Yadav (PW-04) and also the

accused/appellants themselves have narrated the whole incident in their memorandum statement.

**18.** Rajkumari Ratde (PW-1) is the mother of the deceased and has stated that on 01.01.2019, her son left house for his work at 02:00 pm in the afternoon. When he did not return home, then on 02.01.2019 she along with her daughter went to Police Station Sarkanda for filing missing report. She states that when she returned home from the Police Station, she came to know that her husband Shantanu had a fight with Baby Mandle and her husband had started living in a separate rented house in the same locality and she also came to know that Baby Mandle had a son who had died, in whose connection, the appellants suspected her husband and deceased Tarun. On 03.01.2019, the police told her husband Shantanu that the accused/appellants had kidnapped her son Tarun, murdered him and buried the body by digging a pit in village Amne, then her husband and his friend went with the policemen to the spot place where the body was buried.

**19.** Viplov Yadav (PW-4) is the friend of the deceased and has stated in his statement that Baby Mandle's son Nilesh Mandle was murdered a few days ago, the appellants suspected Tarun Ratde for his murder and in order to take revenge for the same, they killed Tarun Ratade. The statement of him is unchallenged and unrebutted in cross-examination.

**20.** Investigating Officer R.A. Yadav (PW-23) has stated that during investigation, he called the accused Baby Mandle, Balram Mandle, Abhishek Mandle, Ms. Megha Goyal and Yogesh Mandle to Chhath Ghat Police Assistance Center and after questioning them in the presence of witnesses Viplov Yadav and Imran, the accused Balaram Mandle had given memoran-

dum statement (Ex.P-7) wherein the accused Balaram Mandle stated that on 01.01.2019 they buried the Tarun Ratde in his pump house in village Amne. Panchnama (Ex.P-11) of the place mentioned by the accused was prepared and on digging, the body of the deceased was seen and lumpy salt was found in the soil, which was probably put to decay the body quickly. he had hidden the spade, shovel and crowbar used in digging the pit to hide the dead body in the pump house of his field. As per the statement of accused Balram Mandle, one piece of iron crowbar, one piece of shovel and one piece of shovel and one piece of crowbar were seized from his pump house in village Amne in front of witnesses Viplav and Imran. He stated in his statement that Abhishek Mandle give memorandum statement (Ex.P4) and told about the hiding the dead body of Tarun, mobile of accused Megha, mobile of deceased Tarun, motorcycle No. CG 10 NA 0652, shoes, bandage wheel and these mobiles, motorcycle, shoes, bandage wheel have been seized vide Ex. P-16 and Ex.P-17. He stated that the accused Ms. Megha Goyal had given a memorandum statement (Ex.P-9) before the witnesses that she has given a photocopy of the Aadhar Card to buy chloroform in the shop of Mehta and the same has been seized (Ex.P-29). He stated that accused Yogesh Mandle had given his memorandum statement (Ex.P-10), he had hidden the car bearing number CG 10 ZD 1631 in which he had taken the dead body to village Amne and had got recovered, on the basis of this, he had seized car and a Bajaj Company motorcycle as per the details in the seizure memo (Ex.P-18). He stated that the accused Baby Mandle has given her memorandum (Ex.P-6) and stated therein that she has hidden the chloroform bottle in a rented house and as per her statement, he had seized a 500

ml bottle containing 150 ml chloroform and a mobile with sim number .....881 from the rented house in Rajkishore Nagar (Ex.P-19).

**21.** Viplav Yadav (PW-04) who is the friend of deceased and memorandum statement of accused/appellants was recorded in front of him, has stated that the accused Abhishek told him that he hid the shoes and bandage chakri of deceased Tarun, with which his mouth was wrapped, in a pond near village Ghutkur and hid the motorcycle and mobile phone of the deceased Tarun near a pond near village Sendri. The shoe and bandage chakri of deceased Tarun Ratde were seized from the Accused Abhishek Mandle.

**22.** Irfan Khan (PW-7) who is also the friend of deceased and memorandum statement was recorded in front of him, stated in his statement that accused Baby Mandle has told the police that the bottle of chloroform was kept in a rented house at Rajkishore Nagar, then he went along with the police officials and took out the chloroform bottle in which some chloroform was left, the chloroform bottle was seized from accused Baby Mandle, whose seizure memo (EX.P-19)

**23.** Dr. Pradeep Agrawal (PW-19) conducted postmortem vide Ex.P/44 and found above stated injuries on the body of the deceased and opined that cause of death was Asphyxia caused by throttling and death was homicidal in nature.

**24.** It is the case of no direct evidence, rather conviction is based on circumstantial evidence. 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***<sup>1</sup>, 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.”*

**25.** On 03.01.2019, the memorandum of appellants were recorded vide Ex.P-6, Ex.P-7, Ex.P-8 Ex.P-9 and Ex.P-10, earlier the accused Megha Goyal was in love with Tarun Ratde who has called the Tarun Ratde for to a rented house at Rajkishore Nagar, where the deceased was administrated

---

<sup>1</sup> (1984) 4 SCC 116

sleeping pills in a coffee and the deceased was made to smell chloroform after which his hands and leg were tied with the rope and the deceased was killed. Later on the deceased was taken to village Amne in car bearing No. CG 10 ZD 1631 and the deceased was buried in the field of accused Balaram Mandle at village Amne. As per statement of the accused persons, the dead body of the deceased was recovered (Ex.P-12), seizures of spade, mobile phone, car used for the offence, motorcycle and shoes of the deceased, bottle of chloroform etc., were made and the postmortem of the dead body of the deceased was conducted.

**26.** It is a well settled law that when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. There are three possibilities; One is that he himself would have concealed it. Second is that the accused would have seen somebody else concealing it. And the third is that he would have seen told by another person that it was concealed there. But if the accused declines to tell the criminal Court that his knowledge about the concealment was on account of one of the last two possibilities, the criminal Court can presume that it was concealed by the accused himself.

**27.** In this case, from the memorandum statement of the accused-appellants specially Balaram stated before the police officials, it transpires that the dead body of the deceased was recovered from the field of Balaram accused-appellant and the deceased was buried in the field of Balaram's House, this information was only within the knowledge of the accused/appellants and all the accused in their memorandum statement stated about burying of the deceased-Tarun Ratde. There is no explanation given by the ac-

cused/appellants, they have seen somebody else for concealing him. Therefore, the accused-appellants themselves would have concealed it.

**28.** The Supreme Court in the matter of *Perumal Raja alias Perumal v State, Rep. By Inspector of Police*<sup>2</sup> 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.

**29.** According to the Investigating Officer PW-23 R. A. Yadav when the investigation in respect of missing person was made he heard that Baby Mandle’s son Nilesh Mandle was murdered a few days ago, the appellants suspected Tarun Ratde for his murder and in order to take revenge for the same, the appellants killed Tarun Ratade. and on that basis strict investigation was made, therefore, the memorandum statement made by the accused/appellants vide Ex.P/6 to Ex.P/10 would be memorandum under Section 27 of the Evidence Act. In the memorandum the narration of incident and commission of offence was made by the accused/appellants, 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.

**30.** The Supreme Court in the matter of *Boby v State of Kerala*<sup>3</sup> held that 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 as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the informa-

---

2 2024 SCC OnLine SC 12

3 2023 SCC OnLine SC 50



tion 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.

**31.** According to the prosecution, the incident happened inside the room and buried in a field. The map of the place of incident is Ex.P/25 & 26. It shows that Panchnama (Ex.P-11) of the place mentioned by the accused was prepared and on digging, the body of the deceased was seen and lumpy salt was found in the soil, which was probably put to decay the body quickly. Seizures of spade, mobile phone, car used for the offence, motorcycle and shoes of the deceased, bottle of chloroform, was seized at the instance of accused/appellant in the memorandum statement. The seized articles were sent for FSL. These articles, which were sent for FSL, recovered from the spot in normal circumstances would not contain the bloodstains.

**32.** The Supreme Court in the matter of ***Mehboob Ali and Another v State of Rajasthan***<sup>4</sup> 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;

---

4 (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. Vide Article 04, Mobile No. ... 5084 was in the name of Megha Goyal and Mobile No. ....2496 was in the name of Radheshyam Dewan. From the IMEI Numbers, it transpires that both the numbers were used by accused Ms. Megha Goyal from the same mobile number. From perusal of the call details of the Mobile No. 2496 of accused Ms. Megha Goyal (Ex.P-70) and call details of the Mobile No. ....3326, it is proved that three call were made from Mobile No. 2496 to deceased Tarun Ratde's

mobile No. ....3326. On 01.01.2019 from 14:27:18 to 14:47:14 that was the last call on deceased's phone. It is proved that the deceased last talked to accused Ms. Megha Goyal from Mobile No. ....2496.

**35.** Further more, Mobile Number .....881 was issued in the name of accused Abhishek Kumar Mandle and the said mobile phone was seized from him on the basis of the recovery memo of accused Baby Mandle. On perusing the call details of the said phone number from 01.11.2018 to 03.01.2019 (Ex.P-77) and the call details of mobile number .....084 issued in the name of accused Ms. Megha Goyal from 01.11.2018 to 03.01.2019, it makes it clear that the accused Ms. Megha Goyal was in contact with accused Abhishek Mandle or his mother accused Baby Mandle. On 01.01.2019, both the mobile numbers were in frequent ten times contact between 11:14:17 to 13:13:56. It transpires that the accused Megha Goyal had called Tarun Ratde on phone and called him to the rented house at Rajkishore Nagar, which makes it clear that Tarun Ratde was called to the rented house by deceitful means.

**36.** 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 Baby Mandle's son Nilesh Mandle was murdered a few days ago, the appellants suspected Tarun Ratde for his murder thereby a dispute aggravated which has been stated by Viplav Yadav (PW-4). On the date of incident 01.01.2019 tarun Ratde went to his work of Computer Operator at Traffic Police Station Bilaspur on 01.01.2019 at about 2:00pm and when he did not returned back till 10:00pm, the family members inquired about him and when no information was received, a missing complaint was filed before P.S. Sarkanda. When the missing report was being investigated by the police, the Investigating Officer PW-23 R. A. Yadav came to know about

the relation between the deceased and the appellants. Thereafter, the investigation was made by the police and on pressurizing it was disclosed that the appellant- Baby Mandle along with co-accused started planning and called the accused Ms. Goyal for contacting Tarun Ratde. On the date of incident, Ms. Megha Goyal called the deceased to a rented house at Rajkishore Nagar, Bilaspur and Baby Mandle hid somewhere in the rented house and Abhishek Mandle and Yogesh Mandle and Balaram were hid outside the rented house and when the deceased came to the rented house, the deceased was administered sleeping pills in a coffee by accused -Ms. Goyal and when he was not sleeping then the deceased was made to smell chloroform by the appellants after which his hands and leg were tied with the rope and the deceased was killed. Later on the deceased was taken to village Amne in car and the deceased was buried in the field of accused Balaram Mandle.

**37.** 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.

**38.** The Supreme Court in the matter of ***Ram Narayan Popli v Central Bureau of Investigation***<sup>5</sup> held thus at paras 344 & 345 :

---

5 (2003) 3 SCC 641

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.

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).]

**39.** The recovery of dead body was not from an open place. It was inside inside the field of accused Balaram. More so the dead body was buried in a pit which was dug in the field of Balaram. When the police officials and witnesses went to the spot the field was found i.e. discovery of fact. Thereafter, on digging, the body of the deceased was seen and lumpy salt was found in the soil, which was probably put to decay the body quickly. The said discovery of fact was made by accused Balaram Mandle. Dead body having been taken

out it was identified to be the dead body of Tarun Ratde by PW-2 Shantanu Ratde. Thereafter it was sent for postmortem. In the postmortem, PW-19 Dr. Pradeep Agrawal opined that the cause of death was Asphyxia caused by throttling and death was homicidal in nature.

**40.** At the instance of the accused/appellants, recovery were made i.e. spade, three mobile phones, car used for the offence, motorcycle and shoes of the deceased, bottle of chloroform from which the incident happened. There is no any explanation given by them.

**41.** 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. All the aforementioned circumstances indicate towards the guilt of the accused which makes the conduct of the accused/appellants 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***<sup>6</sup> 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 *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

---

6 (2018) 18 SCC 654



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 considering the statements of the prosecution witnesses, the finding recorded by the trial Court in its judgment, the fact that the appellants has not offered any explanation under Section 313 of the Cr.P.C. and considering memorandum statements of the accused/appellants disclosing the fact of the accused/appellants that how they conspired the whole incident and the deceased was administered sleeping pills and thereafter he was made to smell chloroform and killed him and thereafter buried him and and at the instances of the accused/appellants, aforesaid seizure were made, therefore, the act of the accused/appellants by pressing the neck of the deceased clearly shows the intention of the accused/appellants to kill the deceased therefore, it is clearly and reliably shown that it was the accused/appellants, who caused the death of the deceased by throttling as aforesaid, in addition to this, it is also notable that the evidence shows that the deceased was the stepson of the accused-Baby Mandle, in such a case, the knowledge of the fact that the deceased died due to the injuries found on the neck of the deceased as aforesaid, is a fact of specific knowledge and in this regard, there is no defence on the part of the accused/appellants has been taken during the examination

and therefore, we are of the considered opinion that the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted the accused/appellants for the offence under Sections 302 r/w 120 B, 201, 328, 364 of the IPC. We do not find any illegality or irregularity in the findings recorded by the trial Court.

**44.** For the foregoing reasons, both the criminal appeals, *sans substratum*, are liable to be and are hereby **dismissed**.

**45.** It is stated at the Bar that the appellants are in jail, they shall serve out the sentence as ordered by the learned trial Court.

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

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

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

CRA No. 145 of 2021

KUMARI MEGHA GOYAL **versus** STATE OF CHHATTISGARH  
&

CRA No. 437 of 2021

SMT. BABY MANDLE **versus** STATE OF CHHATTISGARH

**HEAD NOTE**

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 निकालें, जिससे कि अभियुक्त का दोष सिद्ध हो सके।