

**(2025) 12 UK CK 0052**

**Uttarakhand HC**

**Case No:** Criminal Appeal No. 299 Of 2017

Rajesh Gulati

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

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**Date of Decision:** Dec. 17, 2025

**Acts Referred:**

- Indian Penal Code, 1860 - Section 201, 302
- Code Of Criminal Procedure, 1973 - Section 164, 313
- Evidence Act, 1872 - Section 27, 106

**Hon'ble Judges:** Ravindra Maithani, J; Alok Mahra, J

**Bench:** Division Bench

**Advocate:** Neelima Mishra Joshi, Siddhartha Bisht, S.K. Mohanty, M.S. Bisht

**Final Decision:** Dismissed

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**Judgement**

Ravindra Maithani, J

1. The challenge in this appeal is made to the judgment and order dated 31.08.2017/01.09.2017 passed in Sessions Trial No. 49 of 2011, State v. Rajesh Gulati, by the Additional Sessions Judge, Dehradun, whereby the appellant has been convicted under Section 302, 201 IPC and has been sentenced as under:-

(i) Under Section 302 IPC Life imprisonment and a fine of Rs. 10,00,000/-. In default of payment of fine, to undergo further imprisonment for a period of two years.

(ii) Under Section 201 IPC Imprisonment for a period of three years and a fine of Rs. 5,00,000/-. In default of payment of fine, to undergo further imprisonment for a period of six months.

**FACTS**

2. The prosecution case as unfolded is as follows. The appellant and the deceased Anupama Gulati fell in love and married on 10.02.1999. After marriage, they both

went to United States of America (USA), where they stayed upto 2008. In USA, the appellant had started beating the deceased; he was aggressive towards her. In the year 2006, they were blessed with twin children, a baby boy and a baby girl. In the year 2008, they came to India. The appellant left the deceased in her parental home saying that he is going to USA again so as to wind up his activities there. In the year 2009, when the Green Card of the deceased was going to expire and she was not aware about the location of the appellant, she decided to go to USA so as to find the whereabouts of the appellant. She booked her ticket and sent an email to the appellant about her program. But, the appellant replied that he is not in USA and he is returning.

3. Some time in the month of March or April in the year 2009, the appellant returned to Delhi. Thereafter, the deceased, the appellant and their children shifted to Dehradun, where they stayed in a rented house. The deceased revealed to her brother PW 1 Sujan Kumar Pradhan that during the period when the appellant was not with them in Delhi, the appellant had married a woman, namely, PW 25 Jhuma Dutta in Calcutta. The appellant was advised to forget PW 25 Jhuma Dutta and stay with the deceased and his children. The deceased wanted to grow her children with the appellant. The appellant had started beating the deceased and he would often compare her with his second wife PW 25 Jhuma Dutta. PW 1 Sujan Kumar Pradhan, the brother of the deceased had advised the deceased that she should return to Delhi, but the deceased insisted that this is what the appellant wants so that he may stay with his second wife and she did not pay heed to the advice of her brother.

4. In the month of September, 2010, the appellant purchased a house. For the housewarming, the father and the sister of the appellant had visited Dehradun and they took fight with the deceased and the deceased was beaten up. Puzzled with all these things, the deceased went to a Tarot Card Reader PW 17 Smt. Preeti Mittal, who got a complaint lodged before the Protection Officer PW 8 Ms. Ramindri Mandarwal. PW 8 Ms. Ramindri Mandarwal got a compromise done and it was decided that the appellant would give Rs. 20,000/- to the deceased every month and they may shift to their home after 15.10.2010. It is the prosecution case that the last time, the deceased called her brother PW 1 Sujan Kumar Pradhan at 02:30 p.m. on 17.10.2010. She called on that day twice or thrice to the informant that the appellant has become much aggressive. PW 1 Suraj Kumar Pradhan advised the deceased that she should deposit the passports of her children to PW 17 Smt. Preeti Mittal. After 17.10.2010, no one did talk to the deceased. Last time, PW 1 Suraj Kumar Pradhan, brother of the deceased had talked to the deceased on 17.10.2010. On 19.10.2010, PW 1 Suraj Kumar Pradhan received an email from the email ID of the deceased in which it was conveyed that the deceased and the appellant have tried to forget their past and the in-laws of the deceased would not interfere in their affairs. Again in the month of November, 2010, the appellant sent an email to PW 1 Suraj Kumar Pradhan requiring the passports of the children, which was replied by PW 1 Suraj Kumar Pradhan that he did not have those passports. On 25.11.2010 also, PW 1

received an email from the email ID of his sister informing that they are happily living together as a family and she will make telephone call to him. When till December, 2010, the deceased did not make any call to PW 1 Suraj Kumar Pradhan, PW 1 Suraj Kumar Pradhan visited the house of the deceased on 12.12.2010 along with PW 2 Madhav Paudiyal. The deceased was not found in her house. PW 1 Suraj Kumar Pradhan gave the passport of the deceased to his friend PW 2 Madhav Paudiyal. When PW 2 Madhav Paudiyal visited the house of the appellant, the appellant told him that the deceased has left the house. Thereafter, PW 1 Suraj Kumar Pradhan lodged the missing report, Ex. A1, based on which Chik FIR was lodged on the same day at 02:20 pm. at Reporting Police Chowki Bindal (ROP Bindal), Police Station Cantt., District Dehradun. The police thereafter, along with PW 1 Suraj Kumar Pradhan and PW 2 Madhav Paudiyal, visited the house of the appellant. The appellant was not there. He was called. He opened the lock and after interrogation, he confessed that he killed his wife and kept the dead body in the deep freezer after cutting it into pieces and has thrown some of the body parts in forest. The police did recover the dead body from the deep freezer; the cutting instruments and other articles were also recovered. An inquest report of the recovered body was prepared on 12.12.2010. Thereafter, its post-mortem was done.

5. It is the further case of the prosecution that when the matter was being investigated, the police recovered a laptop from the house of the appellant on 14.12.2010 and on 15.12.2010, at the instance of the appellant, a foot was recovered from the forest, of which a recovery memo was prepared and it was examined by the doctors. The police did also recover the bills of the electronic stone cutter and deep freezer and also interrogated the vendors. In fact, while purchasing the deep freezer, the appellant had given cheques. Those documents were also collected. The deep freezer was sent through delivery challan, on which the appellant had signed. It was sent for forensic science laboratory for forensic examination. The finger prints were also lifted from the place of the incident. The Investigating Officer sent the recovered articles for forensic examination. The Investigating Officer also prepared the site plan. The children of the deceased were examined under Section 164 of the Code of Criminal Procedure, 1973 (the Code).

6. After investigation, the charge sheet, Ex. A-86, was submitted against the appellant under Sections 302 & 201 IPC.

7. On 28.06.2011, the charges under Sections 302 & 201 IPC were framed against the appellant. The appellant denied the charges and claimed trial.

8. In order to prove its case, the prosecution examined as many as 42 witnesses. After the prosecution evidence was concluded, the appellant was examined under Section 313 of the Code. According to him, the witnesses have falsely deposed against him; he has not committed any offence; he has falsely been implicated. According to him, he has been prosecuted because PW 1 Suraj Kumar Pradhan wanted to grab his property; his children are American citizens and PW 1 Suraj

Kumar Pradhan wanted to get undue advantages of their American citizenship and finally PW 1 Suraj Kumar Pradhan had an apprehension that the deceased may demand her share in her fathers property.

9. After hearing the parties, by the impugned judgment and order, the appellant has been convicted under Sections 302 & 201 IPC and sentenced as stated hereinbefore.

10. Heard learned counsel for the parties and perused the record.

### **ARGUMENTS**

11. Learned counsel for the appellant submits that the recovery from the house of the appellant is doubtful; PW 3 Smt. Anubha Mittal and PW 4 Ved Prakash Mittal have not supported the prosecution case. Learned counsel also raised the following submissions in her arguments:-

(i) If the dead body of the deceased was found in the deep freezer in the house of the appellant on 12.12.2010, the deep freezer ought to have been seized on that day itself, but it was seized on 17.12.2010, which doubts the recovery.

(ii) The appellant had no motive to commit the crime. Had he wanted to kill the deceased, he would have killed her and disposed the body and he could not have kept the body inside the house for long.

(iii) There is no evidence that the black bag, in which allegedly the dead body was kept in the deep freezer was purchased by the appellant.

(iv) There is no finger print report.

(v) The deceased was in the habit of leaving her house quite often.

(vi) There is no evidence that the relationship between the appellant and the deceased was unusual or there were any unusual activities between the deceased and the appellant, therefore, no presumption can be drawn that the appellant killed the deceased.

(vii) According to the prosecution, the appellant made a disclosure statement that in a sudden fight he pushed his wife, which hit her on head and as such there is no **mens rea** to kill his wife.

(viii) Confession made before the police cannot be read into evidence.

(ix) There is no independent witness of recovery of foot from the forest on 15.12.2010.

(x) PW 1 Sujana Kumar Pradhan is not an eye witness.

12. On the other hand, learned counsel for the State submits that the prosecution has been able to prove the charges against the appellant; the appellant and the deceased both were staying together; the deceased was seen last time with the

appellant on 17.10.2010 and thereafter she was not seen. Learned State Counsel also submits that on 12.12.2010, the dead body of the deceased was found inside the house of the appellant, which was in total control of the appellant; along with the dead body, a saw, electric cutter, etc. were also recovered from the house of the appellant; at the instance of the appellant, a body part of the deceased was recovered from the forest on 15.12.2010, which has been proved by the witnesses. Learned State Counsel submits that the appellant had strong motive to eliminate his wife because he was having an extra-marital relations with PW 25 Jhuma Dutta; the relations between the deceased and the appellant were not good; PW 8 Smt. Ramindri Mandarwal and PW 17 Smt. Preeti Mittal have stated that, in fact, the deceased was quite in trouble due to beating and torturous and aggressive behaviour of the appellant; the prosecution has also proved that, in fact, the electric cutter and other instruments were purchased by the appellant from the shop of PW 9 Shakeel Ahmad Khan and PW 13 Prateek Bansal; it has been proved by the prosecution witnesses; the forensic science laboratory report and the post-mortem report support the confirm the prosecution case.

13. Before the arguments are appreciated, it would be apt to examine as to what the witnesses have stated.

14. There are 42 prosecution witnesses. They may be classified under various heads, namely:-

(i) The witnesses of factum of recovery of the dead body, electronic cutter, bag, deep freezer, etc. from the house of the appellant on 12.12.2010, 14.12.2010, 15.12.2010 and 17.12.2010, which include the recovery of dead body from the deep freezer from the house of the appellant, the recovery of laptop and other articles; recovery of decomposed foot from the forest on 15.12.2010 and recovery of laptop on 14.12.2010.

(ii) Witnesses of forensic reports.

(iii) Witnesses of motive.

(iv) Doctors; and

(v) Other witnesses.

15. PW 1 Suraj Kumar Pradhan, PW 2 Madhav Paudiyal, PW 3 Smt. Anubha Mittal, PW 4 Ved Prakash Mittal, PW 5 constable Pradeep Rawat, PW 6 SI Sohan Rawat, PW 7 Dr. Sandeep Kumar Sharma, PW 14 Ajay Kumar Sharma, PW 24 Sunil Agarwal, PW 28 Charanjeet Kaushal, PW 29 SI P.D. Bhatt, PW 33 constable Satish Chandra, PW 34 constable Vijay Lal and PW 36 Arvind Singh Rawat are the main witnesses. They have stated about the recovery, the chronology and have stated the prosecution case in detail.

16. PW 1 Suraj Kumar Pradhan is the informant. He is the main witness in the case. He has narrated the entire story of the deceased and the appellant. According to him, both the appellant and the deceased were in love and they married on 10.02.1999. They went to USA, where they were blessed with twin children, a baby boy and a baby girl in the year 2006. In USA, the appellant would beat the deceased up and was aggressive to her. They stayed in USA till 2008. In 2008, the appellant dropped her in her parental home. Till 2009, nothing was heard about the appellant. Some time in the month of March or April in the year 2009, the appellant returned to Delhi. Thereafter, the deceased, the appellant and their children shifted to Dehradun, where they stayed in a rented house. During the period, when the appellant was away from Delhi, he had gone to Calcutta, where he married another woman PW 25 Jhuma Dutta. The appellant thereafter was advised to leave PW 25 Jhuma Dutta and stay with the deceased.

17. According to PW 1 Suraj Kumar Pradhan in the month of June, 2009, he visited Dehradun and gave a SIM card to the deceased, which was in the ID of PW 2 Madhav Paudiyal. The deceased had then revealed that for the sake of her children, she wants to live with the appellant. The appellant would harass and beat up the deceased in Dehradun and would compare her with his second wife. The deceased would convey it to this witness PW 1 Suraj Kumar Pradhan. PW 1 Suraj Kumar Pradhan had also advised the deceased to leave the appellant and return to home, but she did not agree to it. In the month of September, 2010, the appellant purchased her house. For housewarming, the father and the sister of the appellant also came to Dehradun and they beat up the deceased. According to this witness, at it, the deceased visited PW 17 Preeti Mittal, a Tarot Card Reader, who got a complaint lodged before PW 8 Ms. Ramindri Mandarwal, where it was settled that the appellant would give Rs. 20,000/- per month for expenses to the deceased and after 15th October, they will shift in the new home.

18. According to PW 1 Suraj Kumar Pradhan, last time, the deceased talked to him over telephone on 17.10.2010 informing that the appellant was much aggressive. She was advised to deposit the passports of her children with PW 17 Smt. Preeti Mittal. Thereafter, according to PW 1 Suraj Kumar Pradhan, he did not have any conversation with his sister, the deceased. Though, this witness received two emails from the email ID of the deceased, which revealed that she is happy in her home and she would not be harassed by her in laws. In the month of November, 2010, the appellant also sent an email to PW 1 Suraj Kumar Pradhan that he is not able to find the passports of his children and demanded the passports. To it, PW 1 Suraj Kumar Pradhan replied that he did not have the passports.

19. On 12.12.2010, PW1 Suraj Kumar Pradhan visited Dehradun along with PW 2 Madhav Paudiyal. This witness revealed the problem to PW 2 Madhav Paudiyal that he is not able to talk to the deceased, his sister. He gave the passport of his sister to PW 2 Madhav Paudiyal and asked him to visit the house of the appellant and give

the passport of his sister. PW 2 Madhav Paudiyal knocked at the door of the appellant where he met him. On inquiry, the appellant revealed that the deceased has gone to her friends house. Thereafter, PW 1 Suraj Kumar Pradhan called the appellant and inquired about the deceased, to which the appellant stated that she has left the house for 2-3 months. On it, PW 1 Suraj Kumar Pradhan questioned the appellant that the deceased cannot leave her children. But, the appellant did not reply and he disconnected the phone.

20. Thereafter, according to PW 1 Suraj Kumar Pradhan, he gave a missing report at the ROP Bindal, which is Ex. A-1. After lodging of the report, he along with PW 2 Madhav Paudiyal, PW 29 SI P.D. Bhatt and others visited the house of the appellant. The house of the appellant was locked. PW 1 Suraj Kumar Pradhan telephoned the appellant and asked him to return home. PW 29 SI P.D. Bhatt also telephoned the appellant and asked him to return home. The appellant returned and opened the door. This witness and all other persons entered into the room of the appellant. In the meanwhile, the landlord also reached there. The appellant was questioned. He broke down and told that he has killed the deceased and he has kept her body in deep freezer after cutting it into pieces. There was a deep freezer in the room. The appellant opened it. There was a bag in which the dead body of the deceased was kept. Her lower limbs and left arm were not on the body. The body was nude. The appellant was asked about the missing organ of the body, to which he replied that he has cut those parts into pieces and has thrown them in the forest. The police took into custody all these articles and prepared the recovery memo Ex. A-2 to A-5.

21. Inquest of the dead body, Ex. A-6, was prepared, which was signed by PW 1 Suraj Kumar Pradhan also. According to PW 1 Suraj Kumar Pradhan, thereafter the police again called him on 14.12.2010 and took him to the house of the appellant where the laptop was recovered and a recovery memo of it, Ex. A-7, was prepared. This witness has also proved the bag, Material Ex. 1, a wood chopper, Material Ex. 3, saw, Material Ex. 4, stone cutter, Material Ex. 5. He also proved the deep freezer, Material Ex. 7.

22. PW 2 Madhav Paudiyal is the person, who is the friend of PW 1 Suraj Kumar Pradhan. He accompanied PW 1 Suraj Kumar Pradhan on 12.12.2010. He corroborated the statement of PW 1 Suraj Kumar Pradhan and proved his signature on the recovery memo, Ex. A-2 to Ex. A-6. He has also proved the articles, which were taken by the police into the custody.

23. PW 3 Smt. Anubha Mittal is the landlady. She has stated that the appellant was a tenant in their house, where his wife and two children were also staying. This witness tells that after Dussehra, she did not see the wife of the appellant. According to PW 3 Smt. Anubha Mittal, on 12.12.2010, the police had visited the house of the appellant. She also reached there. She did not enter into the room and the PW 1 Suraj Kumar Pradhan came outside of the room crying that the appellant has killed his sister and kept her dead body in deep freezer. This witness was declared hostile

and cross-examined by the prosecution.

24. PW 4 Ved Prakash Mittal is the landlord. According to him, on 12.12.2010, the police had reached at their property and he heard that a dead body has been recovered. He was also declared hostile and was examined by the prosecution.

25. PW 29 SI P.D. Bhatt was incharge of ROP Bindal when missing report was lodged by PW 1 Suraj Kumar Pradhan. According to him, after lodging of the missing report, Ex. A-1, chik FIR, Ex. A-38 was lodged at the ROP Bindal. Thereafter, he was handed over investigation of the case by the inspector. He made a telephone call to the appellant and reached at the house of the appellant. Thereafter, this witness has corroborated the statement of PW 1 Suraj Kumar Pradhan. He has also stated about the recovery memos prepared by him on 12.12.2010. He also arrested the appellant. He proved the arrest memo, Ex. A-39. According to him, on 13.12.2010, he produced the appellant before the Magistrate and took remand of the appellant and had sought permission for recording the statement of the appellant. According to this witness, on 14.12.2010, a laptop was recovered from the house of the appellant. This witness has identified his signature on the recovery memo of the laptop. This witness is also a witness of recovery of foot at the instance of the appellant from the forest on 15.12.2010, of which recovery memo Ex. A-8 was recorded. According to PW 29 SI PD Bhatt, when the appellant was arrested, four mobile phones were also recovered from him, which were sent for forensic examination to FSL, Chandigarh. He has proved these mobiles, laptop, deep freezer and other articles.

26. PW 5 constable Pradeep Rawat was also posted at ROP Bindal on 12.12.2010 when the FIR was lodged in the case. He also accompanied PW 29 SI PD Bhatt and PW 1 Suraj Kumar Pradhan to the house of the appellant. He has corroborated the statement of PW 1 Suraj Kumar Pradhan on recovery, etc. He has identified his signatures on the recovery memo and the articles also. According to PW 5 constable Pradeep Rawat, on 15.12.2010, at the instance of the appellant, one of the body parts of the deceased was recovered from the forest, of which recovery memo is Ex. A-8. According to PW 5 constable Pradeep Rawat, on 17.12.2010 from the house of the appellant, deep freezer, its bill, electronic stone cutter were recovered, of which recovery memo Ex. A-9 was prepared. Certain other jewellery was also recovered from the house of the appellant, of which recovery memo Ex. A-10 was prepared. He also tells that from the search of the appellant, four mobile phones were recovered, of which recovery memo Ex. A-11 was prepared. This witness has also identified those articles.

27. PW 6 SI Sohan Rawat is a witness of recovery of body part of the deceased on 15.12.2010. According to him, he also accompanied other witnesses on that day and from the forest, at the instance of the appellant, a body part of the deceased was recovered. He is also a witness of the recovery memo Ex. A-8.



28. PW 14 Ajay Kumar Sharma is also a witness of recovery of body part of the deceased on 15.12.2010. According to him, he was required by the police to accompany them and in his presence, the body part of the deceased was recovered, of which recovery memo Ex. A-8 was prepared.

29. PW 24 Sunil Agrawal has stated that on 17.12.2010, the police had called him at the house of the appellant, when the police had recovered deep-freezer and prepared a recovery memo. He also witnessed the recovery of jewellery from the house of the appellant and he put his signature on Ex. A-10. He has also proved the other articles.

30. PW 28 Charanjeet Kaushal is a member of Civil Defence as a Sector Warden. He is also a witness of recovery of the body part of the deceased. He has also proved his signature on Ex. A-8.

31. PW 33 constable Satish Chandra is a photographer with the Field Unit Police. According to him, on 12.12.2010, he reached at the house of the appellant, when the dead body and other articles were recovered. He had taken photographs of it. According to him, he had taken those photographs from the digital camera. There is no negative to it. He proved those photographs, Ex. 34 to 62. Apart from taking photographs, this witness has stated that the place of incident was the appellants house. There was a deep-freezer, wherein there was a black bag inside it and inside the bag, there was a dead body with certain parts missing. He is also a witness of fact of recovery.

32. PW 34 constable Vijay Lal had also accompanied PW 33 constable Satish Chandra on 12.12.2010, when they took photographs in the house of the appellant. He has also stated about the recovery of dead body, etc.

33. There is another witness, who visited the house of the appellant on 12.12.2010. He is PW 7 Dr. Sandeep Kumar Sharma. He is incharge Field Unit. According to him, on 12.12.2010, he received an information from the Police Control Room and thereafter he reached at the place of incident. He took finger prints from the electronic cutter, the saw, etc. and gave a report, Ex. A-10.

34. PW 36 Arvind Singh Rawat is the Investigating Officer, who took the investigation on 14.12.2010. He has stated quite in detail about the steps that were taken by him during the investigation. At this stage, only evidence with regard to recovery is to be referred to. According to PW 36 Arvind Singh Rawat, after taking over the investigation, he took police custody and remand of the appellant on 14.12.2010, recovered the laptop from his possession and prepared recovery memo of it, which is Ex. A-7. It has already been proved by PW 5 constable Pradeep Rawat. This witness prepared the site plan Ex. A-41 and has stated that he recorded the statement of the appellant. According to this witness, the appellant had admitted that on the day of Dussehra, he had a fight with the deceased. He hit her head on the bed and thereafter muffled her mouth with cotton and kept the dead body in the bathroom.

Thereafter he purchased deep freezer, where he kept the dead body in a bag and made its pieces by cutter and he threw those pieces in Mussoorie Road forest. He has proved the disclosure statement Ex. A-42.

35. According to PW 36 Arvind Singh Rawat, on 15.12.2010, at the instance of the appellant from Mussoorie Road, Malsi Dear Park, a body part of the deceased was recovered and recovery memo Ex. A-8 was recorded, which has already been proved by PW 5 constable Pradeep Rawat. This witness has also proved the photographs that were taken at the time of recovery of body part of the deceased.

36. There are a few more witnesses of forensic evidence. They are PW 9 Shakeel Ahmad Khan, PW12 Naveen Chandra Pant, PW13 Prateek Bansal, PW 23 constable Vipin Tyagi, PW 26 HC Mayank Tyagi, PW 27 Naveen Agarwal, PW 36 Arvind Singh Rawat and PW 38 Dr. B.K. Mahapatra.

37. PW 9 Shakeel Ahmad Khan has stated that on 19.10.2010, he had sold a deep freezer to the appellant for Rs. 21,500/-. The appellant had given Rs. 10,000/- in cash and had paid Rs. 11,500/- by way of a cheque. He has proved the carbon copy of the bill, Ex. A-12. According to him, deep freezer was sent through a delivery challan, on which the appellant had signed. He has stated about the delivery challan as well.

38. PW 13 Prateek Bansal states that on 03.11.2010, the appellant visited his shop and purchased an electronic stone cutter on payment. According to him, he had given a cash memo. He has identified the cutter in the court.

39. PW 27 Naveen Agarwal is the Bank Manager of ICICI bank, Branch Hathibarkala, Dehradun. According to him, the appellant had maintained an account in his bank. On 12.01.2011, this witness had handed over three cheques of the appellant to PW 36 Arvind Singh Rawat, Investigating Officer of the case, of which recovery memo Ex. A-35 was recorded.

40. PW 26 Head Constable Mayank Tyagi was posted as such at ROP Bindal on 12.12.2010. He has proved various GD entries, by which articles recovered from the place of incident were lodged at ROP Bindal and subsequently they were taken out for forwarding for the FSL examination.

41. PW 23 constable Vipin Tyagi took all these articles to the forensic science laboratory. He has stated about it.

42. PW 36 Arvind Singh Rawat is the Investigating Officer. He has also stated that he recovered some of the articles and forwarded them for forensic examination.

43. PW 12 Naveen Chandra Pant has examined the cheque, which was given by the appellant while purchasing the deep freezer. According to him, they were in the handwriting and signature of the appellant. He has proved his report Ex. A-15. He has also proved the cheques and other articles.

44. PW 38 Dr. B.K. Mahapatra is a Senior Scientific Officer, Central Forensic Science Laboratory (CBI), New Delhi. He has examined the deep freezer, the stone cutter, the saw and the other articles. He also examined the body part, which was recovered from the forest at the instance of the appellant and found that it was that of the deceased. He proved his report Ex. A-88.

45. There is another set of witnesses, who have stated about the relationship between the parties. In fact, they are relevant for the purposes of motive. These witnesses are PW 1 Sujan Kumar Pradhan, PW 8 Ms. Ramindri Mandarwal, PW 17 Smt. Preeti Mittal, PW 18 Smt. Preeti, PW 19 Smt. Babli, PW 20 Smt. Gauri Bala Pradhan, PW 21 Sashikant Bahal, PW 24 Sunil Agarwal, PW 25 Jhuma Dutta and PW 31 Vishu Sharma.

46. PW 1 Sujan Kumar Pradhan has already given the details about the relationship between the appellant and the deceased. It has already been narrated hereinbefore.

47. PW 8 Ms. Ramindri Mandarwal was a District Protection Officer at the relevant point of time. According to her, on 10.09.2010, the deceased telephoned her and told that the appellant beats her up with cruelty. The deceased has also told it to her that the appellant had extra-marital relations with a woman. Thereafter the deceased came to meet this witness on the same day at 02:00 p.m. and revealed that the appellant would beat her up and commit cruelty on her. This witness advised the deceased to leave the appellant, but according to this witness, at that time, the deceased told her that since she has minor children, she cannot leave him. The deceased has also told this witness that the reason for this fight is her father-in-law and the sister-in-law. She gave her their telephone number. Thereafter, this witness spoke to the father-in-law of the deceased, who told that he does not interfere in the family affairs of the appellant.

48. According to PW 8 Ms. Ramindri Mandarwal, again on 21.09.2010, the deceased visited her office and said that the situation has not changed. This witness called the appellant. On 27.09.2010, both the appellant and the deceased visited the office of this witness. The appellant had then admitted that he has a relationship with other woman. She had made a compromise between them that the appellant would give Rs. 20,000/- per month to the deceased. She has proved those documents, Ex. A-11. According to her, on 12.12.2010, PW 1 Suraj Kumar Pradhan made a telephone call to her and told that he is not able to contact his sister.

49. PW 17 Smt. Preeti Mittal is a Tarot Card Reader. She was visited by the deceased. She had advised the deceased that her life is in danger with the appellant. She would submit that she had seen the injury marks and had advised the deceased to seek judicial separation or meet District Protection Officer. According to this witness, the deceased had deposited the passports of her children with her.

50. PW 18 Smt. Preeti and PW 19 Smt. Babli were helpers in the house of the appellant. PW 18 Smt. Preeti tells that she worked in the house of the appellant. She

saw the deceased last time on the day of Dussehra. Thereafter, the appellant told her that the deceased had gone to Delhi as her mother is unwell.

51. PW 19 Smt. Babli also tells that last time she had seen the deceased in the morning of Dussehra and thereafter she had not seen her. She has stated that she had seen a big machine in the house of the appellant after Dussehra. She has identified the machine as freezer in the court.

52. PW 20 Smt. Gauri Bala Pradhan is mother of the deceased. She has narrated the entire story and corroborated the statement of PW 1 Suraj Kumar Pradhan. She has also stated that last time she spoke to the deceased on 17.10.2010. According to her, for DNA test, her sample was also taken.

53. PW 21 Shashikant Bahal is a pastor. According to him, once he met the appellant on flight from UK to USA. He was sent an email by the appellant claiming that he wants to confess his sins and wants to read Bible. According to him, he does not remember as to whether the appellant had ever confessed before him or not? He also tells that the appellant had told him that he had an extra-marital relation with a woman and he wants to stay with the children. He has given print outs of the emails of the appellant.

54. PW 24 Sunil Agarwal was a resident of the locality, where the appellant was residing with the deceased. According to him, he had not seen the deceased after 17.10.2010. He is also a witness of recovery from the house of the appellant on 12.12.2010.

55. PW 25 Jhuma Dutta is an important witness. The appellant had married to her. According to her, she is a marriage consultant in Calcutta. She came in touch with the appellant through internet. The appellant introduced himself as a divorcee. She was pursuing her divorce with her earlier husband. Thereafter, they married and started staying in Calcutta in a rented accommodation. Then, she came to know about the family of the appellant. She also tells that for some period after marriage, the appellant was normal, but thereafter his conduct deteriorated and on 20.04.2009, the appellant left her and visited Dehradun.

56. PW 31 Vishu Sharma runs a grocery shop in the locality, where the appellant and the deceased were residing. According to him, when the deceased did not come for purchase/shopping for long and he inquired from the appellant, the appellant told that the deceased had gone to Delhi for her treatment.

57. There is another set of medical evidence in terms of doctor, who conducted the post-mortem of the deceased and her body parts.

58. PW 10 Dr. Narayan Singh Khatri had conducted post-mortem of the deceased on 13.12.2010. He has proved the post-mortem report, Ex. A-13.

59. PW 11 Dr. Parag Singhal has examined the body part of the deceased, which was recovered from the Mussoorie Road forest on 15.12.2010. He has proved his report, Ex. A-14.
60. There is another set of witnesses. They are PW 15 Sonakshit, PW 16 Siddhant, PW 22 Ashish Rastogi, PW 30 Km. Diksha Sharma, PW 32 Umang Ahuja, PW 35 constable Pramod Singh, PW 37 Suresh Paswan, PW 39 Hussin M. Jaidi, PW 40 Ashwani Kumar, PW 41 Radheyshyam Shukla and PW 42 Naseem Ahmad.
61. PW 22 Ashish Rastogi has stated that he was security guard in the building where the appellant was a tenant. According to him, on the day of Dussehra in the year 2010, he had gone to the appellants house for giving him keys, which he gave.
62. PW 30 Km. Diksha Sharma is a young girl. According to her, she had collected donation from the locality where the appellant and the deceased were residing. She had collected Rs. 150/- donation from the appellant.
63. PW 32 Umang Ahuja is a child, who was staying in the locality where the appellant and the deceased were staying together. He stated that the appellant would stay in the same locality and he had taken once the donation of Rs. 100/- from the appellant.
64. PW 35 constable Pramod Singh has stated that he had collected the call details of the appellant.
65. PW 37 Suresh Paswan was working at the cremation ground Lakhi Bagh, Dehradun. He had cremated the foot of the deceased on 16.12.2010. He has proved those documents.
66. PW 39 Hussain M. Zaidi has been working in Idea Cellular. He has stated about the mobile number of the appellant; their application form, etc. He has proved those documents.
67. PW 40 Ashwani Kumar has been working in Tata Docomo. He has also stated about telephone number and their application.
68. PW 41 Radheyshyam Shukla is the Nodal Officer, Airtel. He has also stated about some telephone number of PW 2 Madhav Paudiyal and proved those documents.
69. PW 42 Naseem Ahmad was Additional Chief Judicial Magistrate on 14.12.2010 when he recorded the statement under Section 164 of the Code of PW 15 Sonakshi and PW 16 Siddhant, the children of the deceased. It may be noted at this stage that PW 15 Sonakshi and PW 16 Siddhant though appeared for recording their statement, but according to PW 42 Naseem Ahmad, they were not capable to record their statements. Therefore, their statements were not recorded.
70. During trial PW 15 Sonakshi and PW 16 Siddhant appeared for their examination on 21.05.2012. They both are children of the appellant. But, the court after making

assessment observed that these witnesses are not capable of giving evidence.

71. In his examination under Section 313 of the Code, the appellant had admitted that once in the counselling, he had admitted to give Rs. 20,000/- per month to the deceased as expenses. This is what was stated by PW 8 Ms. Ramindri Mandarwal while she said that she had settled the dispute between the appellant and the deceased after the deceased had approached her claiming that the appellant had beaten her up and committed cruelty on her.

72. The appellant had also admitted that he had married PW 25 Jhuma Dutta in the year 2008 and they stayed together till 2009.

### **DISCUSSION AND ANALYSIS**

73. It has rightly been argued on behalf of the appellant that PW 1 Sujan Kumar Pradhan has not seen the appellant killing the deceased. But, he is a witness, who has stated about the circumstances under which on 12.12.2010, he reached Dehradun and when questioned, the appellant gave false explanation about non-appearance of the deceased and thereafter the recovery was made, etc.

74. It is a case of circumstantial evidence. In the case of circumstantial evidence, the law is well settled that the chain of evidence should be so interconnected so as to draw an inference that it is the accused and the accused only, who has committed the offence.

75. In the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, the Honble Supreme Court has laid down five golden principles, which are applicable in the case of circumstantial evidence. In para 153 & 154 of the judgment, the Honble Supreme Court observed as follows:-

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

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

It may be noted here that this Court indicated that the circumstances concerned must or should and not may be established. There is not only a grammatical but a legal distinction between may be proved and must be or should be proved as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

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

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

### **LAST SEEN**

76. A few facts are admitted. The appellant and the deceased were married. Their marriage was a love marriage. They stayed in USA till 2008 when they came to India. After it, the appellant disappeared and solemnized marriage with PW 25 Jhuma Dutta and stayed in Calcutta. He returned only in the year 2009. Thereafter, they shifted to Dehradun. Thereafter, according to the prosecution, till 17.10.2010, the deceased spoke over telephone to PW 1 Sujan Kumar Pradhan and others. She was not seen thereafter. PW 1 Sujan Kumar Pradhan has stated that last time he spoke to the deceased on 17.10.2010 at about 02:30 p.m. when the deceased had told it to him that the appellant has become more aggressive.

77. PW 17 Smt. Preeti Mittal is a Taro Card Reader, whom the deceased had approached on multiple occasions and with whom the deceased had deposited the passports of her children and some other documents. She has also stated that last time the deceased telephoned her on the day of Dussehra in the year 2010 at about 03-4 p.m.

78. PW 18 Smt. Preeti and PW 19 Smt. Babli, who had done work in the family of the appellant and the deceased have also stated that last time they had seen the deceased on the day of Dussehra and thereafter, they did not see the deceased. According to PW18 Smt. Preeti the appellant had told that the deceased had gone to Delhi as her mother is unwell. Similarly, PW 20 Smt. Gauri Bala Pradhan, the mother of the deceased has stated that last time she spoke to the deceased on 17.10.2010. PW 24 Sunil Agarwal, who was a resident of the locality, where the appellant and the deceased were staying, has also stated that last time they saw the deceased on 17.10.2010 and thereafter he or anyone in the locality did not see the deceased. Similarly, PW 31 Vishu Pradhan, who was a grocery shop owner has stated that he has not seen the deceased for long and when he inquired, the appellant had told it to him that the deceased had gone to Delhi for her treatment. On 12.12.2010, when PW 2 Madhav Paudiyal questioned the appellant about the deceased, the appellant replied that the deceased had gone to her friends house (statement of PW 2

Madhav Paudiyal at page 2 para 2). On the same day, PW 1 Sujan Kumar Pradhan telephonically inquired about the whereabouts of the deceased from the appellant. The appellant told that the deceased would leave the house for 2-3 months after some fight (statement of PW 1 Sujan Kumar Pradhan at page 7 para 3).

79. The deceased and the appellant both were staying together in a rented house in Dehradun. The deceased could speak to her brother and mother only till 17.10.2010. The witnesses have also stated that they did not see the deceased after 17.10.2010. What is important to notice is that after 17.10.2010, PW 1 Sujan Kumar Pradhan, the brother of the deceased had received emails from the appellant in the month of November, 2010, in which it was stated that if the passports of the children are with this witness, he may send them. To it, according to PW 1 Sujan Kumar Pradhan, he replied that he did not have the passports. It is further important to note that PW 1 Sujan Kumar Pradhan had received an email on 25.11.2010 from the email ID of the deceased, in which, according to this witness, it was informed that they are staying as a family and she would telephone him some time.

80. There is another important factor. On 12.12.2010, when PW 1 Sujan Kumar Pradhan and PW 2 Madhav Paudiyal visited the house of the appellant and returned, PW 1 Sujan Kumar Pradhan received an SMS from the telephone of the deceased informing him please do not send anyone here. What was the need for the deceased to hide and send SMS? Why she could not have appeared before PW 1 Sujan Kumar Pradhan and PW 2 Madhav Paudiyal when they approached her home on 12.12.2010? The statements of the witnesses categorically establish that, in fact, the deceased was last seen on 17.10.2010. Thereafter, she was not seen by anyone. Where was she? It is further proved beyond reasonable doubt that the appellant gave different reasons for non-appearance of the deceased in the house on 12.12.2010.

81. In her statement under Section 313 of the Code, the appellant tells that he had lodged a missing report of the deceased. What was the occasion for him to do so because, the witnesses have stated that the appellant had given different reasons for non-presence of the deceased in Dehradun?. In his examination under Section 313 of the Code recorded on 21.08.2016, at page 27 in answer to the second last question, the appellant tells that he had lodged a missing report to the police because the deceased had suddenly left her home. Where is that missing report? It all concludes that, in fact, the appellant did not lodge any missing report. If the deceased was not seen after 17.10.2010 and she was missing, why the appellant did not lodge the missing report or inform the family members of the deceased? On 12.12.2010, when PW 2 Madhav Paudiyal questioned the appellant about the deceased, the appellant told that after fight, the deceased would leave the house for 2-3 months. As stated, different explanations were given by the appellant to different persons with regard to non-appearance of the deceased in her house. When did the deceased exactly leave the house? Where did she go? On 17.10.2010,



last time she spoke to PW 1 Sujan Kumar Pradhan and others. Within two months thereafter, on 12.12.2010, PW 1 Sujan Kumar Pradhan and PW 2 Madhav Paudiyal and other witnesses had reached the house of the appellant. The deceased was seen last time in the company of the appellant. Where had she gone? This fact was within the special knowledge of the appellant.

82. Under Section 106 of the Indian Evidence Act, 1872 (the Evidence Act), the burden is upon the appellant to prove as to how the deceased was killed? How the dead body of the deceased was kept in the deep freezer in the house of the appellant, which was under the control of the appellant where the appellant was staying with his two young children? But, it was not even slightly explained by the appellant. This is a strong circumstance against the appellant.

### **RECOVERY OF DEAD BODY ETC.**

83. When PW 1 Sujan Kumar Pradhan did not receive any telephone from his sister, he finally visited Dehradun on 12.12.2010 along with PW 2 Madhav Paudiyal. He sent PW 2 Madhav Paudiyal to handover the passport of the deceased. The deceased was not found in the house. Thereafter, they lodged a missing report, Ex. A-1. It is thereafter that PW 1 Sujan Kumar Pradhan, PW 2 Madhav Paudiyal, PW 29 SI P.D. Bhatt and other witnesses visited the house of the appellant and PW 1 Sujan Kumar Pradhan and other witnesses have categorically stated that after a short interrogation, the appellant confessed that he had killed the deceased and after cutting her dead body, kept her in a freezer. The freezer, dead body, cutter and other articles were recovered, of which recovery memo, Ex. A-2 to A-5 were prepared. Inquest of the dead body, Ex. A-6, was also prepared. Thereafter, on 14.12.2010, at the instance of the appellant, a laptop was recovered from his home. On 12.12.2010, one black bag having tissue material, one electronic stone cutter, one metallic saw with wooden handle, one **Wasula** (wood chopper) were recovered.

84. PW 5 constable Pradeep Rawat, PW 29 SI P.D. Bhatt and PW 36 Arvind Singh Rawat have also stated that on 17.12.2010, at the instance of the appellant, from the house of the appellant, a deep freezer was also taken into custody, of which a recovery memo was prepared. Not only this, PW 5 constable Pradeep Rawat, PW 6 Sohan Rawat, PW 14 Ajay Kumar Sharma, PW 28 Charanjeet Kaushal and PW 36 Arvind Singh Rawat have also stated that on 15.12.2010, after police custody and remand of the appellant, at the instance of the appellant, a body part of the deceased was also recovered from the forest. The sample of this body part was taken by PW 11 Dr. Parag Singhal, who has prepared the report, Ex. A-14. The recovered articles were sealed. It is recorded in their respective recovery memos. PW 14 Ajay Kumar Sharma and PW 28 Charanjeet Kaushal are, in fact, independent witnesses to the recovery of foot on 15.12.2010 at the instance of the appellant. Therefore, the argument that there is no independent witness to the recovery on 15.12.2010 has less force.

85. PW 26 Head Constable Mayank Tyagi was posted at the ROP Bindal on the relevant day. He has stated that he lodged the missing report of the deceased given by PW 1 Sujan Kumar Pradhan. He has proved the GD entry, Ex. A-15. This is done on the basis of the report given by PW 1 Sujan Kumar Pradhan. He has also stated that thereafter at 04:40 p.m., he received an information from PW 29 SI P.D. Bhatt on RT set that a dead body has been recovered. GD extract of this information sent by PW 29 SI P.D. Bhatt is Ex. A-16. According to this witness, when the articles were seized pursuant to the recovery memo, Ex. A-2 to Ex. A-5, those four articles were lodged at ROP Bindal and its entry was made at G.D. report no. 26 at 08:15 p.m., the GD extract of which is Ex. A-17.

86. According to PW 26 Head Constable Mayank Tyagi, when the post-mortem of the deceased was conducted, various body parts of the deceased kept in four jars were lodged at ROP Bindal, the entry of which was recorded at GD no. 21, at 19:35 on 13.12.2010, of which GD extract has been proved by this witness as Ex. 18. Regarding recovery of laptop on 14.12.2010, a mention was made in the GD report of ROP Bindal at report no. 26 at 08:10 p.m., GD extract of which is Ex. A-19.

87. On 15.12.2010, according to PW 36 Arvind Singh Rawat, he took police custody of the appellant and inquired from him and then the appellant admitted that he cut the deceased in pieces and has thrown her body parts in Mussoorie road. This witness recorded this disclosure statement, Ex. A-42.

88. PW 26 Head Constable Mayank Tyagi has stated that on that day, PW 36 Arvind Singh Rawat had reached at ROP Bindal at 09:35 a.m., of which GD extract is Ex. A-20. He has also proved the GD entry with regard to the disclosure statement, Ex. A-21. Further, the police proceeded to recover the body parts on 15.12.2010, the GD entry of it has been proved by PW 26 Head Constable Mayank Tyagi. PW 26 Head Constable Mayank Tyagi has also proved the GD entry of ROP Bindal, Ex. A-23, which is regarding lodging of the body part of the deceased by PW 36 SI Arvind Singh Rawat at ROP Bindal. PW 26 Head Constable Mayank Tyagi has also proved other GD entries, by which PW 36 Arvind Singh Rawat proceeded to recover the documents pertaining to purchase of deep freezer and cutting instruments, Ex. A-25, Ex. A-26 and other GD entries. It has also been proved by the witnesses that on 17.12.2010, deep freezer was recovered from the house of the appellant, in which the dead body of the deceased in part was recovered. These articles were lodged at ROP Bindal on 17.12.2010 by GD report no. 27, at 08:20 p.m., dated 17.12.2010. The GD entry has been proved by PW 26 Head Constable Mayank Tyagi as Ex. A-31.

89. It has been argued on behalf of the appellant that confession made before the police cannot be admitted into evidence. It is further argued that the disclosure statement reveals that according to the appellant in a sudden fight the head of the deceased hit on the bed and she received injuries, therefore, it is argued that there is no mens rea. It is true that confession made before the police is not an admissible evidence. But, the recovery made under Section 27 of the Evidence Act is always

admissible in evidence. In the instant case, it is the categorical case of the prosecution that PW 36 recorded the disclosure statement of the appellant when he said that he had killed his wife on 17.10.2010 by muffling her mouth and kept her dead body in the bathroom, purchased a deep freezer, cut her body parts into pieces and threw them in forest. It is the further case of the prosecution that at the instance of the appellant, the body part of the deceased was recovered from the forest. It attracts the provisions of Section 27 of the Evidence Act.

90. Section 27 of the Evidence Act reads as below:-

**27. How much of information received from accused may be proved.** Provided that, when any fact is discovered as a consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

91. In the instant case, the disclosure statement of the appellant has been proved as Ex. A-42. The witnesses have stated about the disclosure statement. In fact, based on the disclosure statement, recovery of foot was made from the forest at the instance of the appellant on 15.12.2010. It applies the doctrine of confirmation by subsequent recovery, which has been proved by the witnesses.

92. In the case of Bodhraj **alias** Bodha and others v. State of Jammu and Kashmir, (2002) 8 SCC 45, the Honble Supreme Court has discussed the law relating to recovery at the instance of the accused. In para 18, the Honble Supreme Court observed as follows:-

18. Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Indian Evidence Act, 1872 (in short the Evidence Act) is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by this Court in Delhi Admn. v. Bal Krishan [(1972) 4 SCC 659 : AIR 1972 SC 3] and Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483] . The words so much of such information as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove

equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. **It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police.** The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. **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 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. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in *Pulukuri Kottaya v. Emperor* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] 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. (See *State of Maharashtra v. Damu Gopinath Shinde* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301] .) 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. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given. (emphasis supplied)

93. Therefore, the arguments advanced on this aspect have no merit for acceptance. In the instant case based on disclosure statement made by the appellant on 15.12.2010, a body part of the deceased was recovered at the instance of the appellant. It is admissible under Section 27 of the Indian Evidence Act, 1872.

94. On behalf of the appellant, it is argued that PW 3 Smt. Anubha Mittal and PW 4 Ved Prakash Mittal have not supported the prosecution case and it doubts the recovery of 12.12.2010.

95. There are multiple witnesses of recovery, including independent witnesses, who have stated that on 12.12.2010, from the house of the appellant the dead body in part was recovered along with cutting instruments. The recovery memo was then prepared and articles seized, which has already been proved. Insofar as PW 3 Smt. Anubha Mittal and PW 4 Ved Prakash Mittal are concerned, it is not that they have not supported the prosecution case. They have, in fact, lent credence to what has been proved by the prosecution. PW 3 Smt. Anubha Mittal tells that last time the deceased was seen with the appellant on the occasion of Dussehra and thereafter she had not seen her. She also tells that on 12.12.2010, the police had reached the house of the appellant. She was outside and at that time the brother of the deceased had come outside the house crying that the appellant has killed his sister and kept her dead body in the deep freezer. It, in fact, supports the prosecution case. Similar is the case of PW 4 Ved Prakash Mittal. He is father of the landlord. He also confirms the prosecution case that on 12.12.2010, the appellant came when the police was in the house and they heard that the dead body was recovered from his house. He has also heard the shrieks emanating from the house.

96. It is also argued that it is not proved that the black bag, in which the dead body was kept in the deep freezer was purchased by the appellant. This argument bears no significance. The prosecution has established that the dead body was kept in the bag inside the deep freezer, which has been proved.

97. One of the arguments that has been raised is that the deep freezer was recovered on 17.12.2010, whereas according to the prosecution, the dead body was recovered on 12.12.2010; this doubts the prosecution case.

98. This argument advanced by the learned counsel has no legs to stand. It is categorically established by the prosecution by the independent witnesses and the forensic science laboratory report that on 12.12.2010, the partially cut dead body was found in the deep freezer in a black bag and though the dead body and other cutting instruments were recovered on 12.12.2010, the deep freezer was recovered on 17.12.2010. As such, the deep freezer was sent for forensic examination to CFSL (CBI), New Delhi. The deep freezer had tissue material and the FSL report confirms that those tissue materials were consistent as biological daughter of PW 20 Smt. Gauri Bala Pradhan, which means the tissue materials belonged to the deceased.

99. Thus the witnesses have proved that, in fact, on 12.12.2010 from the residence of the appellant, the dead body of the deceased in parts, having no lower limbs and left hand were recovered. In addition to it, cutting instruments were also recovered. On 17.12.2010, deep freezer was also recovered from the residence of the appellant. It is important to note that PW 36 Arvind Singh Rawat has recorded the disclosure statement of the appellant on 15.12.2010. It is proved by the witnesses, as stated hereinbefore. Subsequent to it, a body part of the deceased was recovered from the forest. That body part was examined by PW 11 Dr. Parag Singhal and he kept a sample of it, which was also lodged at ROP Bindal. GD entry of it has also been proved, as stated hereinbefore.

100. Those all articles were produced in the court on 21.12.2010 for forwarding them to forensic science laboratory for examination. GD entry has been proved by PW 26 Head Constable Mayank Tyagi as Ex. A-32. PW 23 constable Vipin Tyagi took all these articles to the forensic science laboratory. He has stated about it.

101. PW 38 Dr. B.K. Mahapatra is the Senior Scientific Officer at Central Forensic Science Laboratory (CBI), New Delhi. He examined all those articles. He has submitted the FSL report, Ex. A-88. It may be noted here that in order to identify the deceased, a DNA sample of PW 20 Smt. Gauri Bala Pradhan was taken. PW 36 Arvind Singh Rawat has stated about it. As per the DNA profiling report, from all the articles recovered on 12.12.2010, 15.12.2010 and the materials collected on the post mortem of the partial dead body of the deceased, all these articles are consistent with each other and belong to a female individual and are consistent as biological daughter of PW 20 Smt. Gauri Bala Pradhan and Banchha Ram Pradhan. PW 10 Dr. Narayan Singh Khatri has stated that the death of the deceased was homicidal.

102. There is another set of witnesses. PW 9 Shakeel Ahmad Khan has stated that the appellant did purchase a deep freezer from him on 19.10.2010. He has stated about the bill of it and, according to him, the deep freezer was sent through delivery challan, in which the appellant had signed. These articles were taken by the Investigating Officer in custody.

103. PW 13 Prateek Bansal had sold the electronic cutter to the appellant. He has stated about it.

104. The cheque, which the appellant had given for purchase of deep freezer was collected by the Investigating Officer from the concerned bank. The Bank Manager has stated about it. PW 36 Arvind Singh Rawat, the Investigating Officer has stated that he took permission for forensic examination of those cheques and delivery challan that had signature of the appellant. The appellants specimen handwriting and signatures were also obtained. They were sent for handwriting experts opinion. The recovery memos of these documents have also been proved by the prosecution. PW 23 constable Vipin Tyagi has taken all those articles for forensic examination. The report is Ex. A-15, which has been proved by PW 12 Navin Chandra

Pant, Scientific Officer, Forensic Science Laboratory, Dehradun, Uttarakhand. In fact, PW 12 Navin Chandra Pant has examined the signatures on three cheques, which they have recovered from ICICI Bank, where the appellant had an account. The signatures on the delivery challan of deep freezer, which was sent by PW 9 Shakeel Ahmad Khan, were tallied with the specimen signatures of the appellant, which were taken in the court. As stated, PW 36 Arvind Singh Rawat has stated about it. After examination, PW 12 Navin Chandra Pant has concluded that on all of those documents, signatures were made by one and the same person, who is the appellant. It further proves that the appellant had purchased the deep freezer from the shop of PW 9 Shakeel Ahmad Khan on 19.10.2010, for which he gave a cheque and received the deep freezer and signed the delivery challan.

105. PW 7 Dr. Sandeep Kumar Sharma has stated that on 12.12.2010, he had lifted finger prints from electric cutter, saw and other articles and forwarded the report to Police Station Cantt., Dehradun. He has proved that communication as Ex. A-10. This is, in fact, a report with regard to lifting of finger prints. The finger print report after examination, as such has not been proved by PW 7 Dr. Sandeep Kumar Sharma. But it has less significance in the instant case in view of other cogent, reliable, trustworthy, ocular and forensic evidence.

106. In view of the foregoing discussions, this Court is of the view that the prosecution has been able to prove beyond reasonable doubt that on 12.12.2010, partial dead body of the deceased was recovered from a deep freezer kept in the house of the appellant, which was kept in a black bag, cutting instruments were also recovered. On 15.12.2010, a body part of the deceased was also recovered from the forest. On 17.12.2010, deep freezer was also recovered from the house of the appellant.

107. This Court has already concluded that the deceased was not seen after 17.10.2010 and the appellant had given false excuses of her disappearance. A body part was found at the instance of the appellant from the forest on 15.12.2010. These are strong circumstances. This recovery is based on disclosure statement of the appellant when he admitted that he killed the deceased and cut her dead body into pieces and threw them in the forest. As stated, forensic reports confirm that the body part recovered on 15.12.2010 belongs to the deceased.

108. It is argued that the prosecution has not established that there was any unusual activity in the house of the appellant, which may draw any presumption that the appellant might have killed the deceased. This argument is, in fact, contrary to the evidence available on record. There are multiple witnesses, who have stated that the relations between the appellant and the deceased was quite troublesome. The following discussions reveal that the relations between the appellant and the deceased were strained. The deceased was much worried about her safety and future. She had been approaching various persons, including PW 8 Smt. Ramindri Mandarwal and PW 17 Smt. Preeti Mittal.

## **MOTIVE**

109. Here the statement of PW 1 Sujan Kumar Pradhan and PW 20 Smt. Gauri Bala Pradhan inspire full confidence that the deceased had told to them that the appellant had been aggressive and beat her up and treating her with cruelty. This has further been proved by PW 8 Ms. Ramindri Mandarwal and PW 17 Smt. Preeti Mittal. PW 1 Sujan Kumar Pradhan has stated that he had advised his sister, the deceased, to leave the appellant and come back, but, according to PW 1 Sujan Kumar Pradhan, the deceased had told him that this is what the appellant wants so that he can stay with some other woman.

110. The deceased was not heard about after 17.10.2010. The appellant gave multiple false reasons for her disappearance. In his examination under Section 313 of the Code, he states that he had lodged a missing report, which is not proved or was not shown even. In fact, he sent emails from the email ID of the deceased. The appellant tried to show as if the deceased is alive and communicating, whereas she was nowhere in existence. She was killed by the appellant long back. The dead body of the deceased was found in a freezer from the house of the appellant. The house was in the control of the appellant, where he was staying with his two children. The dead body had no lower limbs and left hand. The appellant had told that he had dispersed the other parts of the body in the forest, one of which was recovered on 15.12.2010. It was the body part of the deceased, as confirmed by DNA profiling. This recovery was made after a disclosure statement of the appellant was recorded. On 17.10.2010, the deep freezer was also recovered.

111. The appellant was in very bad relationship with the deceased. He would beat her up and traumatize her. The appellant had, in fact, solemnized the second marriage during subsistence of his marriage with the deceased. He left the deceased for about a year, married PW 25 Jhuma Dutta and stayed in Calcutta. While he returned from Calcutta, and stayed with the deceased in Dehradun, he continued beating up the deceased. So much so, the deceased became apprehensive of her future and started going to PW 17 Smt. Preeti Mittal. PW 17 Smt. Preeti Mittal has stated that after reading her card, she had told the deceased that she should take judicial separation from the appellant, but the deceased wanted to continue relationship with the appellant for the sake of her children.

112. In view of the foregoing discussions, this Court is of the view that, in fact, the appellant had strong motive to eliminate the deceased.

113. All these circumstances, as discussed hereinbefore categorically prove that it is the appellant and appellant alone, who had killed the deceased, cut her body parts into pieces and threw them in the forest. Therefore, this Court is of the view that, in fact, the prosecution has been able to prove its case beyond reasonable doubt. The court below has rightly convicted and sentenced the appellant by the impugned judgment, which calls for no interference. Consequently, the appeal deserves to be



dismissed.

114. The criminal appeal is dismissed.

115. Let a copy of this judgment along with lower court record be sent to the court concerned.