

(2015) 12 SHI CK 0032

High Court of Himachal Pradesh

Case No: Criminal Appeal No. 421 of 2012

Rajiv Sharma and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision: Dec. 14, 2015

Acts Referred:

- Constitution of India, 1950 - Article 136
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Evidence Act, 1872 - Section 27, 3, 45A, 65 B, 65B
- Penal Code, 1860 (IPC) - Section 120-B, 201, 302

Hon'ble Judges: Rajiv Sharma and Sureshwar Thakur, JJ.

Bench: Division Bench

Advocate: Chander Shekhar Sharma and Nishi Goel, Advocates, for the Appellant; M.A. Khan, Addl. A.G., for the Respondent

Final Decision: Allowed

Judgement

Rajiv Sharma, J.

This appeal is instituted against the judgment and order dated 28.7.2012 and 2.8.2012, respectively, rendered by the learned Addl. Sessions Judge, Ghumarwin, Distt. Bilaspur, H.P., in Sessions Trial No. 15-7 of 2011, whereby the appellants-accused (hereinafter referred to as the accused), who were charged with and tried for offences punishable under Sections 120-B, 302 and 201 IPC, have been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 3,000/- each under Section 302 IPC. They were also sentenced to suffer rigorous imprisonment for a period of seven years and to pay fine of Rs. 3,000/- each for the offence punishable under Section 201 IPC. Both the sentences were ordered to run concurrently. In lieu of default of payment of fine, they were further ordered to undergo rigorous imprisonment for two months each under both the counts.

2. The case of the prosecution, in a nut shell, is that accused Reshma Devi lodged missing report Ext. PW-26/A of her late husband Balak Ram (hereinafter referred to as the deceased) on 22.5.2011, at about 1:05 PM with Police Station Talai. Jiwan Kumar PW-1, brother of deceased was informed by his wife Meena Kumari (PW-21) on 21.5.2011 over telephone that deceased had gone to duty on 20.5.2011 but he did not return to his house after duty. Jiwan Kumar came to the Village Badgaon on 22.5.2011 from Ludhiana. On 23.5.2011 and 26.5.2011, he went to the Police Station to enquire about the whereabouts of the deceased. Balak Ram deceased was not found and then report Ext. PW-1/A was lodged by Jiwan Kumar with the police on 28.5.2011. The deceased was part-time worker in Ayurvedic Dispensary, Dohak. On 20.5.2011, he had gone to attend his duties in the dispensary but did not return. Accused Rajiv Sharma used to visit the house of Balak Ram for the last one and a half year in the absence of deceased and his children. He used to serve liquor to the deceased. He was also having illicit relations with accused Reshma Devi, wife of the deceased. He had given one mobile phone to accused Reshma Devi. The mother of deceased, Juga Devi (PW-3) had deterred accused Rajiv Sharma few days back prior to the occurrence from visiting the house of deceased and thereafter accused stopped visiting the house. Accused Reshma Devi left the house on 20.5.2011, in the morning, in order to go to the house of her maternal Uncle at Thana Kalan to condole the death of her maternal cousin. She did not come back to the house on 20.5.2011 and she returned on 21.5.2011 at about 6:30-7:00 AM. Amrit Lal (PW-4) on 20.5.2011 after finishing his work was on his way to house and met Balak Ram at place Binkhiu Bawri at 7:00-7:15 PM and deceased had given three small packets containing the medicines as his son, namely, Munish Kumar, was suffering from dysentery. The deceased told Amrit Lal (PW-4) that he was to go to Proiyan with accused Rajiv Sharma. Amrit Lal (PW-4) handed over the medicines to the daughter of deceased, namely, Shalu. Balak Ram (deceased) also told his son Munish Kumar (PW-6) on 20.5.2011 while leaving the house that he would not return on that day and would go with accused Rajiv Sharma. Accused Rajiv Sharma got a bottle of liquor through Raj Kumar (PW-18) on 20th and proceeded towards Binkhiu Bawri. PW-16 Shakti Chand marked absence of Balak Ram (deceased) in the attendance register after 20.5.2011 and sent the absent report Ext. PW-16/A to Distt. Ayurvedic Dispensary. PW-5 Julfi Ram had seen accused Rajiv Sharma and Balak Ram on 20.5.2011 at about 7:30-7:45 PM at Binkhiu Bawri going towards Dam side and Balak Ram (deceased) contacted accused Rajiv Sharma on telephone of Thakuri Devi. The call did not mature and then he talked on mobile of Prem Lal. Balak Ram (deceased) worked till 6:30-7:00 PM on 20.5.2011 on the stone crusher of Thakuri Devi. Accused Reshma Devi visited the shop of Ranjana (PW-9) and purchased a pair of sandals and left by saying that she would take bus for Proiyan. PW-12 Garib Dass had seen accused Reshma Devi at Proiyan going towards lake. PW-3 Juga Devi had weaved a cot with a thin thread like silk out of fish net and part of thread left was taken by accused Reshma Devi and given to accused Rajiv Sharma. Accused Rajiv Sharma had taken Balak Ram on 20.5.2011 for drinking alcohol towards lake side near Proiyan.

He was made to consume alcohol and got intoxicated. Accused Rajiv Sharma, while in custody, made disclosure statement vide Ext. PW-8/A, in the presence of witnesses, namely, Ramesh Chand and Amar Singh to the extent that he could identify the place Binkhiu Bawri from where he and Balak Ram proceeded together and also place in the lake near Proiyan where Balak Ram (deceased) was pushed into the water by him after tying stone to his feet with nylon rope. He led the police to those places. Accused Rajiv Sharma also identified the boat which was boarded by him and Balak Ram (deceased) on 20.5.2011 at about 7:45 PM and went towards Proiyan. He also disclosed to the police that he had taken one of the Oars at Bhakra because while proceeding towards Proiyan, the boat slid due to storm and one of the Oars was broken. The said Oar belonged to Ravinder Singh (PW-13) taken from his boat at Bhakra. Accused Reshma Devi, while in police custody, made disclosure statement, Ext. PW-8/B, in the presence of witnesses, namely, Ramesh Chand and Amar Singh to the effect that she could recover the diary and pens from her house, which she had taken out from the bag of Balak Ram at the place, where she had thrown the bag into the water. Consequently, diary Ext. P-1 and ball pens Ext. P-2 were recovered vide memo Ext. PW-6/A. Mobile No. 90220-73801 belonged to accused Rajiv Sharma and mobile No. 98573-18473 belonged to accused Reshma Devi. The call details of the mobile numbers are Ext. PW-20/B and Ext. PW-20/C. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 30 witnesses. The accused were also examined under Section 313 Cr.P.C. The learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. Chander Shekhar Sharma and Ms. Nishi Goel, Advocates, for the respective accused have vehemently argued that the prosecution has failed to prove the case against the accused. On the other hand, Mr. M.A. Khan, Addl. Advocate General, appearing on behalf of the State, has supported the judgment of the learned trial Court dated 28.7.2012.

5. We have heard learned counsel for both the sides and gone through the judgment and records of the case carefully.

6. PW-1 Jiwan Kumar deposed that accused Reshma Devi is wife of his deceased brother Balak Ram. On 21.5.2011, his wife Meena Kumari intimated him over telephone at about 4:00-5:00 PM that Balak Ram (deceased) had gone to his duty on 20.5.2011 but did not come to his house. He came to house on 22.5.2011 from Ludhiana. He came to know that Reshma had lodged missing report of Balak Ram at PS Talai. They made search with their relatives and known places where he could have gone but to no avail. Accused Rajiv Sharma used to visit house of Balak Ram (deceased). The house of accused Rajiv Sharma was at a distance of 200 meters from their house. His mother had deterred accused Rajiv Sharma from visiting house of

his deceased brother about 20-25 days before his brother went missing. Accused Rajiv Sharma had illicit relations with accused Reshma Devi, wife of his brother. On 20.5.2011 during the evening, his brother Balak Ram (deceased) had sent medicines for his ailing son through Amrit Lal and he came to know that after sending medicines, his brother left in the company of accused Rajiv Sharma. This fact was told to him by Amrit Lal. The dead body of his brother could not be recovered. The accused Rajiv Sharma and accused Reshma Devi disclosed to police in his presence that on 20.5.2011 they served liquor to Balak Ram at Proiyan and when he became intoxicated accused Rajiv Sharma and Reshma tied the feet of deceased Balak Ram with a nylon rope and the other end of rope was tied to a stone and then they threw Balak Ram in the water. FIR Ext. PW-1/A was registered on 28.5.2011. The police made efforts to fish out the dead body of his brother and even pressed into service the divers of BBMB but the dead body could not be traced. Accused Reshma Devi also disclosed to the police that she took out small diary and two pens from the bag of the deceased and threw the bag in the water after putting stones in the bag after they pushed Balak Ram in the water. She brought diary and pens to her house. In his cross-examination, he deposed that he had disclosed to the police about 20-25 days before his brother went missing that his mother had deterred accused Rajiv Sharma to not to visit their house. (Confronted with FIR Ext. PW-1/A, where words "20-25 days" are not mentioned) He had not disclosed to the police that medicines had been sent through Amrit Lal. Again said that he had disclosed to the police that medicines had been sent, but name of ailing son was not disclosed. He had not disclosed to the police that nylon rope was used to tie feet of Balak Ram. He had not disclosed to the police that both accused had made any confession in his presence. Balak Ram used to consume liquor from many years. He did not remember the date when he came to know about the visit of accused Rajiv Sharma to the house of his brother but he being their close neighbour was frequent visitor of house of his brother and he was aware of the same. He further stated that perhaps he came to know on 25.5.2011 about the illicit relations of accused Reshma with accused Rajiv Sharma. His wife told him that accused Rajiv Kumar visits the house of Balak Ram (deceased) in his absence. Except his wife, no other person told him this fact.

7. PW-2 Bal Krishan deposed that Balak Ram was part time employee in Ayurvedic Dispensary, Dohak and after leave, he used to do private work. Accused Rajiv Sharma used to visit the house of Balak Ram frequently. Balak Ram used to dine and drink with accused Rajiv Sharma. Accused Rajiv Sharma also used to visit the house of Balak Ram in his absence. About 20-25 days prior to Balak Ram went missing, mother-in-law of accused Reshma had asked accused Rajiv Sharma not to visit the house of Balak Ram. Thereafter, accused Rajiv Sharma reduced his visits. Lastly, he saw Balak Ram going to his duties on 20.5.2011 at 8:00 AM when he came to his shop. He used to carry a small bag with him. On 20.5.2011 accused Reshma had gone to Thana Kalan before departure of Balak Ram to condole the death of her cousin and she came back on 21.5.2011 at about 6:30-7:00 AM. On 21.5.2011,

Reshma Devi came to his shop at about 7:00 PM and told that her husband had not returned on 20.5.2011. He telephonically informed Jiwan Kumar to come back to his house. On 28.5.2011, the police came to Brahmnightat with accused Rajiv Sharma and accused Rajiv Sharma took the police in boat to Proiyan and got the boat stopped at a point and told that he tied both legs of Balak Ram with a stone with nylon rope and pushed Balak Ram in water from the boat. He also confessed that he had served liquor to Balak Ram and he became intoxicated. The police also sought the help of BBMB divers to trace out the dead body but the water was quite deep and they were not equipped with the relevant material to go more deep in the water. In his cross-examination, he admitted that mother-in-law of accused Reshma Devi had not asked accused Rajiv Sharma to not to visit her house in his presence. He had not disclosed to the police that Balak Ram had come to his shop at morning on 20.5.2011 and accused Reshma left for Thana Kalan before departure of Balak Ram and she came back at 6:30/7:00 AM. He has not disclosed to the police that he has intimated Jiwan Kumar over telephone on 22.5.2011 requesting him to come back.

8. PW-3 Smt. Juga Devi is mother-in-law of accused Reshma Devi and mother of Balak Ram (deceased). According to her, accused Rajiv alias Chuha used to pretend to be God brother of Reshma but in fact, both were having illicit relations. The house of accused Chuha alias Rajiv is at a distance of 30-40 meters from their house. Accused Rajiv alias Chuha had given mobile phone to accused Reshma. She had weaved the cot with a thin thread like silk out of fish net. The part of thread was left which was taken by accused Reshma from her. Her son used to keep small bag with him. In her cross-examination, she categorically stated that she has told Bal Krishan that both the accused were having illicit relations. Except Bal Krishan, she did not tell this fact to any other person.

9. PW-4 Amrit Lal deposed that on 20.5.2011, when he reached near Binkhiu Bawri at 7:00-7:15 PM, Balak Ram met him there who was sitting. He told him that his son Munish was ill and suffering from dysentery. He gave him three small packets containing medicines which were to be given at his house. Balak Ram told him that he would go to Proiyan with Rajiv Sharma. Thereafter, he went to the house of Balak Ram and handed over three packets to Shalu, daughter of Balak Ram. Accused Rajiv Sharma used to visit the house of Balak Ram as they were having friendship. Jiwan had told him that both the accused were having illicit relations.

10. PW-5 Julfi Ram is the most material witness. According to him, at about 7:30-7:45 PM on 20.5.2011, he saw Balak Ram and accused Rajiv alias Chuha going together towards Dam site. Accused Rajiv alias Chuha was having an envelope in his hand and Balak Ram was having a small bag. After that date, he never saw Balak Ram. In his cross-examination, he admitted specifically that his eye sight was slightly feeble. He also admitted that it gets dark at 7:00 PM during summer. He saw Balak Ram and accused Chuha alias Rajiv Sharma from a distance of 20-25 meters.

11. PW-6 Munish Kumar is the son of deceased Balak Ram. He testified that his father went to office on 20.5.2011. His mother went to Village Thana Kalan to condole the death of her maternal cousin. His father did not come back from his duties. His mother also did not come back on 20.5.2011. She came on 21.5.2011. Accused Rajiv Sharma used to visit their house and used to serve liquor to his father. He also used to visit their house in the absence of his father. He identified two pens and one diary. In his cross-examination, he admitted that his father was having friendly relations with accused Rajiv Sharma. He did not know as to whether his father used to borrow money from accused Rajiv Sharma. He admitted that his father never objected to the visits of accused Rajiv Sharma to their house. He did not remember as to when accused Rajiv Sharma visited last time before his father went missing.

12. PW-7 Hukam Chand deposed that on 20.5.2011, he took out the fishing net from water and parked the boat on the side of lake at Badgaon. On 20.5.2011, due to inclement weather, he could not go to catch fishes. On 22.5.2011, when he visited his boat one of the Oars (Chappa) of his boat was broken whereas two Oars were intact. One of the Oars was found to be of boat of Ravinder, resident of Bhakra. Accused Rajiv was present with police on 30.5.2011. He told the police in his presence that he had ferried his boat to Proiyan side with Balak Ram on 20.5.2011. He also disclosed that due to bad weather/storm, one of the Oars was broken and boat struck at Bhakra side and he brought Oar of the boat of Ravinder. The police had taken into possession his licence, broken Oar of his boat vide memo Ext. PW-7/A. In his cross-examination, he admitted that his licence had expired on 31.3.2011. Volunteered that he had already applied for renewal of licence and with renewal application, they were permitted to catch fishes. He had applied for renewal in March, 2011. He was not having any receipt of renewal of licence.

13. PW-8 Amar Singh deposed that he had gone to Police Station Talai on 30.5.2011 alongwith Ramesh Kumar and cousin of Balak Ram. Both the accused were in custody of police. They were being interrogated. Accused Rajiv Sharma made disclosure statement to the police in his presence on 30.5.2011 at about 12:30 PM to the effect that he could identify the place from where he accompanied Balak Ram to the place where they boarded boat and the place where he threw Balak Ram. It was signed by him. The statement is Ext. PW-8/A. Accused Reshma also made disclosure statement to the police in his presence and in the presence of Ramesh Chand that she could identify the place where she had thrown the bag of Balak Ram in the lake and could also get the diary and pencils recovered from her house. The disclosure statement is Ext. PW-8/B. Accused Rajiv Sharma also disclosed that he was having illicit relations with Reshma for the last 1-1/2 years and hatched a conspiracy to eliminate Balak Ram. The police got recovered diary and pens from the house of Reshma Devi. These were taken into possession vide memo Ext. PW-6/A. Thereafter, accused Rajiv Sharma led the police party to Binkhiu Bawri and got the place identified from where Balak Ram had gone together to take boat. Both had taken

the boat and gone towards Proiyan side in the boat. The broken oar is Ext. P-4 and another oar is Ext. P-5.

14. PW-9 Ranjana Devi deposed that she runs a grocery shop at Thana Kalan. On 20.5.2011, a lady came to her shop at 4:30-4:45 PM and purchased a pair of sandals for Rs. 170/-. Accused Reshma had stated that she had come to condole the death of her maternal cousin and left the shop by saying that she would take bus for Proiyan.

15. PW-10 Balbir Singh deposed that he lost his son on 13.5.2011. His relatives came to condolence fixed on 20.5.2011. Accused Reshma is his maternal niece and daughter of the daughter of his Uncle. According to him, probably she came after 9:30 AM.

16. PW-11 Mehar Singh deposed that accused Reshma had come to condole the death of the son of Balbir Singh on 20.5.2011. Thereafter, she went away.

17. PW-12 Garib Dass deposed that he saw accused at Proiyan going towards lake side. Accused was wearing "Jamuni" coloured Kameez and Salwar with flower print at that time. After 13-14 days he saw accused Reshma in the custody of police at lake side at Proiyan. Many people were present there. In his cross-examination, he admitted that Proiyan is in district Una. He has not disclosed the name and address to the police as he was not aware of her name and address.

18. PW-13 Ravinder Chandel has deposed that he was summoned by the SHO to Badgaon to identify his missing Oar of the boat. The police took into possession Oar vide memo Ext. PW-7/A.

19. PW-14 Gujjar Ram deposed that Balak Ram used to come to crush stones at 3/3:15 PM and prior to that he used to attend to his duties in the dispensary. Balak Ram used to carry a small bag with him containing diary and pens etc. When they were engaged in the work of stone crushing of Thakuri, Chuha came there and discussed with Balak Ram that 2-3 kg fishes and 2-3 bottles of liquor were required for a drinking programme at Bhakra. He did not remember the date and day when accused Chuha alias Rajiv Sharma had come. Again stated that accused had come to see Balak Ram on 18.5.2011 and had fixed the programme of 20.5.2011. On the next day, Balak Ram contacted accused on the mobile phone of Thakuri but call was not matured and then Balak Ram took the mobile of Prem Lal who had come there to keep his masonry tools. He was not aware of the deliberations over the phone. He was declared hostile and cross-examined by the learned Public Prosecutor. In his cross-examination, he admitted that he was slightly hard of hearing. Accused Chuha talked to Balak Ram from a distance of about 3 meters.

20. PW-15 Kishori Lal deposed that during May, 2011, he Gujjar Ram and Balak Ram were engaged by Thakuri in stone crushing work. On 18.5.2011 at 3:00 PM accused Rajiv alias Chuha came to Balak Ram at the work site where they were working at about 4/4:30 PM and told Balak Ram that they would made programme of

Proiyan/Bhakra site where they would eat and drink for which 2-3 kg fishes and 2-3 bottles of liquor were required. He also told that programme would be made of next day. On 19.5.2011, Balak Ram came to the work site where they were engaged and told them that he would confirm from Rajiv alias Chuha about the time when they would go to Proiyan and took mobile phone of Thakuri but the call did not mature. In the meantime Prem Lal came there to take his tools. Balak Ram requested Prem Lal to call on telephone No. 9022073801 of Rajiv alias Chuha but said number was not connected then Balak Ram told Prem Lal to prefix zero to the aforesaid number and then call matured. Balak Ram talked over mobile with accused Rajiv alias Chuha and then told them that programme of 19.5.2011 had been cancelled and instead, programme of 20.5.2011 had been fixed. Balak Ram also came to the work site on 20.5.2011 and worked with them till 6:30-7:00 PM. Then they disbursed to their houses. After some distance, he and Gujjar Ram proceeded on a different way and Balak Ram proceeded towards Bawri. Near Bawri, Balak Ram saw Amrit Lal and gave him call to stop that he has some work with him. Balak Ram used to carry a hand bag of black colour in which he used to keep small diary and pencils etc.

21. PW-16 Shakti Chand deposed that Balak Ram was working as part time Safai Karamchhari in their dispensary. Balak Ram used to open the dispensary and clean the same. He used to keep the keys in small bag. Balak Ram attended his duties lastly on 20.5.2011 and thereafter, he marked his absent in the attendance register and sent absentee report to Distt. Ayurveda Officer, Bilaspur vide Ext. PW-16/A.

22. PW-17 Gurmail Singh deposed that on 20.5.2011 Paramjeet had gone to his house and he was all alone in the liquor shop. At about 9:30/10:00 PM, Balak Ram came to his shop and demanded match box from him as other shops were closed. He gave half match sticks to him from his match box and then Balak Ram left towards lake. He appeared to be drunk at that time. Sister of Balak Ram is married in the adjoining village and as such he had seen Balak Ram going to the house of his sister through their village.

23. PW-18 Raj Kumar deposed that Rajiv Sharma had given him Rs. 200/- to fetch a liquor bottle from liquor shop Bhakra. Perhaps the date was 19th. He could not bring the bottle on that date and bought the bottle of liquor of Bagpiper on 20th and gave the same to accused Rajiv on the road at Badgaon at 5:00-6:00 PM. After taking bottle accused proceeded on the way towards Binkhiu Bawri. In his cross-examination, he deposed that Rajiv had told him that he required liquor to be served to his relatives and after taking bottle from him, he had gone to his house.

24. PW-21 Meena Kumari is the wife of PW-1 Jeewan Kumar. She deposed that accused Rajiv Sharma used to visit the house of Balak Ram and her mother-in-law had deterred him from visiting the house of Balak Ram few days prior to Balak Ram went missing. Accused Rajiv Sharma had stopped visiting the house of Balak Ram. When her mother-in-law deterred accused Rajiv Sharma, she had asked her mother-in-law, who told her that accused Rajiv Sharma and accused Reshma were

having illicit relations.

25. PW-26 SI Ram Dass deposed that on 22.5.2011 at about 1:05 PM, Reshma Devi came to police station and lodged missing report of her husband Balak Ram vide Ext. PW-6/A. In between, Jiwan Kumar, brother of Balak Ram (deceased) came to Police Station perhaps on 23.5.2011 and on 26.5.2011 and inquired about the whereabouts of Balak Ram (deceased). Jiwan Kumar lodged report Ext. PW-1/A wherein he disclosed that Reshma was having illicit relations with Rajiv Sharma and both have abducted Balak Ram in order to keep their illicit relations. Mobile phones were also recovered alongwith other articles/ornaments vide memo Ext. PW-26/D. Rajiv Sharma made disclosure statement under Section 27 of the Evidence Act in the presence of Ramesh and Amar Singh, on the basis of which the recoveries were effected and the spot where they pushed down Balak Ram was identified. The boat used was also identified and the broken and unbroken Oars were also taken into possession. On 31.5.2015 the divers of BBMB were associated for fishing out the body of Balak Ram who dived 3-4 times but were unable to go deep beyond 80-90 feet as there was no visibility beyond that point. The dead body was not traced. The sims were found to be issued to accused Rajiv Sharma. The ownership record of mobile sim 90220-73801 is Ext. PW-26/J and ownership record of sim No. 98573-18473 is Ext. PW-26/K.

26. PW-27 Insp. Om Parkash deposed that ASI Ram Dass had recovered mobile phone from the personal search of accused Reshma. This was deposited by him with MHC alongwith other articles of Jamatalashi. In his cross-examination, he disclosed that he did not know that mobile Ext. P-7 was with accused Rajiv prior to 28.5.2011. He did not know that there was any entry of mobile phone in Malkhana register or not.

27. PW-28 Madan Lal Sharma deposed that letter Ext. PW-28/A was received in their office from S.P. Bilaspur through e-mail. Call detail record from 20.5.2011 to 24.5.2011 alongwith address of the owner of mobile number 98573-18473 was demanded by the police. The owner of the number was Rajiv Sharma. The aforesaid number was of reliance communication. However, later on stated that the number 98573-18473 was of Aircel and the number of reliance Tele-communication was 90220-73801, which was in the name of Rajiv Sharma. The call details were supplied to the police as per Ext. PW-28/B and PW-28/C.

28. The entire case of the prosecution is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, it is necessary to complete the entire chain of events and all the incriminating circumstances must point towards the guilt of the accused. In the case based upon circumstantial evidence, motive plays a very important role. The motive attributed by the prosecution, in the present case, is that accused had illicit relations and thus they wanted to eliminate Balak Ram (deceased).

29. PW-1 Jiwan Kumar is the brother of the deceased Balak Ram. According to him, his mother had deterred accused Rajiv Sharma from visiting the house of his brother about 20-25 days before his brother went missing. According to him, accused Rajiv Sharma had illicit relations with accused Reshma, wife of his brother Balak Ram. In his cross-examination, he has admitted that perhaps he came to know only on 25.5.2011 about the illicit relations of accused Reshma with accused Rajiv Sharma. His wife told him that accused Rajiv visits the house of Balak Ram (deceased) in his absence. Except his wife, no other person told him this fact. PW-2 Bal Krishan deposed that about 20-25 days prior to Balak Ram went missing, mother-in-law of accused Reshma had asked accused Rajiv Sharma not to visit the house of Balak Ram. Thereafter, accused Rajiv Sharma reduced his visits. In his cross-examination, he admitted that mother-in-law of accused Reshma Devi had not asked accused Rajiv Sharma not to visit her house in his presence. PW-3 Juga Devi, in her cross-examination, has categorically stated that she has told Bal Krishan that both the accused were having illicit relations. Except Bal Krishan, she did not tell this fact to any other person. PW-2 Bal Krishan has categorically stated in his cross-examination, as discussed hereinabove, that this fact was not stated by mother-in-law of accused Reshma in his presence. It is also surprising that if the wife of PW-1 Jiwan Kumar PW-21 Meena Kumari knew about these relations, she would have discussed this fact with her husband. PW-1 Jiwan Kumar has stated in his cross-examination that perhaps he came to know about this incident only on 25.5.2011. PW-2 Bal Krishan has categorically admitted that he has only seen both the accused sitting together. He has never seen both the accused naked or in compromising position.

30. PW-4 Amrit Lal deposed that Jiwan Kumar told him that both the accused were having illicit relations. It is not understandable as to why a person would disclose serious confidential matter to anyone i.e. PW-4 Amrit Lal. Rather, it has come in the statement of PW-1 Jiwan Kumar that accused Rajiv Sharma was frequent visitor of the house of his brother and he was aware of the same. PW-2 Bal Krishan has also admitted that accused Rajiv Sharma used to visit the house of Balak Ram for considerable long time. Balak Ram used to drink and dine with accused Rajiv Sharma.

31. PW-6 Munish Kumar is the son of deceased Balak Ram. He also admitted that accused Rajiv Sharma used to visit their house and used to serve liquor to his father. He also admitted that his father was having friendly relations with accused Rajiv Sharma. He admitted that his father never objected to the visits of accused Rajiv Sharma to their house. He did not remember as to when accused Rajiv Sharma visited last time before his father went missing.

32. PW-21 Meena Kumari deposed that she asked her mother-in-law who told her that accused Rajiv Sharma and accused Reshma were having illicit relations. PW-21 Meena Kumari deposed in her cross-examination that she disclosed to the police

that she had asked her mother-in-law as to why she had deterred accused Rajiv Sharma from visiting the house of Balak Ram (Confronted with Mark-M1, wherein it is not so recorded). She only suspected that both the accused had illicit relations. We have already discussed that PW-3 Juga Devi has categorically stated that she has not narrated about the illicit relations of accused Rajiv Sharma and accused Reshma to any other person except Bal Krishan. Thus, the prosecution has failed to prove that both the accused were having illicit relations.

33. Now, the Court will advert to the theory of "last seen together". It is a fact that the body was never recovered. It has come in the statements of the witnesses that divers of BBMB had come on the spot but the dead body was not traced. The police has not recorded the statement of any diver as to why they could not locate the dead body when according to the prosecution, accused Rajiv Sharma has shown the place where the body of deceased was thrown into the lake.

34. The prosecution has relied upon the statement of PW-5 Julfi Ram to prove the theory of "last seen together". PW-5 Julfi Ram deposed that at about 7:30-7:45 PM on 20.5.2011, he saw Balak Ram and accused Rajiv alias Chuha going together towards Dam side. Accused Rajiv alias Chuha was having an envelope in his hand and Balak Ram was having a small bag. In his cross-examination, he admitted specifically that his eye sight was slightly feeble. He also admitted that it becomes dark at 7:00 PM during summer. He saw Balak Ram and accused Chuha alias Rajiv Sharma from a distance of 20-25 meters.

35. Their lordships of the Hon"ble Supreme Court in the case of [Vijay Shankar Vs. State of Haryana](#)--> , have held that as per Modi's Medical Jurisprudence and Toxicology, a man cannot recognize someone in moonlight beyond a distance of 17 yards. One yard is equivalent to 3 feet. PW-5 Julfi Ram has seen the accused in the company of Balak Ram at 7:30-7:45 PM from a distance of 20-25 meters and he has admitted categorically that his eye sight was slightly feeble. Their lordships have held as under:

"13. Evidence of PW-11 is assailed contending that PW-11 is not a reliable witness and that he being the owner of sixty acres of land and also owning a petrol pump, it is quite unbelievable that he went in the midnight from one village to another in search of buffalo. Learned counsel for the appellant placed reliance on the Modis" Medical Jurisprudence and Toxicology 19th Edn. Para (2) at page No. 61 contending that according to Tidy, "the best known person cannot be recognized in the clearest moonlight beyond a distance of seventeen yards...." and it is quite improbable that PW-11 could see the accused-appellant so clearly from such a long distance.

14. As the prosecution case mainly revolves around the evidence of PW-11, it is necessary to carefully consider whether the High Court and the trial court have properly appreciated the evidence of PW-11 and whether the courts below were right in accepting the prosecution case based on evidence of PW-11. PW-11 is a

resident of village Dieghal. If we look at the economic position of PW-11, admittedly he owns sixty acres of land and also a petrol pump. It is quite improbable to believe that he was going alone from village Dujana to Dieghal which is at a distance of ten kilometers in the midnight in search of his buffalo. Trial court and the High Court erred in holding that the evidence of PW-11 cannot be brushed away as even a rich man may take the theft of petty items seriously and may take every effort to search the same. It is quite unnatural that in the midnight PW-11 went alone without informing anyone nor taking anyone with him. Further as pointed out by Sukhbir Singh (PW-10) the distance of the room where Satish Kumar was sleeping and the road leading to village Dujana is three killas i.e. three acres on the northern side and the southern and western side of the room, their fields are situated and as per the version of Vidya Rattan (PW-11) he had identified the appellant from a distance of twenty five feet in the moonlight and also in the light of a electric bulb fixed in the courtyard of the room. It is quite improbable that in the night from such a long distance PW-11 was able to identify the accused.

15. If the prosecution establishes the last seen theory, an inference can be drawn against the accused which may lead to the finding of his guilt. Considering the evidence of PW-11 and the improbabilities, evidence of PW-11 neither inspires confidence nor does it lead to a conclusion that the appellant was last seen with the deceased. As noticed earlier, PW-10 and Satish Kumar had three servants; two were sleeping in the adjoining room where deceased-Satish Kumar was sleeping and the third one was sleeping in the truck parked at some distance from the farm. From the post-mortem certificate Ex. PS, it is seen that the deceased has sustained number of injuries on the neck, chest and upper arm. From the postmortem certificate it is also seen that deceased-Satish Kumar was well-built and nourished. Probably, deceased might have resisted and raised alarm, it is quite improbable that the farm servants never heard the noise and that none of the servants came to the rescue of deceased-Satish Kumar which again raises serious doubts about the prosecution case."

36. In this case also, the person who claimed to have seen the accused in the darkness had gone in the search of buffaloes at 2:30 AM. Now, as far as this case is concerned, in this case also PW-5 Julfi Ram deposed that he has left the cattle for grazing and thereafter he went in search of his cattle towards Binkhiu Bawri at 7:30-745 PM. The Court can take judicial notice of the fact that cattle are brought back before the sunset. The statement of PW-5 Julfi Ram does not inspire confidence. It was not possible for PW-5 Julfi Ram to see accused at a distance of 20-25 meters when his eye sight was also feeble.

37. The prosecution has also relied upon the extra-judicial confession made before PW-1 Jiwan Kumar by accused Rajiv Sharma and before PW-2 Bal Krishan. The disclosure statement has not been made before a person of authority. PW-1 Jiwan Kumar is the brother of the deceased. The extra-judicial confession made before

PW-7 Hukam Chand is also not believable for the simple reason that his licence to catch fish had expired on 31.3.2011. In his cross-examination, PW-1 Jiwan Kumar has admitted that he has not disclosed to the police that Nylon rope was used to tie feet of Balak Ram. He has also not disclosed to the police that both the accused had made any confession before the police. Similarly, PW-2 Bal Krishan has also admitted in his cross-examination that he has not disclosed to the police in his statement that Reshma told that she was sitting on the bank of Govind Sagar when accused Rajiv Sharma pushed Balak Ram in water from boat. He had not disclosed to the police that accused Rajiv had brought stone of 20-25 kg to tie the same to the legs of Balak Ram and then Balak Ram was pushed down in the water.

38. Mr. M.A. Khan, learned Addl. Advocate General has drawn the attention of the Court to the statement of PW-4 Amrit Lal who has deposed that he has met Balak Ram in the evening on 20.5.2011. PW-4 Amrit Lal deposed that Balak Ram met him and told him that his son Munish is ill suffering from dysentery and gave him three small packet containing medicines that the same be given at his house. He handed over the same to Shalu, daughter of Balak Ram. He also admitted that accused Rajiv Sharma used to visit the house of Balak Ram as they were having friendship. In his cross-examination, he has admitted that he has not seen accused Rajiv Sharma in the company of Balak Ram on 20.5.2011. It is intriguing to note as to why deceased Balak Ram should have handed over the medicines to PW-4 Amrit Lal to be carried to his house for his son. The normal human conduct of a father whose son was ill would be to carry medicines himself to his house.

39. The prosecution has also relied upon the statements of PW-14 Gujjar Ram and PW-15 Kishori Lal to prove that Balak Ram used to work with them in stone crushing and deceased and accused Rajiv Sharma were talking about the drinking eating fish. According to PW-14 Gujjar Ram, accused Rajiv Sharma had come to Balak Ram on 18.5.2011 and had fixed the programme of 20.5.2011. PW-14 Gujjar Ram has also admitted that he was hard of hearing and the programme of drinking on 20.5.2011 was heard by him from a distance of 3 meters.

40. PW-18 Raj Kumar deposed that about 5-6 months prior, accused Rajiv Sharma had given him Rs. 200/- to fetch a liquor bottle from liquor shop Bhakra. Perhaps the date was 19th. He could not bring the bottle on that date and bought the bottle of liquor of Bagpiper on 20th and gave the same to accused Rajiv on the road at Badgaon at 5:00-6:00 PM. After taking bottle accused Rajiv Sharma proceeded on the way towards Binkhiu Bawri. In his cross-examination, he admitted that accused Rajiv had told him that he required liquor to be served to his relatives and after taking bottle from him, he had gone to his house. His statement does not inspire confidence. In case accused Rajiv had given him Rs. 200/- to fetch liquor bottle on 19th, he would have given him on 19th itself but he bought the bottle on 20th. According to him, accused Rajiv had gone towards Binkhiu Bawri. PW-17 Gurmail Singh has deposed that at about 9:30/10:00 PM, Balak Ram came to his shop and

demanding match box from him as other shops were closed. He gave half match sticks to him from his match box and then Balak Ram left towards lake. He specifically deposed that Balak Ram appeared to be drunk at that time. The case of the prosecution is also that Balak Ram was found nearby banks of lake and thus, the possibility of his drowning being drunk cannot be ruled out.

41. Their lordships of the Hon'ble Supreme Court in the case of [Chattar Singh and Another Vs. State of Haryana](#), have held that at a point of time when accused and deceased were seen together alive and time when deceased was found dead, the time gap between the two must be small. It has been held as follows:

"14. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this court. In [State of U.P. Vs. Satish](#), it was noted as follows:

"22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

42. In the instant case, the dead body has not been recovered and thus the rigors of "last seen together" won't apply strictly. Moreover, very scanty evidence has been produced by the prosecution to prove theory of "last seen together" on the basis of statement of PW-5 Julfi Ram, who has admitted that his eye-sight was feeble and he has seen the accused from a distance of 20-25 meters.

43. Their lordships of the Hon'ble Supreme Court in the case of [Ajitsingh Harnamsingh Gujral Vs. State of Maharashtra](#), have held that the duration of time between two events ought to be so small that possibility of any other person being author of crime can be ruled out. It has been held as follows:

"27. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible, vide [Mohd. Azad @ Samin Vs. State of West Bengal](#), and [State Vs. Mahender Singh Dahiya](#), [Sk. Yusuf Vs. State of West Bengal](#), .

28. In our opinion, since the accused was last seen with his wife and the fire broke out about 4 hours thereafter it was for him to properly explain how this incident

happened, which he has not done. Hence this is one of the strong links in the chain connecting the accused with the crime.

29. The victims died in the house of the accused, and he was there according to the testimony of the above witnesses. The incident took place at a time when there was no outsider or stranger who would have ordinarily entered the house of the accused without resistance and moreover it was most natural for the accused to be present in his own house during the night."

44. Their lordships of the Hon"ble Supreme Court in the case of [Dandu Jaggaraju Vs. State of A.P.](#), have held that in a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution. It is this circumstance which often forms the fulcrum of prosecution story. It has been held as follows:

"9. It has to be noticed that the marriage between P.W. 1 and the deceased had been performed in the year 1996 and that it is the case of the prosecution that an earlier attempt to hurt the deceased had been made and a report to that effect had been lodged by the complainant. There is, however, no documentary evidence to that effect. We, therefore, find it somewhat strange that the family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple. In this view of the matter, the motive is clearly suspect. In a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution and it is this circumstance which often forms the fulcrum of the prosecution story."

45. Their lordships of the Hon"ble Supreme Court in the case of [Sathya Narayanan Vs. State Rep. by Inspector of Police](#), have held that in the case of circumstantial evidence, motive also assumes significance since absence of motive would put Court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omissions or conjectures do not take place of proof. It has been held as follows:

"42) In the case of circumstantial evidence, motive also assumes significance for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omission or conjecture do not take the place of proof. In the case on hand, the prosecution has demonstrated that initially, the deceased entered the Ashram in order to assist the devotees and subsequently became one of the Trustees of the Trust and slowly developed grudge with the appellants. PWs 35 and 36, sister and brother of the deceased Leelavathi deposed that since then she became a Trustee, there was a dispute with regard to the Management of the said Trust."

46. Their lordships of the Hon"ble Supreme Court in the case of [Majendran Langeswaran Vs. State \(NCT of Delhi\) and Another](#), have held that onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt

in the mind of the Court and all the circumstances must lead to the conclusion that accused is the only one who has committed crime and none else. It has been held as follows:

"3. On 30th November, 1996, an altercation is stated to have taken place between the accused and the deceased L. Shivaraman. As the accused had sustained some cut injuries on his hands, he reported the matter to the officials. On 1st December, 1996 when the ship was on high seas, the appellant took off from his duty as helmsman on the ground of pain in his hands due to cut injuries and another helmsman Baria was asked to do the duty as replacement. As the accused and the deceased were staying in Cabin No. 25, the accused was temporarily shifted from that cabin to Cabin No. 23 due to the above incident of assault. At about 1510 hours, the accused allegedly approached IInd Officer Kalyan Singh (PW-6) with a blood-stained knife in his hand and his hands smearing in blood and is alleged to have confessed before him that he had killed L. Shivaraman. On being asked by Kalyan Singh (PW-6), the appellant handed over the blood-stained knife to him which he placed in a cloth piece without touching the same. Kalyan Singh (PW-6) then intimated the Captain and other officers. The body of L. Shivaraman was found lying in Cabin No. 23 in such a way that half of it was inside the cabin and half of it outside. The officials of Shipping Corporation of India were informed. On incident being reported, pursuant to an instruction from concerned quarter, the ship was diverted to Hongkong. On being so directed by the Captain of the ship (PW-5), Kalyan Singh (PW-6) got the body of the deceased cleaned up for being preserved in the fish room with the help of Manjeet Singh Bhupal (PW-4) and Chief Officer V.V. Muralidharan (PW-18) took photographs. The blood-stained knife was kept in the safe custody of PW-5. The accused was then apprehended, tied and disarmed before being shifted to the hospital on board. Since the ship was having Indian Flag, as per the International Treaty of which India was a signatory, the act of the accused was subject to Indian laws. Accordingly, a case bearing R.C. No. 10(S) of 1996 was registered by the Central Bureau of Investigation (CBI) against the accused on 6th December, 1996.

16. Now, we have to consider whether the judgment of conviction passed by the trial court and affirmed by the High court can be sustained in law. As noticed above, the conviction is based on circumstantial evidence as no one has seen the accused committing murder of the deceased. While dealing with the said conviction based on circumstantial evidence, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused, which would mean that the onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court.

17. In the case of [Hanumant Vs. The State of Madhya Pradesh](#), this Court observed as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

18. In the case of [Padala Veera Reddy Vs. State of Andhra Pradesh and others](#), this Court opined as under:

"10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

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

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

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See [Gambhir Vs. State of Maharashtra](#),)"

19. In the case of [C. Chenga Reddy and Others Vs. State of Andhra Pradesh](#), this Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and

allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

20. In the case of [Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh](#), , this Court again considered the case of conviction based on circumstantial evidence and held as under:

"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67 and [Reddy Sampath Kumar Vs. State of Andhra Pradesh](#), ."

21. In the case of [Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra](#), , this Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:

"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court- [Bharat Vs. State of M.P.](#), . In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime."

22. In the case of [State of Goa Vs. Pandurang Mohite](#), , this Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of

the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

23. It would be appropriate to consider some of the recent decisions of this Court in cases where conviction was based on the circumstantial evidence. In the case of [G. Parshwanath Vs. State of Karnataka](#), this Court elaborately dealt with the subject and held as under:

"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

24. In the case of [Rajendra Pralhadrao Wasnik Vs. The State of Maharashtra](#), while dealing with the case based on circumstantial evidence, this Court observed as under:

"12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime.

13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person."

25. Last but not least, in the case of [Brajendrasingh Vs. State of Madhya Pradesh](#), , this Court while reiterating the above principles further added that:

"28. Furthermore, the rule which needs to be observed by the court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled to a just and fair trial. (Ref. [Dhananjay Chatterjee alias Dhana Vs. State of W.B.](#), ; [Shivu and Another Vs. R.G. High Court of Karnataka and Another](#), and [Shivaji @ Dadya Shankar Alhat Vs. The State of Maharashtra](#), "

26. As discussed hereinabove, there is no dispute with regard to the legal proposition that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence as laid down by this Court. In such a case, all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else."

47. Their lordships of the Hon"ble Supreme Court in the case of [Rishi Pal Vs. State of Uttarakhand](#), , have held that motive does not have a major role to play in cases based on eye witnesses account of incident but it assumes importance in cases that rest entirely on circumstantial evidence. Their lordships have further held that circumstances sought to be proved against accused be established beyond reasonable doubt, but also that such circumstances form so complete a chain, as

leaves no option for court, except to hold that accused is guilty of offences with which he is charged. It has been held as follows:

"15. The second aspect to which we must straightaway refer is the absence of any motive for the appellant to commit the alleged murder of Abdul Mabood. It is not the case of the prosecution that there existed any enmity between Abdul Mabood and the appellant nor is there any evidence to prove any such enmity. All that was suggested by learned counsel appearing for the State was that the appellant got rid of Abdul Mabood by killing him because he intended to take away the car which the complainant-Dr. Mohd. Alam had given to him. That argument has not impressed us. If the motive behind the alleged murder was to somehow take away the car, it was not necessary for the appellant to kill the deceased for the car could be taken away even without physically harming Abdul Mabood. It was not as though Abdul Mabood was driving the car and was in control thereof so that without removing him from the scene it was difficult for the appellant to succeed in his design. The prosecution case on the contrary is that the appellant had induced the complainant to part with the car and a sum of Rs. 15,000/-. The appellant has been rightly convicted for that fraudulent act which conviction we have affirmed. Such being the position, the car was already in the possession and control of the appellant and all that he was required to do was to drop Abdul Mabood at any place en route to take away the car which he had ample opportunity to do during all the time the two were together while visiting different places. Suffice it to say that the motive for the alleged murder is as weak as it sounds illogical to us. It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. [See [Sukhram Vs. State of Maharashtra](#), , [Dr. Sunil Clifford Daniel Vs. State of Punjab](#), , [Pannayar Vs. State of T. Nadu by Inspector of Police](#),]. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.

19. It is true that the tell-tale circumstances proved on the basis of the evidence on record give rise to a suspicion against the appellant but suspicion howsoever strong is not enough to justify conviction of the appellant for murder. The trial Court has, in our opinion, proceeded more on the basis that the appellant may have murdered the deceased-Abdul Mabood. In doing so the trial Court over looked the fact that there is a long distance between "may have" and "must have" which distance must be traversed by the prosecution by producing cogent and reliable evidence. No such evidence is unfortunately forthcoming in the instant case. The legal position on the subject is well settled and does not require any reiteration. The decisions of this Court have on numerous occasions laid down the requirements that must be satisfied in cases resting on circumstantial evidence. The essence of the said requirement is that not only should the circumstances sought to be proved against the accused be established beyond a reasonable doubt but also that such circumstances form so complete a chain as leaves no option for the Court except to

hold that the accused is guilty of the offences with which he is charged. The disappearance of deceased-Abdul Mabood in the present case is not explainable as sought to be argued before us by the prosecution only on the hypothesis that the appellant killed him near some canal in a manner that is not known or that the appellant disposed of his body in a fashion about which the prosecution has no evidence except a wild guess that the body may have been dumped into a canal from which it was never recovered."

48. PW-7 Hukam Chand deposed that when he visited his boat on 22.5.2011, one of the Oars (Chappa) of his boat was broken whereas two Oars were intact. One of the Oars was found to be of boat of Ravinder, resident of Bhakra. Accused Rajiv Sharma was present with police on 30.5.2011, who told the police in his presence that he had ferried his boat to Proiyan side with Balak Ram on 20.5.2011. He also disclosed that due to bad weather/storm, one of the Oars was broken and boat struck at Bhakra side and he brought Oar of the boat of Ravinder. The police had taken into possession his licence, broken Oar of his boat vide memo Ext. PW-7/A. In his cross-examination, he admitted that his licence had expired on 31.3.2011. Volunteered that he had already applied for renewal of licence and with renewal application, they were permitted to catch fishes. He had applied for renewal in March, 2011. He was not having any receipt of renewal of licence. PW-13 Ravinder Chandel deposed that on 22.5.2011, he went to see his boat but one of the Oars of his boat was missing. However, surprisingly, he has not lodged any FIR. The explanation given for not lodging FIR is that he was busy in construction and the value of Oar was less than Rs. 100/-. In his cross-examination, he could not disclose the date when he commenced the construction and when his construction completed.

49. Mr. M.A. Khan, Addl. Advocate General for the State has placed strong reliance upon the disclosure statement made under Section 27 of the Evidence Act before PW-8 Amar Singh. PW-6 Munish Kumar, in his cross-examination admitted that Amar Singh and Ramesh were their relations. According to PW-8 Amar Singh, accused Rajiv Sharma has made disclosure statement vide Ext. PW-8/A and accused Reshma also made disclosure statement vide memo Ext. PW-8/B. Accused Rajiv had disclosed that he could identify the place from where he accompanied Balak Ram and from where they pushed the body into the water. Accused Reshma has made the statement that before drowning the bag in the lake, she has taken out diary and pens and has kept it in her house. There was no occasion for accused Reshma to take the diary and pens to her house. She would have thrown the bag instead of retaining pens and diary to hide them in the house.

50. The I.O. should have recorded the statements of some independent witnesses instead of PW-8 Amar Singh and Ramesh Chand. Amar Singh and Ramesh Chand are close relatives of deceased. It is settled law that the statements of the close relatives can be relied upon but they have to be perused with caution. Moreover, Ramesh

Chand has not been examined by the prosecution, though he has signed Ext. PW-8/A and PW-8/B as well as PW-8/C. PW-8 Amar Singh has admitted that Ramesh Kumar was cousin of Balak Ram in his examination-in-chief. PW-8 Amar Singh as also admitted in his cross examination that Ramesh Chand was his relative.

51. Their lordships of the Hon"ble Supreme Court in the case of [State of Rajasthan Vs. Kashi Ram](#), have held that extra judicial confession is a weak piece of evidence and must be proved like any other fact. It has been held as follows:

"14. On appeal, the High Court reversed the findings of fact recorded by the trial court and acquitted the respondent. Before advertng to the other incriminating circumstances we may at the threshold notice two of them namely - the circumstance that the respondent made an extra-judicial confession before PWs 3 and 4, and the circumstance that recoveries were made pursuant to his statement made in the course of investigation of the waist chord used for strangulating Kalawati (deceased) and the keys of the locks which were put on the two doors of his house. The High Court has disbelieved the evidence led by the prosecution to prove these circumstances and we find ourselves in agreement with the High Court. There was really no reason for the respondent to make a confessional statement before PWs 3 and 4. There was nothing to show that he had reasons to confide in them. The evidence appeared to be unnatural and unbelievable. The High Court observed that evidence of extra-judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra-judicial confession, the confessional evidence must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made. The High Court found that PW-3 Dinesh Kumar was known to Mamraj, the brother of deceased Kalawati. PW-3 was neither a Sarpanch nor a ward member and, therefore, there was no reason for the respondent to repose faith in him to seek his protection. Similarly, PW-4 admitted that he was not even acquainted with the accused. Having regard to these facts and circumstances, we agree with the High Court that the case of the prosecution that the respondent had made an extra-judicial confession before PWs-3 and 4 must be rejected."

52. Their lordships of the Hon"ble Supreme Court in the case of [Ajay Singh Vs. State of Maharashtra](#), have held that extra-judicial confession must be voluntary and the person to whom confession is made should be unbiased and not inimical to the accused. It is for the Court to judge credibility of the witness" capacity and thereafter to decide whether his or her evidence has to be accepted or not. Their lordships have also explained the terms "confession" and "statement" as under:

"8. We shall first deal with the question regarding claim of extra judicial confession. Though it is not necessary that the witness should speak the exact words but there cannot be vital and material difference. While dealing with a stand of extra judicial confession, Court has to satisfy that the same was voluntary and without any coercion and undue influence. Extra judicial confession can form the basis of

conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely inimical to the accused. Where there is material to show animosity, Court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is made. It is not invariable that the Court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may be able to repost exact words and there may be many who are possessed of normal memory and do so. It is for the Court to judge credibility of the witness's capacity and thereafter to decide whether his or her evidence has to be accepted or not. If Court believes witnesses before whom confession is made and is satisfied confession was voluntary basing on such evidence, conviction can be founded. Such confession should be clear, specific and unambiguous.

10. The expression "confession" is not defined in the Evidence Act, "Confession" is a statement made by an accused which must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. The dictionary meaning of the word "statement" is "act of stating; that which is stated; a formal account, declaration of facts etc." The word "statement" includes both oral and written statement. Communication to another is not however an essential component to constitute a "statement". An accused might have been over-heard uttering to himself or saying to his wife or any other person in confidence. He might have also uttered something in soliloquy. He might also keep a note in writing. All the aforesaid nevertheless constitute a statement. If such statement is an admission of guilt, it would amount to a confession whether it is communicated to another or not. This very question came up for consideration before this Court in [Sahoo Vs. State of Uttar Pradesh](#). After referring to some passages written by well known authors on the "Law of Evidence" Subba Rao, J. (as he then was) held that "communication is not a necessary ingredient to constitute confession". In paragraph 5 of the judgment, this Court held as follows:

"...Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence presumably on the ground that as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession goes not to

depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession. as the case may be.... If, as we have said, statement is the genus and confession is only a sub-species of that genus, we do not see any reason why the statement implied in the confession should be given a different meaning. We, therefore, hold that a statement, whether communicated or not, admitting guilt is a confession of guilt

(Emphasis supplied)

53. The prosecution has also tried to prove that accused Reshma Devi has left her house on 20.5.2011 and came back in the evening on 21.5.2011 at 7:15 AM. Mr. M.A. Khan, Addl. Advocate General has drawn the attention of the Court to the statement of PW-6 Munish Kumar son of the accused Reshma. According to him, his mother had gone to Thana Kalan to condole the death of her maternal cousin on 20.5.2011 but she did not come back on that date. She came back on 21.5.2011 at 7-7:15 AM. PW-9 Ranjana Devi deposed that she was running a grocery shop at Thana Kalan. On 20.5.2011, the accused came to her shop at 4:30-4:45 PM and purchased a pair of sandals. According to her, accused was her old customer. (confronted with mark-R, wherein it was not so recorded) She had gone, according to the prosecution to condole the death of her relation and there was no occasion for her to buy sandals and that too from village Thana Kalan.

54. PW-10 Balbir Singh deposed that he lost his son on 13.5.2011 and his condolence was fixed for 20.5.2011. The Court can take judicial notice of the fact that meeting of condolence in these areas is organized after 13 days and not after 7 days, as stated by PW-10 Balbir Singh. According to him, after condolence, accused went to the house of maternal Uncle Mehar Singh. However, in his cross-examination, he has deposed that he did not know as to where accused Reshma went after she left the house of Mehar Singh. He did not know that she had gone to the house of her sister or stayed for night. He did not remember the time when police recorded his statement. PW-11 Mehar Singh deposed that after condoling the death, accused Reshma left to her house, however, he was present at the house of Balbir Singh. He remained whole day in the house of Balbir Singh. In case Mehar Singh had stayed whole day in the house of Balbir Singh, there was no occasion for accused Reshma to visit the house of Mehar Singh his maternal uncle. PW-12 Garib Dass deposed that he saw accused at Proiyan going towards lake side. Accused was wearing "Jamuni" coloured Kameez and Salwar with flower print at that time. After 13-14 days he saw accused Reshma in the custody of police at lake side at Proiyan. Many people were present there. In his cross-examination, he admitted that he has not disclosed the name and address to the police as he was not aware of her name and address. It is not believable that the accused would be wearing the same dress which she was wearing on 20.5.2011 when she was noticed by PW-12 Garib Dass.

His statement does not inspire confidence that he has seen the accused going towards lake side.

55. The deceased went missing on 20.5.2011. Accused Reshma had lodged the missing report on 21.5.2011. PW-1 Jiwan Kumar had come to the village Badgaon on 20.5.2011. However, the fact of the matter is that FIR PW-1/A was registered only on 28.5.2011. The FIR must be recorded promptly and in case there is inordinate delay, the same is required to be explained. The prosecution, in the instant case, has not explained the delay in lodging the FIR. We have also noted that the statements of the material witnesses were recorded either on 30.5.2011 or 2.6.2011 or 4.6.2011. PW-2 Bal Krishan is one of the material witness. His statement was recorded on 4.6.2011 under Section 161 Cr.P.C. The statement of PW-6 Munish Kumar was recorded on 30.5.2011 alongwith the statement of Hukam Chand. The statement of PW-9 Ranjana Devi was recorded on 2.6.2011. The statement of Meena Kumari PW-21 was recorded on 4.6.2011. The statement of Kishori Lal PW-15 was recorded on 4.6.2011. The statements under Section 161 Cr.P.C. though recorded belatedly, can be considered, but delay is required to be explained. In the present case, the delay has also not been explained.

56. PW-26 SI Ram Dass deposed that both the accused were produced before the Medical Officer and got them medically examined. At the time of arrest of accused Reshma, mobile phone Nokia-1110 bearing SIM No. 98573-18473 was recovered alongwith other articles/ornaments which she was wearing. These articles were taken into possession vide Fard Jamatalashi Ext. PW-26/D. These were deposited with MHC. The ornaments were handed over to accused Reshma when she was sent to judicial custody on 10.6.2011, however, mobile was not returned. PW-25 HC Jagat Ram deposed that he was posted as MHC at Police Station Talai from 2007. The articles of jamatalashi of Reshma Devi i.e. two golden ear rings, one silver challa, two golden ear pins, two rings of gold of feet and a mobile phone Nokia 1110 with Aircel SIM 98573-19473 were deposited with him by SI Ram Dass. The mobile phone was taken back on 14.6.2011 by SHO Om Parkash that the same was required for investigation. It was sealed with three seals of "A" and taken into possession vide memo Ext. PW-25/A. It was signed by him as well as Surinder. Phone Ext. P-7 was produced while recording the statement of PW-25 HC Jagat Ram. He deposed that parcel containing mobile phone was deposited with him which he entered at Sr. No. 406 in the malkhana Register on 14.6.2011. In his cross-examination, he deposed that his statement was recorded by the police. He has disclosed to the police in his statement that on 14.6.2011, mobile phone was taken back from him by the I.O. (Confronted with Mark-J1, wherein it is not so recorded). He also admitted that he has not made entry of the aforesaid articles and mobile phone before 14.6.2011. He did not know that the mobile phone was given by accused Rajiv Sharma to accused Reshma to talk to her brother that police is about to arrest her. The mobile phone, as per PW-26 SI Ram Dass was recovered from Reshma and fard jamatalashi Ext. PW-26/D was also prepared. According to him, mobile phone and articles were

deposited with MHC. Surprisingly enough, PW-25 HC Jagat Ram has admitted in his cross-examination that the items were handed over to him, including mobile phone, however, the same was taken back by the Inspector SHO Om Parkash for the purpose of investigation and that entry was made in the malkhana register on 14.6.2011. He has specifically testified in his cross-examination that before 14.6.2011, he has not made entries in the malkhana register.

57. According to the Punjab Police Rules, the case property is to be deposited in the malkhana and entry is required to be made in the Register No. 19 of the Punjab Police Rules. The entry of phone was required to be made when the same was deposited with the MHC after its alleged recovery from the accused Reshma. It casts doubt whether the phone was ever recovered from the possession of accused Reshma or not. As and when the case property is deposited and taken out, the entry is required to be made in the malkhana register. The prosecution has not even produced the malkhana register showing entry at Sr. No. 406 recorded on 14.6.2011. PW-27 Insp. Om Parkash has also deposed that articles recovered from the personal search of accused Reshma were deposited with MHC. He took mobile phone in possession from MHC On 14.6.2011 vide memo Ext. PW-25/A after wrapping and parceling the same in a parcel and was sealed with three seals of "A".

58. PW-28 Madan Lal Sharma deposed that call detail record from 20.5.2011 to 24.5.2011 alongwith address of the owner of mobile number 98573-18473 was demanded by the police. The aforesaid number was of reliance communication and the owner was Rajiv Sharma in their record. Again stated that phone No. 98573-18473 was a aircel and the number of reliance was 90220-73801, which was in the name of Rajiv. He had intimated S.P. Bilaspur over e-mail Ext. PW-26/J. PW-28 Madan Lal Sharma has not testified the computer from which call details were recorded was in working condition or not. Even if assuming that conversation has taken place, what transpired between the two accused is not known. PW-28 Madan Lal Sharma has also admitted in his cross-examination that in Ext. PW-26/J, there is no parentage of the mobile phone holder. In order to duly prove the call detail records, the prosecution was required to prove that provisions of Section 65 B of the Indian Evidence Act, 1872 have been complied with in letter and spirit. PW-28 Madan Lal Sharma has to prove that the computer output containing the information was produced by the computer during the period over which the computer was used regularly and the information of the kind contained in the electronic record was regularly fed into the computer in the ordinary course of the said activities and the computer was operating properly. He was also required to give certificate as per Section 65B(4) containing the statement and describing the manner in which it was produced, giving details of device involved in the production of that electronic record, as may be appropriate. It is to be signed by the person holding responsible position.

59. Their lordships of the Hon^{ble} Supreme Court in the case of [Anvar P.V. Vs. P.K. Basheer](#) , have held that production of copy of statement pertaining to electronic record in evidence not being the original electronic record, such statement has to be accompanied by a certificate as specified in S. 65-B(4) and such certificate must accompany electronic record like CD, VCD, pen drive etc. Their lordships have further held that under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the conditions are satisfied. It has been held as follows:

"15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of examiner of electronic evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India."

60. The prosecution case is also that the deceased has not gone to dispensary on 20.5.2011 by relying upon the statement of PW-16 Shakti Chand. PW-16 Shakti Chand deposed that Balak Ram (deceased) used to open the dispensary and clean the same. Balak Ram attended his duties lastly on 20.5.2011 and thereafter he marked his absence in the attendance register and sent absentee report to Distt. Ayurveda Officer, Bilaspur. We have seen Ext. PW-16/A. It is apparent to naked eyes that "P" has been converted into "A" on 21.5.2011. It further casts doubt on the version of the whole story of the prosecution that the deceased had not gone to the office and gone to some other place.

61. In the present case, the dead body was not recovered. It has come on record that divers of BBMB were deployed but the statement of any diver was not recorded. Their lordships of the Hon"ble Supreme Court in the case of [Rama Nand and Others Vs. State of Himachal Pradesh](#), have held that homicidal death can be proved even on the basis of circumstantial evidence alone provided such evidence unerringly points to the only conclusion of guilt of the accused. It has been held as follows:

"27. Although the High Court has held that the body recovered was that of Sumitra deceased and that the bones sent to the medical experts were not parts of the decomposed body found, but appeared to have been fraudulently replaced with the bones of a child during transmission to the medical experts, we would assume that the identity of the body found in the river was not established beyond reasonable doubt. In other words, we would take it that the corpus delicti, i.e., the dead-body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been murdered by Rama Nand appellant? It is true that one of the essential ingredients of the offence of culpable homicide required to be proved by the prosecution is that the accused "caused the death" of the person alleged to have been killed.

28. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead-body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English Law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. "I would never convict", said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead". This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead-body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature

where the discovery of the dead-body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Hale's enunciation has to be interpreted no more than emphasising that where the dead-body of the victim in a murder case is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye-witness, or by circumstantial evidence, or by both. But where the fact of corpus delicti, i.e. "homicidal death" is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be "proved", if the Court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned. In the instant case, Circumstances (1) to (5), in their cumulative effect, are not only inconsistent with the innocence of Rama Nand appellant, but ineluctably and rationally compel the conclusion that Sumitra has died and it is Rama Nand appellant who has intentionally caused her death. Circumstance (3) involves an admission by Rama Nand and Shish Ram accused that Sumitra has met an unnatural death. The only difference between the prosecution version and the defence version is as to whether Sumitra committed suicide or had been killed by Rama Nand appellant. It has been found that the story of the suicide set up by the accused is false. The articles Salwar (Ex. P.14) and the shoes (Ex. P-15) do not belong to her. They were planted by the accused to lay a false trail and to mis-direct the investigation. This circumstance taken in conjunction with the others, irresistibly and rationally leads to the conclusion that she has been murdered by Rama Nand appellant and her dead body has been disposed of by the appellants Shish Ram and Kali Datt."

62. Their lordships of the Hon^{ble} Supreme Court in the case of [Sevaka Perumal, etc. Vs. State of Tamil Nadu](#), have held that in some cases, in some cases corpus delicti may not be possible to be traced or recovered. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced. It has been held as follows:

"5. Sri Raju Ramachandran contended that the dead body was admittedly found in a highly decomposed condition. There is no proper identification of the dead body to

be of the deceased. The mother PW-2 identified only with reference to the photograph taken of the dead body. There is evidence that the deceased wrote a letter of leaving to unknown destination. Unless there is proof that the dead body belongs to Hariramachandran, it is not safe to convict to A-1 to a capital punishment of death sentence. We find no force in the contention. In a trial for murder it is not an absolute necessity or an essential ingredient to establish corpus delicti. The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum, of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced. In this case the evidence of PWs.-7 to 10 would establish that they have seen the dead body of the deceased Hariramachandran in the well and brought it out and the photograph was taken at the time of inquest. It was identified to be that of the deceased by no other than his mother, PW-2. Thus we have no hesitation to hold that there is no doubt as regards the identity of the dead body and that the medical evidence establishes that the deceased died due to stabbing with sharp edged weapon like knife."

63. Their lordships of the Hon^{ble} Supreme Court in the case of [Ram Gulam Chaudhury and Others Vs. State of Bihar](#)--> , have held that when corpus delicti is not found, even so accused can be convicted if there is direct or circumstantial evidence conclusively showing that the victim had died and that accused committed his murder. It has been held as follows:

"23. There can be no dispute with the proposition of law set out above. As is set out in the various authorities (referred to above) it is not at all necessary for a conviction for murder that the corpus delicti be found. Undoubtedly, in the absence of the corpus delicti there must be direct or circumstantial leading to the inescapable conclusion that the person had died and that the accused are the persons who had committed the murder. Both the Courts below have come to the conclusion, based upon the evidence of P.Ws. 3 and 4 (who were eye witnesses) that Appellant No. 9 had killed the accused before the body was taken away by all the Appellants. We have read the evidence of all the witnesses. We have given a careful consideration to the material on record. We see no reason to take a different view. The evidence in this case is direct and there is no reason to disbelieve this evidence. We see no substance in the submission of Mr. Mishra that these two ladies could not have seen the boy being killed and could not have in any case come to a conclusion that he had

died. Their presence at the place of incident could not be doubted. Their evidence clearly indicates that the incident took place before their eyes. We cannot accept the submission of Mr. Mishra that their evidence discloses that the incident took place outside the courtyard and on the road. Mr. Mishra has relied on stray sentences. The evidence has to be read as a whole. Read as a whole both the ladies have given positive evidence that the murder took place in the courtyard. We also see no substance in the submission that PW 3 and PW 4 could not positively say that Krishnanand Chaudhary had been killed. The evidence is that Bijay Chaudhary stated that "he is still alive and should be killed". On this statement Appellant 9 gave a chhura blow on the chest. The evidence is that Krishnanand Chaudhary, who was till then struggling twitched and thereafter his body became still. From this it could be concluded that death had taken place. It must be mentioned that even P.W. 1, whose evidence Mr. Mishra relied upon, has deposed that Krishnanand Chaudhary had died."

64. The prosecution has failed to prove the motive attributed to the accused persons. The chain of events is incomplete. The dead body was not recovered. Thus, the prosecution has failed to prove the case against both the accused beyond reasonable doubt.

65. Accordingly, in view of the analysis and discussion made hereinabove, the appeal is allowed. Judgment and order of conviction and sentence dated 28.7.2012 and 2.8.2012, respectively, rendered by the learned Addl. Sessions Judge, Ghumarwin, Distt. Bilaspur, H.P., in Sessions trial No. 15-7 of 2011, is set aside. Accused are acquitted of the charges framed against them. Fine amount, if any, already deposited by the accused is ordered to be refunded to them. Since the accused are in jail, they be released forthwith, if not required in any other case.

66. The Registry is directed to prepare the release warrants of the accused and send the same to the Superintendent of Jail concerned, in conformity with this judgment forthwith.