A KISHORE BHADKE

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 467 of 2010)

B JANUARY 03, 2017

[JAGDISH SINGH KHEHAR, ARUN MISHRA AND A. M. KHANWILKAR, JJ.]

Penal Code, 1860: ss.364, 302, 201 r/w ss.34/120-B – Abduction and murder by strangulation – Destruction of clothes and articles of deceased – Recovery of wrist watch and gold ring from accused persons – Motive – Transaction of purchase of land by deceased from appellants – Conviction by courts below on the ground that complete chain of circumstances pointed towards the guilt of appellants – Held: Evidence of mother of the deceased was to the effect that on the fateful day, the deceased received a phone call from accused no.1 whereafter he left home with relevant documents/papers to finalise deal of land – This was relevant fact in support of circumstance of motive – Prosecution also established the vital circumstance of last seen together – The circumstance was further strengthened by evidence to the effect that concerned accused persons loaded a gunny bag in a vehicle – Gunny bag as found by courts below was used to carry dead body of deceased which was transported in a vehicle and then thrown at the isolated location – The fact where the dead body of deceased was disposed, was disclosed by accused nos.2 and 3 in quick succession to the Investigating Officer – The discovery was made only after accused nos.2 and 3 were taken together by the police to the spot – Dead body was discovered at the instance of accused Nos.2 and 3 from the spot in a valley about 600 ft. deep – The fact disclosed by them, therefore, and the discovery made at their instance, was admissible against both the accused in terms of s.27 of the Evidence Act – There was clinching evidence to point towards the involvement of the appellants in the commission of the crime – No tangible reason to deviate from the concurrent findings of the courts below – Evidence Act, 1872 – s.27.

Evidence Act, 1872: s.27 – Applicability of – Held: When two

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persons in custody are interrogated separately and in quick succession and both of them furnish similar information leading to the discovery of fact, such disclosure by two or more persons in police custody does not go out of the purview of s.27 altogether – What is relevant is that information given by one after the other without any break, almost simultaneously and such information is followed up by pointing out the material things by both of them then there is no good reason to eschew such evidence from the regime of s.27.

Dismissing the appeals, the Court

HELD: 1. The evidence given by PW-1 (brother of the deceased) and corroborated by PW-15 (mother) revealed that there was transaction in respect of land between the accused no.1 and the deceased. That version could not be demolished in the cross-examination. Another piece of evidence relied by the prosecution is about the destruction of clothes and articles of deceased. The Police could only recover ash from the spot along with bunch of keys. That would lend support to the prosecution case that the possibility of documents having been destroyed also cannot be ruled out. Hence, it was open to the trial court as well as the High Court to rely on the evidence of witnesses for the limited purpose. The fact that deceased while leaving his house had carried some papers/documents with him has been stated by PW-15, when he went to meet accused No.1. Therefore, there is no tangible reason to discard the relevant fact established by the prosecution witnesses in support of the circumstance of motive. [Para 15] [352-C-D, H]

2. The prosecution also established the vital circumstance of last seen together. That evidence is given by PW-11 and PW-12 in particular. Their evidence will have to be juxtaposed with the evidence of PW-15, who has spoken about the telephone call received from accused no.1 and pursuant to which the deceased left his house in her presence with relevant documents/papers. The courts below accepted her version as truthful and reliable. The evidence of PW-11 corroborated the fact that deceased had gone to the Bank for withdrawing cash amount and then proceeded to the house of accused no.1. He deposed that deceased went inside the house of accused no.1 and saw accused

A nos.2, 3, 4 and 6 standing near the cattle shed. While returning back he saw accused no.5 standing near the water tank. The fact of deceased having gone to the Bank for withdrawing the amount has been corroborated by PW-8 who was Cashier in the Bank at the relevant time. Even the evidence of PW-8 was found to be truthful and reliable. There was sufficient evidence about the B factum of last seen together. This circumstance is further strengthened by the evidence given by other prosecution witnesses (PW 9, 6 and 12), who had seen the concerned accused persons loading a gunny bag in Sumo vehicle after some time; and that accused Nos. 3 and 6 were also seen in the vehicle C carrying that gunny bag. The gunny bag, as found by the two courts below was used to carry the dead body of deceased which was transported in a vehicle and then thrown at an isolated location in the valley. There was no tangible reason to doubt the correctness of the concurrent finding recorded by the two courts below in this behalf. Thus, the prosecution succeeded in D establishing the circumstance of motive and last seen together indicating the involvement of the appellants-accused nos.1, 3 and 6 in particular. [Paras 16, 17] [353-A-D; 354-B-D]

3. The trial court examined the evidence of the doctor (PW-16), letter of requisition and the post mortem report. The Doctor E explained the fracture injury noticed on the dead body, which, in his opinion, was due to strangulation and asphyxia. Thus, there is no merit in the contention that the nature of injury noted in the post mortem report would rule out the possibility of homicidal death. The dead body was discovered at the instance of accused F nos.2 and 3 from the spot in a valley about 600 ft. deep. The Police reached that spot on the basis of the disclosure made by the said accused nos. 2 and 3 under Section 27 of the Evidence Act. Section 27 provides that any fact deposed to and discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, so much of such G information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The fact where the dead body of deceased was disposed, was disclosed by both the accused nos.2 and 3 to the Investigating Officer in the presence of (PW 2) one after another. The discovery was

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made only after accused nos.2 and 3 were taken together by the police to the spot in the neighbouring State. In other words, the disclosure of the relevant fact by accused No.3 to the Investigating Officer preceded the discovery of dead body from the disclosed spot at the instance of both the accused nos. 2 and 3. It was not a case of recording of statement of accused No.3 after discovery nor a joint statement of accused nos.2 and 3, but disclosure made by them separately in quick succession to the Investigating Officer, preceding the discovery of the fact so stated. The fact disclosed by them, therefore, and the discovery made at their instance, was admissible against both the accused in terms of Section 27 of the Evidence Act. The disclosure made by accused no. 3 about the relevant fact, *per se*, is not inadmissible. The statement of accused no.2 and 3 has been recorded separately and both the accused accompanied the Police and disclosed the spot where the dead body of deceased was thrown. On the basis of that disclosure, the dead body of deceased and the remains of the burnt articles of deceased were recovered for which that fact becomes relevant fact and can be used against the appellants (accused nos.2 and 3). [Paras 18, 19, 20, 23] [354-F-H; 355-A, F-H; 356-A-B, E-F; 358-A-B]

State (NCT of Delhi) v. Navjot Sandhu [2005] 2 Suppl. SCR 79 : (2005) 11 SCC 600 – relied on.

A.R. Khima v. State of Saurashtra AIR 1956 SC 217 : [1955] SCR 1285 – distinguished.

Lohit Kaushal v. State of Haryana (2009) 17 SCC 106 – held inapplicable.

5. The Courts found that no explanation was offered by the accused no.3 in respect of presence of human blood on his clothes. The presence of accused no.3 at the relevant time in the house of accused no.1 and also seen while loading the gunny bag in Sumo vehicle and also travelling in that vehicle, leaves no manner of doubt about his complicity in the commission of offence. [Paras 24, 25] [358-D-E, F-G]

6. It is well established that, ordinarily, direct evidence regarding conspiracy may not be forthcoming. Hence, in most of

A **the cases, the Courts have to infer conspiracy on the basis of established facts. In the present case, on analyzing the facts and the events that unfold, the Courts below have answered the factum of conspiracy against the appellants-accused nos. 1, 3 and 6. Further, the prosecution did not rest only on the factum of last seen together but also on other circumstances to point out the involvement of the appellants in the commission of crime. [Para 26] [359-A-B]**

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Malleshappa v. State of Karnataka **[2007] 10 SCR 153 : (2007) 13 SCC 399**; *Ashok v. State of Maharashtra* **[2015] 6 SCR 375 : (2015) 4 SCC 393**; *Mousam Kanhaiya Lal v. State of Rajasthan* **[2014] 3 SCR 744 : (2014) 4 SCC 715 – relied on.**

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Keshav v. State of Maharashtra **[2007] 13 SCR 264 : (2007) 13 SCC 284**; *Singha Roy & Ors. v. State of W.B.* **(2003) 12 SCC 377**; *Sangili v. State of Tamil Nadu* **[2014] 7 SCR 788 : (2014) 10 SCC 264**; *Gulab Singh v. State of U.P.* **(1995) Supp. 4 SCC 502 – distinguished.**

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7. The argument of accused no. 3 that he may be given the same benefit as given to accused no. 7 is also liable to be rejected. Because, the High Court has given tangible reason for treating the case of accused no. 7 differently. As regards accused no. 3, there is consistent evidence that he was present in the house of accused no.1 at the relevant time and also participated in loading of the gunny bag containing dead body of deceased in the vehicle and then travelling in the same vehicle for disposing the dead body in a valley. This distinguishes his role from that of accused no.7. The role of accused no. 3 was rightly analyzed by the courts below to be similar to accused no. 6 and liable for punishment for the offence in question. [Para 34] [362-F-G]

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8. Accused no. 6 stated that the dead body of the deceased was discovered at the instance of accused nos. 2 and 3 with which accused No. 6 had no concern. The fact that accused no. 6 did not make similar disclosure about disposal of dead body of deceased, as made by accused no. 2 and 3, cannot absolve him. The courts below have rightly concluded that the concerned accused, in particular accused nos. 1, 3 and 6 were party to the conspiracy to

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cause homicidal death of deceased and for disposal of the evidence of crime. The fact that blood stains were not found on the gold ring recovered at the instance of accused no.6 would not make the recovery inadmissible. Similarly, the fact that the gold ring was freely available in the market, would be of no avail to the said accused. The accused has not produced any evidence to explain the circumstances in which the said gold ring came in his possession, which has been identified by the prosecution witnesses as belonging to deceased. The fact that the no blood stains were found on the clothes of accused no. 6 will also be of no avail, considering the overwhelming evidence about other relevant circumstances indicating his complicity in the commission of crime. [Paras 36, 37] [363-B-E; 364-B]

Sunil Clifford Daniel v. State of Punjab **[2012] 7 SCR 1100 : (2012) 11 SCC 205 – distinguished.**

Saju v. State of Kerala **[2000] 4 Suppl. SCR 621 : (2001) 1 SCC 378;** *Arjun Marik and others v. State of Bihar* **[1994] 2 SCR 265 : (1994) Suppl. 2 SCC 372;** *Mohibur Rahman & Anr. v. State of Assam* **(2002) 6 SCC 715;** *Niranjan Panja v. State of W.B.* **[2010] 7 SCR 113 : (2010) 6 SCC 525;** *Sk.Yusuf v. State of W.B.* **[2011] 8 SCR 83 : (2011) 11 SCC 754;** *Shyamal Ghosh v. State of W.B.* **[2012] 10 SCR 95 : (2012) 7 SCC 646;** *Nizam v. State of Rajasthan* **[2015] 10 SCR 786 : (2016) 1 SCC 550;** *Jackaran Singh v. State of Punjab* **AIR (1995) SC 2345 – referred to.**

Case Law Reference

AIR (1995) SC 2345	**referred to**	**Para 9**
[1955] SCR 1285	**distinguished**	**Para 9**
[2012] 7 SCR 1100	**distinguished**	**Para 9**
[2015] 10 SCR 786	**referred to**	**Para 10**
[2000] 4 Suppl. SCR 621	**referred to**	**Para 10**
[2007] 13 SCR 264	**referred to**	**Para 10**
[1994] 2 SCR 265	**referred to**	**Para 10**

A	**(2002) 6 SCC 715**	**referred to**	**Para 10**
	[2010] 7 SCR 113	**referred to**	**Para 10**
	[2011] 8 SCR 83	**referred to**	**Para 10**
	[2012] 10 SCR 95	**referred to**	**Para 10**
B	**[2014] 3 SCR 744**	**relied on**	**Para 10**
	[2007] 10 SCR 153	**distinguished**	**Para 10**
	[2015] 6 SCR 375	**referred to**	**Para 10**
	[2015] 10 SCR 786	**referred to**	**Para 10**
C	**(2003) 12 SCC 377**	**distinguished**	**Para 10**
	(2009) 17 SCC 106	**held inapplicable**	**Para 10**
	(1995) Supp. 4 SCC 502	**distinguished**	**Para 11**
	[2005] 2 Suppl. SCR 79	**relied on**	**Para 20**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 467 of 2010.

From the Judgment and Order dated 15.09.2008 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal
E No. 444 of 2005

WITH

Crl. A. No. 854 of 2010

Crl. A. No. 11 of 2015.

F Kishor Lambat, S. Rajappa, Gagan Sanghi, Rameshwar Prasad Goyal, Satyajit A. Desai, Ms. Anagha S. Desai, Akash Kakade, Nishant Ramakantrao Katneshwarkar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

G **A.M. KHANWILKAR, J.** 1. These appeals are filed by the original accused No.1 (Crl.A.No.854/2010), accused No.3 (Crl.A.No.467/2010) and accused No.6 (Crl.A.No.11/2015). They were tried for offence punishable under Sections 364, 302, 201 read with 34/ 120-B of Indian Penal Code (IPC) along with four other accused.

2. The prosecution case is that, on 10th May 2003, Shriniwas son

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of Wasudeorao Tonpe lodged a report (Exh.154) that his elder brother Raman has gone missing since morning of 8th May 2003. On the basis of that report, a missing Register entry was effected by the Police Station, Narkhed, District Nagpur (Maharashtra). On the next day i.e. 11th May 2003 another brother of the missing person, Madan son of Wasudeorao Tonpe lodged a second report (Exh.68) suspecting that accused No.1-Nalini, her husband Vijay Dhpake, accused No.2-Rinku, and accused No.7- Suresh Chandra might have abducted his brother Raman in order to commit his murder. On the basis of this report, Police Station registered an offence punishable under Section 364 read with Section 34 of IPC against the named persons. Police Inspector R.B.Bansod (PW-17) was entrusted with the investigation of the case. On the same day, he called accused No.1-Nalini and Accused No.2- Rinku to the Police Station for interrogation. As nothing came out of that interrogation, the said accused persons were allowed to go back. However, on the same evening, he arrested both Nalini and Rinku and thereafter accused No.3 – Kishor, accused No.4 – Tarachand in the mid night of 12th May 2003. It is stated that accused No.2- Rinku and accused No.3- Kishor, during interrogation confessed that on 8th May 2003 between 1.00 p.m.to 1.30 p.m. they along with accused No.4-Tarachand and accused No.6-Satish with the help of accused No.1-Nalini and accused No.5-Arun had committed murder of Raman by strangulation in the cattle shed of one Nitin Rai. The dead body of Raman was thereafter taken away in a gunny bag and then thrown in a valley near "Deona Darshan Point". Before throwing the dead body, they had removed the clothes and wrist watch from the dead body. They then burnt the gunny bag as well as the rope used for strangulation including some documents possessed by the deceased by pouring petrol at some other place at a distance of 10 km. before Deona Darshan Point. They also agreed to show the spot where the gunny bag, clothes and documents were burnt and the place where the dead body was disposed. Pursuant to the said revelation, the police party along with accused No.2-Rinku and accused No.3-Kishor proceeded to the locations disclosed by the said accused. Firstly, they showed the place of burning the articles from where the remains in the form of ash and a bunch of keys was seized. Thereafter, they proceeded to the other location where the dead body was found lying in the valley near Deona Darshan Point. The Investigating Officer R.B.Bansod completed the necessary formalities of preparing memorandum of statements of the said accused, Panchnamas, seizure panchnamas/memos, Inquest

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A panchnama etc. of the dead body. The dead body and the recovered articles were then brought to Narkhed. The dead body was identified by the complainant Madan Tonpe (PW-1) at the spot i.e. Deona Darshan Point itself. The dead body was then sent to Primary Health Centre, Narkhed for post mortem examination. After the post mortem was conducted on the dead body, it was handed over to the family members/ B relatives for funeral. The mother of the deceased, Smt. Shantabai (PW 15) also identified the dead body of her son when it was brought to their house. The offence was then converted and registered under Section 364, 302 and 201 read with Section 34/120-B of the IPC. Thereafter remaining accused i.e. accused No.5- Arun, accused No.6-Satish and C accused No.7-Suresh Chandra were arrested.

3. The Investigating Officer R.B.Bansod carried out further investigation. He recorded statements of the witnesses, seized the vehicle/ Tata Sumo used in the commission of offence for transporting the dead body, recovered the wrist watch and gold ring at the instance of accused D No.3 - Kishor and accused No.6 - Satish respectively. He prepared a panchnama of the place of incident in the cattle shed of Nitin Rai, seized clothes of accused No.2 - Rinku, accused No.3-Kishore and accused No.6-Satish and of deceased Raman. He then verified the bunch of keys recovered from the spot disclosed by the accused by applying it on the cupboard in the house of deceased Raman. He also arranged for E identification parade of the wrist watch and gold ring. He seized some currency at the instance of accused No.6-Satish. The muddemal/property, seized articles, viscera etc. was then sent to the Chemical Analyser for analysis. After the investigation was completed, police report was filed in the Court of J.M.F.C., Narkhed, who committed the case for trial of F the accused before the Sessions Court at Nagpur. The trial proceeded before the 3rd Addl. Sessions Judge, Nagpur, who framed charges for offence punishable under Section 364, 302, 201 read with Section 34 in the alternative 120-B of IPC. All the accused pleaded not guilty and to have been falsely implicated. They claimed to be tried.

G 4. The prosecution examined in all 18 witnesses. On considering the oral and documentary evidence adduced by the prosecution, the Trial Court held that the accused persons conspired to kill Raman. In furtherance of that conspiracy on 8th May 2003, Raman was abducted by the accused persons and on the same day in the noon he was killed in the cattle shed of Nitin Rai. Thereafter with a view to dispose of the

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dead body of Raman and to destroy the evidence of murder, they carried the dead body of Raman and threw it in the valley near Pachmadi (in the State of Madhya Pradesh) at the spot later on disclosed to the Police by the concerned accused. Similarly, the articles such as gunny bag used for carrying the dead body and rope used for strangulation, clothes worn by deceased Raman at the relevant time as also the documents in his possession were burnt at a different spot which was disclosed to the Police by the concerned accused. The Trial Court held that the death of Raman was homicidal death. Accordingly, the Trial Court convicted the accused for their involvement in the concerned offence. The operative part of the Trial Court judgment reads thus:

> "1. Accused No. 1 Nalini W/o Vijay Dhapke is hereby convicted vide section 235 (2) Cr.P. Code for the offence punishable under Section 302 read with 120-B of I.P.Code to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- (Rupees two thousand only) in default of payment of fine amount to suffer further rigorous imprisonment for four months.
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> 2. Accused No.2 Rinku alias Anand S/o Suresh Chandra Roy is hereby convicted vide section 235(2) of Cr.P. Code for the offence punishable under section 302 read with 120-B of I.P.Code to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- (Rupees two thousand only) in default of payment of fine amount to suffer further rigorous imprisonment for four months.
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> 3. Accused no. 3 Kishor is hereby convicted vide Section 235(2) of Cr.P. Code for the offence punishable under Section 302 read with 120-B of I.P. Code to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- (Rupees two thousand only) in default of payment of fine amount to suffer further rigorous imprisonment for four months.
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> 4. Accused No.4 Tarachand is hereby convicted vide Section 235(2) of Cr.P. Code for the offence punishable under Section 302 read with 120-B of I.P.Code to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- (Rupees two thousand only) in default of payment of fine

A amount to suffer further rigorous imprisonment for four months.

5. Accused No. 6 Satish is hereby convicted vide Section 235(2) of Cr.P.Code for the offence punishable under Section 302 read with 120-B of I.P.Code to undergo rigorous
B imprisonment for life and to pay a fine of Rs. 2,000/- (Rupees two thousand only) in default of payment of fine amount to suffer further rigorous imprisonment for four months.

6. Accused Nos. 1 to 4 and 6 namely Nalini, Rinku, Kishor,
C Tarachand and Satish are hereby convicted vide Section 235(2) of Cr.P.Code for the offence punishable under Section 364 read with 120-B of IP.Code to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/- (Rupees two thousand only) each in default of payment of fine amount to suffer further rigorous imprisonment for
D two months.

7. Accused Nos. 1 to 4 and 6 namely Nalini, Rinku, Kishor, Tarachand and Satish are hereby convicted vide Section 235(2) of Cr.P.Code for the offence punishable under rigorous imprisonment for two years and to pay a fine of
E Rs. 1,000/- (Rupees one thousand only) each in default of payment of fine amount to suffer further rigorous imprisonment for two months.

8. The above sentence of Accused Nos. 1 to 4 and 6 namely Nalini, Rinku, Kishor, Tarachand and Satish shall run
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9. Accused No. 7 Suresh Chandra Roy is hereby convicted vide Section 235(2) of Cr.P.Code for the offence punishable under Section 201 of I.P.Code to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/-(Rupees one thousand only) in default of payment of fine
G amount to suffer simple imprisonment for two months.

10. Accused No. 7 Suresh Chandra Roy is directed to surrender his bail bond forthwith.

11. Accused No. 7 Suresh Chandra Roy is acquitted vide
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Section 235 of Cr.P.Code for the offence punishable under Section 302, 364, read with 120-B of I.P. Code.

12. Accused No. 5 Arun Nasre is acquitted under Section 235 of Cr.P.Code for the offence punishable under sections 302, 364, 201 read with 120-B of I.P.Code and his bail bonds shall stand cancelled.

13. The period of undergone period by the accused by set off against the above sentence of imprisonment under Section 428 of Cr.P.Code.

14. The valuable muddemal property namely wrist watch, golden ring and cash amount of Rs. 4,600/- (Rupees four thousand six hundred only) be returned to the complainant Madan S.o Wasudeo Tonpe R/0 Narkhed after the appeal period is over.

15. The remaining muddemal property being worthless be destroyed after the appeal period is over."

5. Aggrieved by the aforementioned decision, accused Nos.1 to 4, 6 and 7 filed separate appeals before the High Court being Criminal Appeal Nos.367, 435, 444 and 452 all of 2005. The High Court dismissed Appeal Nos.367, 435 and 444 of 2005 filed by the concerned accused (Nos.2, 6, and 7; 1; and 3 respectively); and allowed Appeal No.452 of 2005 filed by accused No.4, by a common judgment dated 15th September 2008. After re-appreciating the entire evidence adduced by the Prosecution, the High Court in paragraph 44 of the impugned judgment summed up the circumstances which led to the finding of guilt against the concerned accused. The same reads thus:

"44. It was submitted by the learned counsel for the appellants that the motive is not established and everything is in the air. We are, however, satisfied that the prosecution has proved that Raman wanted to purchase the land of A-1 Nalini and her husband Vijay; that he entered into transaction of purchasing the land from them; that two agreements of sale were executed by Nalini and her husband on consideration paid by Raman to them; that on 8.5.2003 A-1 Nalini called Raman to her house by giving him a ring; that accordingly Raman went to her house after

withdrawing Rs. 58,000/- from the Bank of Maharashtra, Branch Narkhed; that at that time A-3 Kishore Bhadke, A-4 Tarachand Vaidya and A-6 Satish Bansod were also at the house of A-1 Nalini; that thereafter Raman was not seen alive; that Tata Sumo of Avinash Kalbande was engaged by A-2 Rinku Roy for taking goods from the cattle shed of Nitin Rai to Parasiya; that Sanjay Kalkar was the driver of the said vehicle; that gunny bags were loaded in Tata Sumo in the cattle shed of Nitin Roy; that A-3 Kishore Bhadke, A-6 Satish Bansod and A-7 Suresh Roy travelled by the said Sumo from Narkhed to Parasiya; that A-2 Rinku Roy followed Tata Sumo on motorcycle; that in the midnight the gunny bags were unloaded from Tata Sumo at the house of A-7 Suresh Roy; that on the next day morning Sanjay Kalkar brought Tata Sumo to the house of owner thereof; that on 10.5.2003 Sanjay Kalkar again came to take back Tata Sumo and thereafter he never turned up."

After analyzing the other circumstances and contentions, the High Court concluded that the finding reached by the Trial Court that the dead body discovered from the valley near Deona Darshan Point was that of deceased Raman and that he met with homicidal death, was unassailable. The High Court also considered the circumstance of discovery of wrist watch at the instance of accused No.3, gold ring of Raman and cash of Rs.4800/- (48 notes of 100 denomination) seized from accused No.6; including the blood stained earth seized from cattle shed of Nitin Rai on 16th May 2003 under seizure memo (Exh.92) which as per the report of Chemical Analyser (Exh.151) showed human blood. Human blood was also found on the pant of Accused No.2 Rinku, which circumstance remained unexplained. Similarly, full pant and shirt of accused No.3 Kishor which were seized on 15th May 2003 from his house and on analysis by the Chemical Analyser it showed human blood, which also remained unexplained. After taking over all view of the matter, the High Court concluded that the complete chain of circumstances unequivocally point out towards the guilt of accused No.1 - Nalini, accused No.2 -Rinku, accused No.3- Kishore Bhadke, and accused No.6- Satish Bansod, excluding any hypothesis consistent with their innocence. Accordingly, they were convicted for offence punishable under Section 364/120-B, 302/120-B and 201/120-B of the IPC. The finding of guilt

reached against these accused by the Trial Court was once again reiterated by the High Court.

6. As regards accused No.4-Tarachand, in paragraph 74 of the impugned judgment, the High Court observed thus:

> "74. On close scrutiny of the evidence we find that though there is evidence to show that A-4 Tarachand Vaidya was at the house of A-1 Nalini on 8.5.2003 when Raman came to her house and he was also seen loading gunny bags in Tata Sumo, he did not travel by Tata Sumo from Narkhed to Parasiya thereafter. From the evidence it seems that the role of A-4 Tarachand Vaidya is only to the extent of loading gunny bags in Tata Sumo from the cattle shed of Nitin Roy. There is no evidence to show that he was aware of the murder of Raman. Immediately after loading gunny bags in Tata Sumo, he left the place and did not travel by Tata Sumo from Narkhed onwards. From these circumstances A-4 Tarachand Vaidya is entitled to get benefit of doubt. Accordingly we extend benefit of doubt to him and acquit him."

7. While dealing with the case of accused No.7- Suresh, the High Court in paragraph 75 of the impugned judgment observed thus:

> "75. The role of A-7 Suresh Roy is only to the extent of helping the other accused persons in removing the dead body of Raman from Narkhed to Parasiya and thereafter causing disappearance of the dead body and other evidence of the offence. As such his conviction for the offence punishable under Section 201/120-B of IPC needs to be maintained."

8. The High Court finally disposed of the appeals in the following terms:

> "(i) Appeal Nos. 367 of 2005, 435 of 2005 and 444 of 2005 are dismissed. Bail bonds of original accused No.7/ Sureshchandra Jagannath Rai stand cancelled. He is directed to surrender within four weeks to serve out the sentence.
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> (ii) Appeal No. 452 of 2005 is allowed. The conviction of

A Tarachand s/o Shalikram Vaidya for the offence punishable under Sections 364, 302 and 201 r/w 120-B of IPC is set aside and he is acquitted of the said charges. He be released forthwith if not required in any other offence."

9. Aggrieved by the aforementioned decision, accused Nos.1, 3 B and 6 have assailed the same by way of separate appeals before this Court. The argument was led by Advocate R.R.Deshpande for accused No.3. He submitted that the prosecution case hinges on circumstantial evidence. If the chain of circumstances is not complete pointing towards the guilt of the accused, it would be unsafe to uphold the finding of guilt though concurrent by two courts below. He submits that the High Court C has not analyzed the circumstance about the nature of death of Raman as to whether it was suicidal or homicidal death. He submits that circumstance held against accused No.3 of recovery of blood stained clothes at his instance is questionable. In that, the prosecution has failed to establish the blood group much less that the blood stains pertained to D the blood group of deceased Raman. He submits that the evidence regarding factum of motive produced by the prosecution is very weak. In any case, motive is attributed to Nalini (A1) with which accused No.3 has no concern. Therefore, that circumstance cannot be used against him. He has also taken us through the evidence of prosecution witnesses who have spoken about the presence of accused at the scene of offence, E relied by the prosecution to substantiate the circumstance of last seen together. He submitted that the evidence of PW-11 and PW-12 is not reliable. Their statements were recorded after a long gap and the reason for such delay has not been explained. Further, the prosecution witness (PW 12) examined in support of this circumstance is a chance witness. F He was residing in another village. The prosecution theory about homicidal death is doubtful. Even the evidence regarding the manner in which the body of deceased Raman was thrown is doubtful. For, no lacerated injury was found by the Doctor while conducting post mortem. Only four injuries have been noted which belies the prosecution theory that the body was thrown in the valley from the height of around 600 ft. He submits that G the factual position mentioned in the memorandum of disclosure recorded under Section 27 of the Evidence Act, relied by the prosecution qua accused No.3, is inadmissible and cannot be taken into account. In absence thereof, there is no legal evidence about discovery of dead body of deceased or articles belonging to the deceased ascribable to accused

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No.3 Thus, that circumstance cannot be used against him. He submits that the said evidence is inadmissible also because no signature of accused is taken on the recovery panchnama. He then submits that the statement of accused No.3 recorded under Section 313, Cr.P.C., the whole of it is vitiated because it is a joint statement of all the accused recorded by the Trial Court. In support of this contention, he invited our attention to the said statement recorded under Section 313, Cr.P.C. Lastly, he submits that benefit be given to accused No.3 on the same reasoning as given to accused No.7. Learned counsel has placed reliance on the decisions of this Court in the cases of ***Jackaran Singh vs. State of Punjab***[1]***; A.R. Khima vs. State of Saurashtra***[2]***; and Sunil Clifford Daniel vs. State of Punjab***[3]**.**

10. The accused No.1 is represented by Advocate Mr. Gagan Sanghi. His argument essentially revolved around the two circumstances held against accused No.1. Firstly, of motive and secondly last seen together. He submits that no recovery has been made at the instance of accused No.1 nor it is the case of prosecution that accused No.1 was seen along with other accused travelling in Tata Sumo vehicle wherein the dead body of deceased Raman was carried away. As regards motive, he submits that the prosecution theory about the illicit relations between accused No.1 Nalini and accused No.2 Rinku has been discarded by both the courts below. The Trial Court as well as the High Court has, however, accepted the prosecution case that there was some transaction about land between accused No.1 Nalini and deceased Raman over which the matter got escalated causing death of Raman. The evidence in this behalf produced by the prosecution, however, is very weak. PW-1 in his cross-examination says that he had disclosed about the said fact to PW-17 (I.O.) i.e. about the agreement executed between the parties. But PW-1 was not aware as to why that fact is not mentioned in his statement recorded by the police. Further, PW-17(I.O.) in the cross-examination has denied of any such statement given by PW-1. PW-17 (I.O.) admitted in his cross-examination that he had not investigated the matter with regard to the land transaction. Moreover, PW-1 in his cross-examination admits that he does not know who and in whose name the stamp papers were purchased and how payments were made. The other witness, who has spoken about the land transaction is PW-15, mother of

[1] AIR 1995 SC 2345 –Para 8
[2] AIR 1956 SC 217
[3] (2012) 11 SCC 205 Para 37 to 40

A deceased Raman. She has spoken about the phone call received on 8th May 2003 from Nalini. She wanted to talk to Raman. Raman attended the phone call and thereafter disclosed to PW15 that Nalini (accused No.1) had called him to her house and he will go along with documents in respect of agricultural land to get her signature. She has stated that deceased Raman left the house at about 11.30 a.m. According to the learned counsel, evidence of PW-15 cannot be taken into account as neither the documents regarding transaction have been produced by the prosecution nor the documentary evidence regarding the fact that phone call was received by PW-15 has been produced. As regards the factum of last seen together, it is submitted that the evidence of PW-11 is unreliable and is replete with material omissions and contradictions. Similarly, the evidence of PW-12 is also unreliable. As a result, the prosecution has failed to substantiate the crucial circumstance of last seen together with accused No.1. This being a crucial link and as no satisfactory evidence is forthcoming to indicate the complicity of accused No.1, the finding of guilt qua accused No.1 would be unsafe. Further, being a case of circumstantial evidence, the Court must analyze the evidence with utmost circumspection and even if one crucial link is missing, benefit must go to the accused. He has placed reliance on ***Nizam and another vs. State of Rajasthan***[4]. On the issue of motive he has placed reliance on ***Saju vs. State of Kerala***[5] to contend that motive by itself cannot be a proof of conspiracy. Reliance is also placed on ***Keshav vs. State of Maharashtra***[6] to contend that conviction cannot be based solely on the basis of motive; and the circumstance of last seen together becomes relevant only when the death is proved to have taken place within a short time of the accused being last seen. Reliance is then placed on ***Arjun Marik and others vs. State of Bihar***[7] to buttress the argument that the factum of motive assumes importance in a case of circumstantial evidence, if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime; and that the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused. Thus, the only circumstance

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[4] (2016) 1 SCC 550 – Para 8,9,18-20
[5] (2001) 1 SCC 378
[6] (2007) 13 SCC 284
[7] 1994 Suppl.(2) SCC 372

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of last seen together will not be enough to complete the chain of circumstances to record a finding of guilt against accused No.1. He has also placed reliance on the other decisions, more or less dealing with similar aspect, in the case of ***Mohibur Rahman & Anr. vs. State of Assam***[8]***; Niranjan Panja vs. State of W.B.***[9]***; Sk.Yusuf vs. State of W.B.***[10]***; Shyamal Ghosh vs. State of W.B.***[11]***; Kanhaiya Lal vs. State of Rajasthan***[12]***; Malleshappa vs. State of Karnataka***[13]***; Ashok vs. State of Maharashtra***[14]***; Nizam vs. State of Rajasthan***[15]***; Mousam Singha Roy & Ors. vs. State of W.B.***[16] ***and Sangili vs. State of Tamil Nadu***[17] Reliance is also placed on the decision in the case of ***Lohit Kaushal vs. State of Haryana***[18] about the efficacy of statement of a co-accused under Section 27 of the Evidence Act.

11. Ms. Anagha S.Desai, Advocate appeared for accused No.6. She contends that that the dead body was recovered at the instance of accused Nos.2 and 3. The recovery of gold ring at the instance of accused No.6 is doubtful. The prosecution has not established the special identity of gold ring and it has come on record that such gold rings are freely available in the open market. Further, no blood stains or any incriminatory evidence was noticed on the gold ring. The accused No.6 was arrested on 13th May 2003 on which day his statement was also recorded. The recovery of gold ring, however, is on 18th May 2003, while the accused No.6 was in police custody. Similarly, the cash amount recovered at the instance of accused No.6 was of no avail to the prosecution. It was a paltry amount as compared to the amount withdrawn by Raman on 8th May 2003 from the Bank. Further, there is no evidence that the currency recovered from accused No.6 was the same as withdrawn by the deceased Raman from the Bank. No blood stains were found on the clothes recovered at the instance of accused No.6. In the confession statement of accused No.2, there is no mention of gold ring. The signature

[8] (2002) 6 SCC 715
[9] (2010) 6 SCC 525
[10] (2011) 11 SCC 754
[11] (2012)7 SCC 646
[12] (2014) 4 SCC 715
[13] (2007) 13 SCC 399
[14] (2015) 4 SCC 393
[15] (2016) 1 SCC 550
[16] (2003) 12 SCC 377
[17] (2014) 10 SCC 264
[18] (2009) 17 SCC 106 – Para 18, 21

A of accused No.6 was obtained on a blank paper and it was then used as a memorandum under Section 27 of the Evidence Act. Recovery of clothes as well as gold ring attributed to the accused No.6 was doubtful. Reliance is placed by the counsel on ***Gulab Singh vs. State of U.P.***[19] to contend that recovery of ring of deceased from the accused No.6 after such long gap and even if accused No.6 failed to offer valid explanation for possession of the gold ring, is at best liable to be convicted under Section 411 of IPC and not for the offence of murder. She submits that the accused No.6 should be given the same benefit as given to accused No.7, if not an acquittal as in the case of accused Nos.4 and 5.

12. Per contra, Mr. N.R. Katneshwarkar, Advocate appearing for the State supported the findings and conclusions reached by the two courts below. He submits that the argument of the appellants is essentially on the basis of some minor discrepancies in the evidence and not because of material omissions amounting to contradictions or contradictory evidence of the prosecution. Two courts below have had the opportunity to analyze the evidence threadbare; and the view taken by the High Court being a possible view, does not merit any interference. He submits that there is clinching evidence to indicate the complicity of accused Nos.1, 3 and 6, who are the appellants before this Court. No fault can be found with the courts below for having convicted them for the stated offence. He took us through the evidence of the concerned witnesses and pointed out the findings of the two courts below which have analyzed the said evidence exhaustively and analytically. Regarding the factum of land transaction, the evidence of PW1 was unassailable. He submits that the prosecution has successfully substantiated the circumstance of motive of accused No.1. The fact that no discovery is made at the instance of accused No.1 would be of no avail to the said accused. She was the master mind of the conspiracy to murder Raman. There was dispute between accused No.1 and deceased Raman in respect of land transaction and non-payment of the agreement amount. The prosecution evidence has established that Nalini had made a telephone call to deceased Raman on 8th May 2003. PW-15 has also spoken about the fact disclosed to her by Raman before leaving the house at around 11.30 a.m. The prosecution was also able to substantiate the fact that Raman after leaving the house in the presence of PW-15, proceeded towards the Bank and withdrew an amount of Rs.58,000/-. He went to the house

[19] 1995 Supp. (4) SCC 502

of Nalini where he was last seen. The dead body of Raman was put in a gunny bag and transported by Tata Sumo vehicle. It was then disposed at a spot disclosed by the accused Nos.2 and 3. He submits that prosecution has succeeded in establishing motive and last seen together which is good enough to affirm the finding of guilt against accused No.1 Nalini. As regards accused No.6, he submits that the recovery of ring which belonged to deceased Raman has been established by the prosecution. Besides that, accused No.6 was not only last seen together with the deceased in the house of Nalini but also while taking away the dead body of deceased Raman in Tata Sumo vehicle. His involvement cannot be equated with the role of accused Nos. 4, 5 and 7, which has been found to be materially different by the Courts below. While refuting the argument of accused No.3, he submits that the prosecution has been able to establish that the death was homicidal death and was caused due to strangulation by a rope. The prosecution has also established the presence of accused No.3 at the relevant time. He was not only last seen together in the house of Nalini accused No.1 at the relevant time but also in the Tata Sumo vehicle in which the dead body of Raman was transported. Moreover, the location where the dead body and articles of Raman were disposed has been disclosed even by accused No.3. Reliance is placed on the decision of this Court in the case of ***Sunil Clifford Daniel (supra)*** to contend that absence of signature of the accused on the memorandum of recovery would make no difference. The statement of the accused No.3 recorded under Section 27 of the Evidence has been signed by the accused. A separate statement of accused No.3 was recorded before the police proceeded to the location which was jointly disclosed by accused Nos. 2 and 3. Learned counsel submits that all the appeals deserve to be dismissed and the finding of guilt and sentence awarded to the concerned accused be affirmed.

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13. We have heard the learned counsel for the parties at length. We were ably assisted by the learned counsel for the respective parties who took us through the relevant depositions and documents and the analysis done by the Trial Court and the High Court in that behalf. We must appreciate the exhaustive judgment delivered by the Trial Court, meticulously dealing with every aspect of the evidence on record. We find that the High Court has also analyzed the relevant piece of evidence on its own besides adverting to the findings rendered by the Trial Court in that regard. In other words, we have to deal with concurrent findings

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A of fact on most of the relevant aspects concerning the matters in issue. Our analysis, therefore, must focus on the legal aspects emanating from the concurrent findings so recorded and not to re-appreciate the entire evidence.

14. In this backdrop, we may first advert to the main question as B to whether the circumstance of motive and last seen together, as answered by the two courts below, is just and proper. As regards the circumstance of motive, prosecution has mainly relied on the evidence of PW-1 and PW-15. The criticism is that no documentary evidence to buttress the factum of land transaction between deceased Raman and Nalini (accused No.1) and about the telephone call made by Nalini to C Raman in the morning on 8th May 2003, as stated by the said witnesses have been brought on record or any attempt made by the Investigating Officer to recover the same. The courts below have found that absence of documentary evidence in the form of agreement of land transaction or a civil suit between the parties, that cannot be the basis to outright D discard the statements given by the witnesses to the Investigating Officer and more particularly the evidence before the court. They have spoken about the dispute regarding taking of possession of the land. Further, the accused No.1 in her statement under Section 313, Cr.P.C. has stated that the members of Tonpe family wanted her land and they cheated her and that Raman Tonpe and his brother Madan Tonpe (PW-1) caused E heavy loss to her agricultural land and also defamed her. The courts below, therefore, held that absence of documents regarding such transaction was not fatal. The evidence on record was enough to accept the theory of demand for compliance of the transaction from the side of Tonpe family, as the cause of motive. The courts have also noted from F the evidence that there was some dispute in respect of hotel premises for which Vijay Dhpake (husband of accused No.1-Nalini), had lodged a report against accused No.2. That dispute was settled by deceased Raman. The Courts below have found that the prosecution proved the following circumstances. That deceased Raman was the Director of Rashtra Mata Indira Gandhi Kanya Vidyalaya,Narkhed. The land of G accused No.1 Nalini and her husband Vijay Dhpake was adjacent to the said school. Since Raman was looking after the family affairs of Tonpe, he had entered into an agreement with accused No.1 Nalini and her husband Vijay for purchase of their land. Accused No.1 and her husband executed an agreement in favour of Madan and her elder brother Pramod

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by accepting Rs.25,000/-. Another agreement of sale was executed in favour of Pramod by accepting Rs.1,33,000/-. The possession of the land was also delivered to Tonpe family. Besides the said amount, deceased Raman had paid Rs.50,000/- and Rs.30,000/- to Nalini towards the transaction for which receipts were executed on separate stamp paper. This had happened one year before the incident in question. The High Court in paragraph 26 has dealt with the argument under consideration and observed thus:

> "26. It is true that neither the alleged agreements of sale no receipts for payment made after the agreements have been produced by the prosecution. However, we cannot overlook the evidence to the effect that when on the date of incident deceased Raman had left his house, he had carried the documents about those transactions with him. Neither those documents nor the cash amount which was carried by deceased Raman was recovered perhaps because all the belongings of deceased Taman were burnt before his dead body was thrown in the valley. As agreements of sale might not have been registered and as such no certified copies thereof could be obtained by the prosecution in order to support its case. Even otherwise this is not a civil proceeding in which transactions of sale are to be proved by production of documents. We can rely on oral testimony of PW1 Madan for this purpose. Hence we find that the sale transactions between A-1 Nalini and Raman have been proved by the prosecution."

Also in para 31 the High Court observed thus:

> "31. It was urged by the learned counsel for the appellants that the investigating officer has not verified the record from the Telephone Exchange about the call received at the residence of deceased Raman on 8.5.2003. In the absence of corroboration by the record of Telephone Exchange, the testimony of PW Shantabai should not be accepted. We are unable to agree with this submission. We see no reason to disbelieve the testimony of PW Shantabai. This would show that the documents about transaction of purchase of land were taken by deceased Raman with him and as those

A documents must have been burnt. So there is no question of production of those documents in order to prove the transaction between A-1 Nalini and deceased Raman."

15. The question is whether the approach of the High Court regarding the argument under consideration is correct. We may hasten B to add that Criminal Court trying the offence of murder was not required to decide about the issue of title of the land or to consider the relief of specific performance. The evidence given by PW-1 and corroborated by PW-15, revealed that there was transaction in respect of land between the accused No.1 and Tonpe's. That version could not be demolished in the cross-examination. Another piece of evidence relied by the prosecution C is about the destruction of clothes and articles of deceased Raman. The Police could only recover ash from the spot along with bunch of keys. That lends support to the prosecution case that the possibility of documents having been destroyed also cannot be ruled out. Hence, it was open to the Trial Court as well as the High Court to rely on the D evidence of witnesses for the limited purpose. The fact that deceased Raman while leaving his house had carried some papers/documents with him has been stated by PW-15, when he went to meet accused No.1 Nalini. The counsel for the appellants and in particular accused No.1 had drawn our attention to cross-examination of PW-15. He has also drawn our attention to cross-examination of PW-1 to contend that the E factum of land transaction between Tonpe and Nalini was not disclosed in the statement recorded by the Police under Section 161 of the Code. On close examination of the said cross-examination, we found that the question posed to the witness was limited to the initial statement and not to the supplementary statement recorded by the Investigating Officer. A F supplementary statement of the witnesses was given to the Investigating Officer, which mentioned the fact of land transaction, as was deposed by the witness in the examination-in-chief. In other words, it was half hearted cross-examination by the accused. No question was posed in respect of the contents of the supplementary statement which was also part of the charge-sheet and crucial to the relevant fact. The answer G given by Investigating Officer PW-17 therefore will have to be understood in the same context. Confronted with this situation, the argument of the appellants is that no documentary evidence regarding the transaction is forthcoming. For the reasons already mentioned, there is no tangible reason to discard the relevant fact established by the prosecution H witnesses in support of the circumstance of motive.

16. The prosecution has also established the vital circumstance of last seen together. That evidence is given by PW-11 and PW-12 in particular. Their evidence will have to be juxtaposed with the evidence of PW-15, who has spoken about the telephone call received from Nalini and pursuant to which Raman left his house in her presence with relevant documents/papers. The courts below have accepted her version as truthful and reliable. That evidence cannot be discarded on the basis of some minor discrepancies pointed out during the course of argument. The finding recorded by the two courts below with regard to PW-15 about the truthfulness of her version is unexceptional. The evidence of PW-11 corroborates the fact that deceased Raman had gone to the Bank for withdrawing cash amount and then proceeded to the house of Nalini accused No.1. He has deposed that Raman went inside the house of Nalini and saw accused Nos.2, 3, 4 and 6 standing near the cattle shed of Nitin Rai. While returning back he saw accused No.5 standing near the water tank.

17. The fact of deceased Raman had gone to the Bank for withdrawing the amount has been corroborated by PW-8 who was Cashier in the Bank at the relevant time. Even the evidence of PW-8 has been found to be truthful and reliable. In other words, there is credible evidence on record that Raman started from his house in the presence of PW-15 as stated by her. He then proceeded to the Bank for withdrawing amount of Rs.58,000/-, which obviously was to be paid to accused No.1 Nalini. From the Bank he straight proceeded to the house of Nalini. That fact stated by PW-11 stands corroborated from the evidence of PW-12, who has deposed that he had gone to Nalini's house to finalise the deal concerning her agricultural land for cultivation on yearly rent basis. He met her in her house at about 11.30 a.m. to 12.00 noon and found that Raman was sitting in the verandah of the house with her. He had also seen accused Nos.2, 3, and 6 in the same room. The counsel for the appellants no doubt made an attempt to discredit this witness on the basis of some discrepancies in his evidence such as the place where his statement was recorded by the Police - whether in his house or in the Police Station and that he knew Raman for the last 10 years and was therefore an interested witness. Further, the fact stated by him that Raman was sitting in Varandah and talking to Nalini and when he saw other accused were present has not been disclosed to the Investigating Officer and unable to assign any reason as to why he had

A not disclosed that fact. The evidence of this witness has been analyzed by the Trial Court as well as by the High Court. This witness has been found to be independent and truthful. He has deposed about the relevant facts which have been corroborated by the version of PW-11 about the concerned accused persons last seen together. No other witnesses has come forward to depose that after the meeting of deceased Raman with B Nalini, Raman was seen elsewhere at a later point of time. Thus, there is sufficient evidence about the factum of last seen together. This circumstance is further strengthened by the evidence given by other prosecution witnesses (PW 9, 6 and 12), who had seen the concerned accused persons loading a gunny bag in Sumo vehicle after some time; C and that accused Nos. 3 and 6 were also seen in the vehicle carrying that gunny bag. The gunny bag, as found by the two courts below was used to carry the dead body of deceased Raman which was transported in a vehicle and then thrown at an isolated location in the valley. There is no tangible reason to doubt the correctness of the concurrent finding recorded by the two courts below in this behalf. The Courts below have D undertaken detailed analysis of the evidence of the concerned prosecution witnesses. Thus, the prosecution has succeeded in establishing the circumstance of motive and last seen together indicating the involvement of the appellants - accused Nos.1, 3 and 6 in particular.

18. It was then argued that the High Court has failed to analyse E the fact as to whether death of Raman was suicidal or homicidal. From the judgment of the Trial Court, we find that every aspect on this issue has been considered threadbare from para 16 to para 25, to conclude that the death of deceased Raman was homicidal death. The Trial Court has examined the evidence of Dr.R.N.Gakare (PW-16), letter of F requisition (Exh.127) and the post mortem report (Exh.129). The Doctor has explained the circumstances in which he could notice the injuries on the dead body. He has categorically deposed that although the dead body was decomposed because of passage of time but identity of the person could be discerned. The Doctor himself identified deceased Raman as he was known to him. The other prosecution witnesses PW- G 1 and PW-15 have also identified the dead body of Raman. The Doctor has also explained the fracture injury noticed on the dead body, which, in his opinion, was due to strangulation and asphyxia. Thus, we find no merit in the contention that the nature of injury noted in the post mortem report would rule out the possibility of homicidal death. The dead body

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has been discovered at the instance of accused Nos.2 and 3 from the spot in a valley about 600 ft. deep. The Police reached that spot on the basis of the disclosure made by the said accused Nos. 2 and 3 under Section 27 of the Evidence Act. The Police party along with other witnesses had proceeded to the spot disclosed by accused Nos.2 and 3 and recovered the dead body of Raman from the valley.

19. It was contended by the counsel for the accused No.3 that the evidence regarding discovery of the dead body of Raman cannot be used against accused No.3. Inasmuch as, when accused No.3 gave his statement and recorded in the form of Memorandum under Section 27 of the Evidence Act, the Police already knew about the spot where the dead body was thrown as it was disclosed by accused No.2. It was contended that the statement made by accused No.2 can be used only against accused No.2. This argument has been negatived by the Trial Court after analyzing the decisions which were brought to its notice, as can be discerned from para 46 to para 53 of the judgment. The Trial Court found that in the present case the accused Nos.2 and 3 made disclosure (about the spot where dead body of Raman was thrown by them) one after another in quick succession and that their statement came to be recorded separately. The only thing that had happened was a joint discovery made at the instance of both the accused Nos.2 and 3, on proceeding to the spot along with the police. Section 27 of the Evidence Act is an exception to Section 25 of the Act. Section 25 mandates that no confession to a Police Officer while in police custody shall be proved as against a person accused of any offence. Section 27, however, provides that any fact deposed to and discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The fact where the dead body of deceased Raman was disposed, was disclosed by both the accused Nos.2 and 3 to the Investigating Officer in the presence of SK Idris (PW 2) one after another on 12th May 2003 at 3.05 hrs and 3.25 hrs. respectively. The discovery was made only after accused Nos.2 and 3 were taken together by the police to the spot in the neighbouring State (Madhya Pradesh), where the recovery Panchnama was recorded bearing Exh.76A. In other words, the disclosure of the relevant fact by accused No.3 to the Investigating Officer preceeded the discovery of dead body from the disclosed spot

A at the instance of both the accused Nos. 2 and 3. It was not a case of recording of statement of accused No.3 after discovery nor a joint statement of accused Nos.2 and 3, but disclosure made by them separately in quick succession to the Investigating Officer, preceding the discovery of the fact so stated. The fact disclosed by them, therefore, and the discovery made at their instance, was admissible against both the accused in terms of Section 27 of the Evidence Act.

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20. In the case of ***State (NCT of Delhi) Vs. Navjot Sandhu,***[20] this Court has held that a joint disclosure or simultaneous disclosures, *per se,* are not inadmissible under Section 27. A person accused need not necessarily be a single person, but it could be a plurality of the accused. The Court held that a joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in chorus. When two persons in custody are interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact which was reduced into writing, such disclosure by two or more persons in police custody do not go out of the purview of Section 27 altogether. What is relevant is that information given by one after the other without any break, almost simultaneously, as in the present case and such information is followed up by pointing out the material things by both of them then there is no good reason to eschew such evidence from the regime of Section 27. Whether that information is credible is a matter of evaluation of evidence. The Courts below have accepted the prosecution version in this behalf, being credible. Suffice it to say that the disclosure made by Accused No. 3 about the relevant fact, *per se,* is not inadmissible.

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21. Reliance was placed on ***A.R. Khima*** (supra) to contend that incriminating articles alleged to have been recovered at this instance of the accused is inadmissible in evidence, if the police already knew where they were hidden. The dictum in the said decision is in the context of the fact situation of that case. The Court found that the police already knew where the articles were hidden. Further, the information was not derived from the accused but from someone else, one of the other suspects. In that case, the Sub-Inspector to whom the disclosure was made was not examined by the prosecution. The Court also found that articles were not hidden but kept in the manner which might be normally kept in any average household. In the present case, as found by the Courts below,

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[20] 2005 (11) SCC 600 (para 45)

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the disclosure was made by the Accused Nos. 2 and 3 in quick succession. The police party along with witnesses and both the accused thereafter proceeded to the isolated spot (in a valley) disclosed by the said accused from where the dead body of Raman was discovered. The concerned Police Officer as well as the witnesses to the Memorandum of Statement recorded under Section 27 have been examined by the prosecution and found to be reliable and trustworthy. This reported decision, therefore, does not take the matter any further.

22. It was then argued that the recovery Panchnama (Exh.76A) did not contain signature of the accused and for which reason the same was inadmissible. Even this submission does not commend to us. In that, no provision has been brought to our notice which mandates taking signature of the accused on the recovery Panchnama. Admittedly, signature of accused was taken on the statement recorded under Section 27 of the Evidence Act (Exh.76 and 77 respectively). The statement of accused No.3 (Exh.77) bears his signature. Therefore, even this argument does not take the matter any further.

23. In the case of the ***Jackaran Singh*** (supra), the Court opined that the disclosure statement given by the accused regarding conscious possession of the weapon did not inspire confidence. One of the reason was that disclosure statement did not bear the signature or the thumb impression of the appellant. The Court found that even, the recovery memo of the revolver and the cartridges did not bear either the signatures or the thumb impression of the accused. In the present case, the disclosure statement bears the signature of accused Nos. 2 and 3 respectively. The absence of signatures on the recovery memo (Exhibit 76-A) would not make it inadmissible and it has been rightly taken into account because of the other evidence regarding its authenticity and genuineness. In the recent decision in the case of ***Sunil Clifford Daniel*** (supra), in paras 37 to 40, the issue stands answered against the appellants. Reliance was placed on the dictum in paras 18 and 21 in the case of ***Lohit Kaushal (supra)***. In that case, the Court found that the statement of accused who was discharged by the Trial Court was hit by Section 25 and 26 of the Evidence Act. The same was inadmissible in evidence. The Court, however, observed that statement made to the Police can only be used for the limited purpose provided under Section 27 of the Evidence Act and that too only against the person making the statement. In that case, the statement made by the concerned accused who was

A discharged did not lead to the recovery of any item whatsoever. In the present case, however, the statement of accused No.2 and 3 has been recorded separately and both the accused accompanied the Police and disclosed the spot where the dead body of Raman was thrown. On the basis of that disclosure, the dead body of Raman and the remains of the
B burnt articles of Raman were recovered for which that fact becomes relevant fact and can be used against the appellants (accused Nos.2 and 3). In other words, this decision will be of no assistance to the said appellants.

24. It was then contended that the circumstance of blood stained clothes recovered at the instance of accused No.3 was questionable
C because no evidence regarding the blood group or the fact that the blood stains belonged to the blood group of deceased Raman is forthcoming. Further, the recovery itself was doubtful. Even this aspect has been considered by both the courts below and negatived. The absence of evidence regarding blood group cannot be fatal to the prosecution. The
D finding recorded by the courts below about the presence of human blood on the clothes recovered at the instance of accused No.3 has not been questioned. The Courts have also found that no explanation was offered by the accused No.3 in respect of presence of human blood on his clothes. Accordingly, we affirm the concurrent finding recorded by the courts below in that behalf including about the legality of such recovery at the
E instance of accused No.3.

25. It was then argued by the counsel for accused No.3 that even if circumstance of motive is proved, that can be relevant only against accused No.1. That cannot be used against accused No.3. This argument completely overlooks the charge for which accused No.3 was tried,
F which included charge of conspiracy under Section 120-B of IPC. As aforesaid, the presence of accused No.3 at the relevant time in the house of Nalini and also seen while loading the gunny bag in Sumo vehicle and also travelling in that vehicle, leaves no manner of doubt about his complicity in the commission of offence.

G 26. In the case of ***Saju*** (*supra*), on facts of that case it was held that the circumstances of last seen together and motive were not conclusive to indicate hatching of criminal conspiracy. The Court held that there was no evidence regarding the circumstance attributing the pregnancy of the deceased to the appellant and his insistence for abortion
H of the child. On that finding, the circumstance of motive was answered

against the prosecution and in favour of the appellant. In that context the Court observed that even otherwise motive by itself cannot be proof of conspiracy. It is well established that, ordinarily, direct evidence regarding conspiracy may not be forthcoming. Hence, in most of the cases, the Courts have to infer conspiracy on the basis of established facts. In the present case, on analyzing the facts and the events that unfold, the Courts below have answered the factum of conspiracy against the appellants-accused Nos. 1, 3 and 6. Further, the prosecution did not rest only on the factum of last seen together but also on other circumstances to point out the involvement of the appellants in the commission of crime. In the Case of ***Arjun Mariks*** (supra), which deals with similar contention, the Court restated the settled legal position that interference by the Supreme Court with concurrent finding of fact is justified only when it is possible to take the view that the findings are manifestly erroneous, unreasonable, unjustified or illegal or violative of some Fundamental Rules of Procedure or natural Justice. In the present case, concurrent finding recorded by two Courts below after exhaustive analysis of the evidence, is that the same unambiguously points out towards the involvement of the appellants in the commission of crime. In the reported decision, this Court has also observed that mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But in the case of circumstantial evidence motive, does assume some relevance. If it is evident from the evidence on record that the accused had an opportunity to commit the crime and the established circumstances along with explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused. On the facts of the present case, we find no tangible reason to disturb the concurrent findings recorded by the two Courts below.

27. The case of ***Nizam*** (supra) was also based on circumstantial evidence. In that case, the courts below placed emphasis on the last seen theory. After analyzing the evidence on facts of that case, this Court held that none of the circumstances relied upon by the prosecution and accepted by courts below can be said be pointing only towards the guilt of appellants and to no other inference. In that case, more than one inferences could be drawn on the basis of evidence brought before the

A Court for which benefit of doubt was given to the appellants. The Court noted several other lapses in the investigation and missing links. And therefore, observed that last seen together though an important link in the chain of circumstances yet the court is required to take into account the entire evidence in its entirety and ensure that only inference that could be drawn from evidence, is guilt of the accused. In the present B case, however, two courts below have justly analysed the entire evidence and considered all the circumstances and not limited to the circumstance of last seen together. The concurrent finding recorded by the courts below is that the only inference that can be drawn is pointing towards the guilt of the concerned accused in particular accused Nos. 1,3 and 6.

C 28. Similarly, in the case of ***Kanhaiya Lal*** (supra), the Court observed that last seen together circumstance does not by itself necessarily lead to inference that it was accused who committed crime but there must be something more to connect the accused with the crime and to point out the guilt of the accused and none else. As aforesaid, in D the present case there is clinching evidence to point towards the involvement of the appellants in the commission of the crime. We find no tangible reason to deviate from the concurrent findings of the courts below in that behalf.

29. Reliance placed on the dictum in the case of ***Sangili*** (supra) E in our view is inapposite. In that case, the court found that the evidence of last seen together was not established and the factum of motive was based on hearsay evidence. Further, except the alleged recovery there was no other circumstance worth the name which could be proved against the appellants. That is not the position in the present case. For, the courts below have analytically considered the prosecution evidence in F its entirety to answer both the counts against the appellants. The concurrent finding recorded by the courts below in that behalf does not merit interference. Reliance was placed on the decision in ***Gulab Singh (supra)***. In that case, however, the Court found as of fact that the prosecution had failed to establish the guilt of the accused as evidence G against him on the factum of last seen together was deficient. In the present case, however, the fact situation is different.

30. In the case of ***Shyamal Ghosh*** (supra), on the basis of the evidence before the Court in that case, in para 74, the court observed that reasonableness of the time gap is of some significance. If the time H gap is very large, then it is not only difficult but may not even be proper

for the court to infer that the accused had been last seen alive with the deceased and the former, thus, was responsible for commission of the offence. In the present case, however, it is noticed from the evidence on record that deceased Raman visited the house of Nalini accused No. 1 when the appellants (accused Nos. 3 and 6) were also present in the house at the relevant time. He did not come out of that house nor was seen by anyone thereafter elsewhere. The dead body of Raman was taken away in a vehicle for being dispose of, in which accused Nos. 3 and 6 also travelled. The two courts below have carefully analysed the entire evidence to conclude that there was no other possibility except that within all human probability the crime must have been committed in particular by the appellants. It is well established that facts of each case must be appreciated on its own merits to draw inference about the involvement of the accused in commission of offence or otherwise. The case of ***Mohibur Rahman (supra)*** was also a case of circumstantial evidence. On facts of that case, the Court found that the circumstances were sufficient to conclusively point out to the commission of murder of the deceased by the accused, though the circumstances did not establish offence of causing disappearance of the evidence. While dealing with the factum of last seen together, the Court held that there must be a close proximity between the event of accused last seen together with the deceased. In the present case, as noted earlier, the courts below have meticulously analyzed the prosecution evidence and have found that the same established the guilt of appellants in the commission of crime. On facts of the present case, no fault can be found with the said concurrent findings recorded by the two courts below. For the same reason, even the exposition in the cases of ***Ashok*** and ***Mausam Singha Roy (supra)*** will be of no avail to the appellants. As the same is in the context of facts of that case.

31. In the case of ***Malleshappa*** (supra) the court found that no witness had spoken about who gave the information to the police. Further, the deceased was forcibly taken on 12.07.2001, while his dead body was found on 21.07.2001 and what transpired during the intervening period was not brought on record. The court also noted that when the death of deceased actually occurred was also not established. In the present case, however, evidence establishes the fact that the deceased Raman entered the house of Nalini accused No. 1 and was not seen thereafter. His dead body was placed in a gunny bag which was then

A loaded in a vehicle in close proximity of deceased Raman entering the house of Nalini on the same day. The gunny bag after being loaded in the vehicle was taken away in which accused Nos. 3 and 6 also accompanied. The medical evidence supports the prosecution case that the death of Raman occurred around 8th May, 2003 and the Doctor who conducted the post mortem opined that it was a case of homicidal death.
B

32. In the case of ***Keshav*** (supra), the court held that in the case of circumstantial evidence, conviction can be recorded on the basis of motive. Further, the circumstance of last seen together becomes relevant only if the death takes place shortly after accused and deceased were last seen together. Even this decision is of no avail to the fact situation
C of the present case, for the reasons already discussed hitherto.

33. According to the learned counsel for the accused No.3, a joint statement of all the accused was recorded by the Trial Court under Section 313,Cr.P.C. This contention, in our opinion, is ill-founded. We have examined the record and found that separate statement under Section
D 313 of each accused has been recorded. It is a different matter that their statements have been recorded in part on different dates. That, in our opinion, does not vitiate the trial. Had it been a case of all questions put to all the accused jointly and one statement recorded by the Trial Court, it may have become necessary for us to consider this argument.
E In the present case, we find that separate statement of each accused under Section 313, has been recorded on different dates. That is substantial compliance of Section 313, Cr.P.C.

34. The argument of accused No. 3 that he may be given the same benefit as given to accused No. 7 is also liable to be rejected. We
F say so because, the High Court has given tangible reason for treating the case of accused No. 7 differently. As regards accused No. 3, there is consistent evidence that he was present in the house of Nalini at the relevant time and also participated in loading of the gunny bag containing dead body of deceased Raman in the vehicle and then travelling in the same vehicle for disposing the dead body in a valley. This distinguishes
G his role from that of accused No.7. The role of accused No. 3 has been rightly analyzed by the courts below to be similar to accused No. 6 and liable for punishment for the offence in question.

35. Reverting to the argument of accused No. 1, we reject the same in so far as the circumstance of motive and last seen together as
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we have affirmed the concurrent findings of the courts below in that behalf. The decisions pressed into service by the counsel for the accused No. 1 have no bearing on the facts of the present case, including against accused No.1. A

36. That takes us to the argument of the counsel for the accused No. 6 - that the dead body of the deceased was discovered at the instance of accused Nos. 2 and 3 with which accused No. 6 had no concern. The fact that accused No. 6 did not make similar disclosure about disposal of dead body of Raman, as made by accused No. 2 and 3, cannot absolve him. The courts below, in our opinion, have rightly concluded that the concerned accused, in particular accused Nos. 1, 3 and 6 were party to the conspiracy to cause homicidal death of deceased Raman and for disposal of the evidence of crime. We have already analyzed that aspect of the matter in the earlier part of the judgment, which needs no repetition. B C

37. The next argument of accused No.6 is that no blood stains were noticed on the gold ring recovered at his instance. Even this argument is devoid of merit. The fact that blood stains were not found on the gold ring would not make the recovery inadmissible. Similarly, the fact that the gold ring was freely available in the market, would be of no avail to the said accused. The accused has not produced any evidence to explain the circumstances in which the said gold ring came in his possession, which has been identified by the prosecution witnesses as belonging to deceased Raman. The fact that no mention was made about the said gold ring in the statement of other accused, does not make the recovery doubtful as the gold ring has been recovered on the basis of disclosure made by the accused No. 6 himself after his arrest. On the same lines it was contended by the counsel for accused No. 6 that the recovery of cash amount from accused No. 6 cannot be used against him as incriminatory evidence. In as much as, the prosecution has failed to produce any legal evidence to establish the fact that the currency recovered was part of the same amount which was withdrawn by the deceased Raman from the Bank on 8th May, 2003. The fact that the entire amount of Rs. 58,000/- withdrawn by the deceased Raman on 8th May, 2003 was not recovered by the investigating agency also cannot be the basis to disregard the complicity of accused No. 6, in view of the credible evidence about his presence in the house of accused No. 1 Nalini at the relevant time and of having assisted in loading the gunny bag carrying the dead body of Raman in the vehicle and then travelling D E F G H

A in the same vehicle to dispose of the dead body of Raman. Evidence in this regard being clinching, absence of legal evidence regarding the source from where the currency notes had come in possession of accused No. 6 will be of no avail. The fact that the no blood stains were found on the clothes of accused No. 6 will also be of no avail, considering the overwhelming evidence about other relevant circumstances indicating his complicity in the commission of crime.

38. In the case of ***Sunil Clifford Daniel*** (supra) the court held that non-matching of blood group or absence of report regarding origin of blood, no advantage can be conferred upon accused to claim benefit of doubt. This decision also deals with the argument canvassed by the appellants about absence of signature of accused on the seizure memo/ recovery memo. The court rejected that plea and held that merely because the recovery was not signed by accused, it will not vitiate the recovery itself. Further, every case has to be decided on its own facts. Accordingly, even this contention of the appellants must fail.

39. The argument that the memorandum under Section 27 of the Evidence Act was a fabricated document as the signature of accused was obtained on a blank paper, does not impress us .The courts below have considered the evidence on record and found that the memorandum making disclosure about the gold ring in possession of accused No. 6 was admissible and trustworthy. We are not inclined to disturb the concurrent findings recorded by the two courts below in that behalf.

40. The next argument of the counsel for the accused No. 6 is that even if accused No.6 had failed to offer any valid explanation regarding possession of gold ring of deceased Raman, he can at best be proceeded for offence punishable under Section 411 of IPC and not for the offence of murder. This submission is obviously an argument of desperation. For, conviction simpilicitor under Section 411 of IPC or under Section 201/120B of IPC as rendered against accused No. 7 would be possible, if evidence on other crucial facts was absent. In so far as accused No. 6, there is clinching evidence to hold against him on the basis of last seen together, seen loading the gunny bag in the vehicle and then travelling in the same vehicle for disposal of the dead body. This evidence cannot be disregarded. The finding recorded by the Trial Court in favour of the acquitted accused or by the High Court in favour of the accused No. 7, is not by disbelieving the evidence of the same prosecution witnesses. But, it is in the context of the limited role of the concerned

accused established from the evidence of the same prosecution witnesses. The accused No. 6 cannot take advantage of that finding, in view of overwhelming evidence of his complicity in the commission of crime. A

41. In view of the above, we hold that the appeals filed by accused Nos. 1, 3 and 6 respectively, are devoid of merits. B

42. We accordingly uphold the finding of guilt as against these accused Nos.1,3 and 6 as recorded by the courts below as also the sentence imposed in respect of the offence committed by them.

43. Hence these appeals fail and the same are dismissed. Accused No.1 Nalini Dhapke, appellant in Criminal Appeal No.854/2010 and accused No.6 Satish, appellant in Criminal Appeal No.11/2015 are on bail. Their bail bonds shall stand cancelled and they are directed to surrender before the Trial Court within four weeks from today for undergoing the remaining period of sentence. C

Devika Gujral Appeals dismissed. D