ASHISH JAIN

v.

MAKRAND SINGH AND ORS.

(Criminal Appeal No. 1980 of 2008)

JANUARY 14, 2019

[N. V. RAMANA AND MOHAN M. SHANTANAGOUDAR, JJ.]

Penal Code, 1860:

ss. 302/34, 394/34 and 449 – ss. 11/13 of Madhya Pradesh Dakaiti and Vyapharan Prabhavit Kshetra Adhiniyam, 1981 and ss. 25(1)(b)(a) r/w s. 27 of Arms Act, 1959 – Prosecution under – Of three accused – Prosecution case based on circumstantial evidence – Two last seen witnesses – Recovery of incriminating articles on the basis of confessional statements of the accused – Conviction by trial court imposing death setence – High Court acquitted the accused – On appeal, held: Unless any blatant illegality or substantial error in the order of acquittal is proved, and as long as the conclusion of acquittal is a possible view, Supreme Court is not bound to interfere with the same – Acquittal granted by High Court is well-reasoned – Appellants have failed to prove any substantial error in the order of High Court – The accused are entitled to be acquitted as a reasonable suspicion or doubt persists regarding the guilt of the accused – Acquittal order confirmed..

Criminal Law:

Presumption of innocence – Held: Where appellate court acquits the accused, there is a double presumption in favour of accused – Initial presumption of innocence is reinforced by the acquittal.

Appeal:

Appeal against acquittal order – Interference with – Held: In such cases, if the view of the High Court is reasonable and based on the material on record, Supreme Court should not interfere – Interference in such cases is permissible only when the order of High Court is palpably erroneous, constituting miscarriage of justice

A *and also when there is misconception of law or erroneous interpretation of evidence or when the High Court has completely misdirected itself in reversing the order of trial court.*

Evidence:

B *Confession – Evidentiary value – Held: There is an embargo on accepting self-incriminatory evidence – But, if it leads to recovery of material objects in relation to the crime, it is most often taken to hold evidentiary value as per circumstances of each case – If such statement is made under undue pressure and compulsion, the evidentiary value of such evidence leading to the recovery is nullified* C *as it is hit by Art. 20(3) of the Constitution – Constitution of India – Art. 20(3) – Evidence Act, 1872 – s. 27.*

Identification of Prisoners Act, 1920:

ss.4 and 5 – Fingerprint samples - Obtained without magisterial order – Whether illegal – Held: If suspicious D *circumstances arise, in order to ward off such suspicion, it is in the interest of justice to get orders from the Magistrate – But that does not mean that u/s. 4, police officers are not entitled to take fingerprints until order is taken from Magistrate.*

Dismissing the appeals, the Court

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HELD: 1. In a case wherein the High Court has acquitted the accused of all the charges, there is a double presumption in favour of the accused, as the initial presumption of innocence is further reinforced by an acquittal by the High Court. In such a case, this Court will keep in mind that the presumption of F **innocence in favour of the accused has been fortified by the order of acquittal and thus if the view of the High Court is reasonable and based on the material on record, this Court should not interfere with the same. Interference is to be made only when there are compelling and substantial reasons to do so, and if the** G **ultimate conclusion reached by the High Court is palpably erroneous, constituting a substantial miscarriage of justice. Moreover, interference can be made if there is a misconception of law or erroneous appreciation of evidence or the High Court has completely misdirected itself in reversing the order of conviction by the Trial Court. [Para 17][358-F-G]**

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State of Rajasthan v. *Islam and Ors.* **(2011) 6 SCC 343 : [2011] 6 SCR 988;** *State of U.P.* v. *Awdhesh* **(2008) 16 SCC 238 : [2008] 13 SCR 269;** *State (Delhi Admin.)* v. *Laxman Kumar and Ors.* **(1985) 4 SCC 476 : [1985] 2 Suppl. SCR 898 – relied on.** A

2.1 PW12 and PW20 are the last seen witnesses who saw the entry and the exit of the accused persons from the crime scene, respectively. These two witnesses have categorically stated that they had conveyed this piece of valuable information to the complainant PW26 right before he filed the first information. However, there is no whisper of such an important fact anywhere in the first information, Ex. P5 nor the FIR arising from it, Ex. P6. Moreover, PW12 and PW20 have deposed that they were present at the spot when the bodies were found. However, their statements were not taken by the police on the same day, rather they were taken subsequently on the next day. Considering the fact that the details of the last seen circumstance as deposed by PW12 and PW20 are not found in the first information (though PW26, the informant was informed about the same by PW12 and PW20 before filing the First Information Report), PW12 and PW20 did not see the accused entering or exiting the house of the deceased, as is sought to be made out by the prosecution. There was deliberate delay in recording the statements of these important witnesses with regard to the last seen circumstance. Hence, the statements of PW12 and PW20 were clearly an afterthought. [Para 18][359-B, C-D, F-H] B C D E

2.2 PW20 is a chance witness. Moreover, there are discrepancies and contradictions in the statement of PW20, inasmuch as it is only in his testimony that he asserts for the first time that he saw the accused coming out of the house of the deceased, as opposed to walking hurriedly away from the area. Also, he admitted that he could not remember how many people came out holding bags, and how many came out empty-handed, along with the fact that he did not usually take the route in front of the house/shop of the deceased to reach his house from his shop, which shows that he is a chance witness. Keeping in mind that this witness was related to the deceased, and appears to be a chance witness with material discrepancies in his account, his F G H

A **evidence as to the last seen circumstance is discarded. [Para 19][360-A-C]**

2.3 The first information clearly mentions the name of the accused as well as their addresses. It is also stated by the witnesses that they are acquainted with the accused persons. The B **police could have easily arrested the accused. The material on record shows that the arrests were made only the next morning between 11:00 a.m. and 11:30 a.m., that too at the houses of the accused persons, which also, incidentally, shows that the accused persons were not absconding, which is unnatural conduct on the part of an offender who knows that he has been observed entering** C **the house of the deceased on the day of the offence. Thus, the delay in the arrest, despite clear knowledge of the whereabouts of the accused persons, casts a serious shadow of doubt over the case of the prosecution. [Para 20][360-D-F]**

2.4 The confessions that led to the recovery of the D **incriminating material were not voluntary, but caused by inducement, pressure or coercion. Once a confessional statement of the accused on facts is found to be involuntary, it is hit by Article 20(3) of the Constitution, rendering such a confession inadmissible. There is an embargo on accepting self-incriminatory** E **evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. However, if such a statement is made under undue pressure and compulsion from the investigating officer, as in the present matter, the evidentiary value of such a statement leading to the recovery is nullified.** F **The recovery of the stolen ornaments, etc. in the instant matter was made on the basis of involuntary statements, which effectively negates the incriminating circumstance based on such recovery, and severely undermines the prosecution case. [Paras 21 and 22][361-A-C; 363-G]**

G *Selvi* v. *State of Karnataka* **(2010) 7 SCC 263 : [2010] 5 SCR 381 – relied on.**

2.5 It is evident from the testimony of several of the examined pledgors, such as PWs 15, 16 and 28, that the identification procedure was conducted without mixing the

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recovered jewellery with similar or identical ornaments. Additionally, there is nothing on record to show the identity of the pledgors and to prove that the identified ornaments were pledged by them to the deceased, except for the account books maintained by the deceased for his business, but these cannot be relied upon. This is because these account books were seized by the police from the possession of PW11, who is the son-in-law of the deceased. Incidentally, he also runs a similar money-lending business as a pawn broker in another town. No valid reason is accredited to the recovery of deceased's alleged account books from the possession of his son-in-law. Moreover, these account books were returned to him without any prayer for the same and without following any procedure. Later, it was found that there were additional entries made in the account book after the date of the incident. Moreover, none of the witnesses have spoken about the particular entry relating to them in the account books. No signature of any witness is identified and marked in the account books. None of the witnesses have deposed about any relevant entry found in the account books with reference to their respective gold/silver articles. All these issues, coupled with the fact that the investigation officer has put forth an artificial and got-up story in the matter of identification of the ornaments, creates grave suspicion with regard to the recovery of the ornaments, as well as their identification by the different pledgors. [Para 23][364-B-F]

2.6 The non-examination of two important witnesses to recoeries, in the light of the recoveries adversely affects the prosecution case. [Para 24][365-A-B]

2.7 A pointed *suja* and a chisel were recovered from the houses of Accused Nos. 2 and 1, respectively, at their instance. However, the prosecution has not established that these are the weapons which were used for the commission of the crime. The medical evidence indicates that the injuries that were found on the bodies of the deceased persons could not have been caused with the weapons seized, and the likelihood of the seized weapons causing the present injuries are very slim, as all the injuries, except one, were lacerations caused by a hard and blunt object. [Para 25][365-C]

2.8 The blood-stained clothes of the accused persons were also recovered from the houses of the accused at their instance. However, the veracity of the said recovery is doubtful in light of the fact that the said recovery was made two days after the arrest of the accused and the recovery of the stolen articles from the houses of the accused, which the investigating officer had thoroughly searched previously. From Accused No. 3, clothes were recovered hanging from a hook inside his one-room house, which had also been searched previously and from where ornaments had also been seized before. All these apparent infirmities create nothing but doubts regarding the guilt of the accused. [Para 25][365-D-F]

2.9 All the blood-stained items (including the weapons, clothes of the deceased and the flooring and tiles of the spot where the bodies were found) were sent to the FSL for examination, however the reports do not, in any way, help the case of the prosecution. Although it is argued that the blood group of the deceased persons is 'O', there is nothing conclusive to prove the same. Therefore, no reliance can be placed on the recovery of the blood-stained weapons or clothes of the accused. [Para 26][365-F-H]

2.10 Another incriminating factor is that the fingerprints of Accused No. 1 were found upon the tea tumblers found at the scene of the crime. The High Court was not correct in concluding that the fingerprint samples of the accused (used for comparison with the fingerprints on the tumblers) were illegally obtained, being in contravention of the Identification of Prisoners Act, 1920, inasmuch as they were obtained without a magisterial order. There cannot be any hard and fast rule that in every case, there should be a magisterial order for lifting the fingerprints of the accused. A bare reading of these rules makes it amply clear that a police officer is permitted to take the photographs and measurements of the accused. Fingerprints can be taken under the directions of the police officer. If certain suspicious circumstances do arise from a particular case relating to lifting of fingerprints, in order to dispel or ward off such suspicious circumstances, it would be in the interest of justice to get orders from the Magistrate. But that does not mean that under Section 4, police officers are not

entitled to take fingerprints until the order is taken from a Magistrate. It cannot be held that the fingerprint evidence was illegally obtained merely due to the absence of a magisterial order authorizing the same. [Para 27][366-A-B; 368-F-H; 369-A, B-C]

Sonvir v. State (NCT) of Delhi **(2018) 8 SCC 24;** *Shankaria v. State of Rajasthan* **(1978) 3 SCC 435;** *Mohd. Aman v. State of Rajasthan* **(1997) 10 SCC 44 – referred to.**

2.10 At the same time, in the current facts and circumstances, the absence of a magisterial order casts doubts on the credibility of the fingerprint evidence, especially with respect to the packing and sealing of the tumblers on which the fingerprints were allegedly found, given that the attesting witnesses were not independent witnesses, being the family members of the deceased. Thus, the possibility of tampering and post-facto addition of fingerprints cannot be ruled out. [Para 27] [369-C-D]

2.11 The DIG of Police who had visited the scene of the crime shortly after finding the bodies, upon seeing three tea tumblers and some electrical equipment at the scene of the crime, inferred that the crime may have been committed by three persons who were electricians. This inference drawn by a high-ranking officer in the police is likely to have impeded the course of investigation and created prejudice against the accused persons. The whole investigation and the prosecution case seem to be concocted around this inference made by the DIG, and such a circumstance does not help the case of the prosecution. [Para 28][369-E-F]

2.12 There is no glaring infirmity in the acquittal granted by the High Court. On the other hand, it is well-reasoned. The appellants have failed to establish that the High Court has erred in its conclusion. Unless any blatant illegality or substantial error in the order of acquittal is proved by the appellants, and as long as the conclusion of acquittal is a possible view based on the circumstances and material on record, this Court is not bound to interfere with the same. As a reasonable suspicion or doubt persists regarding the guilt of the accused based on the case of

the prosecution, the scales of criminal justice tilt in favour of acquittal of the accused. In such a scenario, the acquittal of the accused persons is confirmed. [Para 29][369-G-H; 370-A]

Case Law Reference

[2011] 6 SCR 988	**relied on**	**Para 17**
[2008] 13 SCR 269	**relied on**	**Para 17**
[1985] 2 Suppl. SCR 898	**relied on**	**Para 17**
[2010] 5 SCR 381	**relied on**	**Para 21**
(2018) 8 SCC 24	**referred to**	**Para 27**
(1978) 3 SCC 435	**referred to**	**Para 27**
(1997) 10 SCC 44	**referred to**	**Para 27**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1980 of 2008.

From the Judgment and Order dated 04.04.2005/21.09.2005/ 23.09.2005 of the High Court of Madhya Pradesh, Jabalpur Bench Gwalior, in Death Reference No. 1 of 2004 and Criminal Appeal No. 312 of 2004.

WITH

Criminal Appeal No. 1981 of 2008.

V. N. Sinha, Sr. Adv., Puneet Jain, Abhinav Gupta, Harsh Jain, Ms. Christi Jain, Ms. Pratibha Jain, Mrs. Swarupama Chaturvedi, B. N. Dubey, Mukesh Kumar, Ms. Santanu Singh, Sanjay Verma, Ms. Nidhi, Advs. for the appearing parties.

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J. 1. The instant appealsarise from the judgments of the High Court of Madhya Pradesh, Jabalpur, Gwalior Bench, passed in Death Reference No. 01 of 2004 and Criminal Appeal No. 312 of 2004. Vide the impugned judgments, the High Court acquitted the accused respondentsMakrand Singh, Raj Bahadur Singh and Shyam Sunder for the offences punishable under Sections 302 read with 34, 394 read with 34 and 449 of the Indian Penal

Code (in short "the IPC"), and Sections 11 read with 13 of the Madhya Pradesh Dakaiti and VyapharanPrabhavitKshetraAdhiniyam (in short "the MPDVPKA") and additionally respondentMakrand Singh for offences under Section 25(1)(b)(a) read with Section 27 of the Arms Act and Sections 11 and 13 of the MPDVPKA for causing the death of three people, viz. Premchand Jain, his wife Anandi Devi and unmarried daughter Preeti, and for committing robbery of Rs. 30,000/- in cash and about Rs. 8,00,000/- worth of gold and silver.

2. The case of the prosecution is reiterated below in brief:

Deceased Premchand Jain was in the occupation of money lending, and pawning gold and silver ornaments. The incident took place on the intervening night of 4th- 5th January 2003, where the aforementioned accused persons, on the pretext of doing electrical repairs in the house of the deceased, entered the house and committed the said murder and robbery. After committing the offence, they locked the house from outside and fled.

3. The appellant in Criminal Appeal No. 1980 of 2008 is the complainant Ashish Jain (PW26), who is the nephew of the deceased Premchand. The appellant upon growing suspicious about finding the house locked from outside on 5.1.2003, asked some relatives about the whereabouts of the family, but to no avail. Therefore, towards the end of the day at around 09:45pm, he informed the Police Station about the house being suspiciously locked from outside. The police reached the house, broke open the lock, and found all three residents lying dead on the third floor of the house. Multiple injuries were also noticed on the bodies of the deceased, andsome electrical equipment (such as wires and a screwdriver)was found inside the house. The chest in which the deceased Premchand used to keep the pawned gold and silver ornaments and cash was found broken open with its contents missing.Thus, an inference was drawn that the accused persons, who are electricians, and who did regular repair works at the house of the deceased, had committed the said offence. The first information (*DehatiNalishi)*Ex. P5 was lodged by Ashish Jain,who deposed as PW26. This first information was registered as the FIR Ex. P6 soon after.

After completing due procedure and upon investigation, the accused persons were arrested the next morning. The robbed gold and silver ornaments, cash, blood-stained clothes, and certain electrical tools,

A i.e. a *suja* and a chisel, which were said to be the weapons of offence, were recovered from the possession of the three accused persons at their instance. The key used to lock the house from outside after the commission of the crime was also recovered from a field at the instance of Accused No.1, Makrand Singh. The robbed ornaments were said to be theornaments which were pledged by different people as a part of the business run by the deceased. The Naib Tehsildar,the Executive Magistrate, conducted the identification of the robbed ornaments by the pledgors, who identified the ornaments which belong to them.

4. The Trial Court, upon framing charges and appreciating evidence, found the accused persons guilty of the said offences, and sentenced them to capital punishment.

5. The reference for the death sentenceand an appeal by the accused persons were filed before the High Court. Both were heard by a Division Bench; however,the learned judges could not reach a consensus andhad a difference of opinion. One learned Judge was in favour of acquittal of the accused persons and another learned Judge concurred with the judgment of the Trial Court. Hence, the matter was heard by the learned Third Judge,and as his findings were in consonance with acquittal, upon a majority of 2:1, the High Court acquitted the accused persons from all charges levelled against them.

6. To satisfy our conscience, we have reappreciated the entire evidence. The case mainly revolves around the statements of Ashish Jain, PW26, who is the complainant,Kailash Chandra, PW12, a last seen witness, and Vinod Kumar Jain, PW20, another last seen witness, as well as the recovery made of all the incriminating materials like the stolen articles, blood-stained weapons and blood-stained clothes of the accused at the instance of the accused persons.

7. PW26 has deposed that he is the nephew of the deceased Premchand and he frequented the house of the deceased, though he himself lived in a different house. He sometimes used to help the deceased Premchand with his business. On the morning of 5th January, he had planned to visit his uncle but the house was locked from outside. He presumed that since his deceased aunt, the wife of Premchand, was not keeping well, their family must have taken her for medical examination. Thereupon, he enquired from their relatives about Premchand's whereabouts, but did not get any response. Night fell, and Ashish Jain,

PW26 along with a few otherslodged a report at the Police Station, City Kotwali, Bhind about the suspicious circumstances. The police arrived at the scene, broke open the lock and found the dead bodies inside the house with the ornaments and cash stolen from the chest. At the scene of the crime, PW26 noticed tea tumblers in the kitchen area, and some electrical equipment lying around the house. He further deposed that Kailash Chandra, PW12, who was a neighboring shopkeeperas well as a relative, had told him that he had seen the accused persons entering the house of the deceased at around 6:00-6:30p.m. the previous evening carrying a bag containing electrical equipment. Vinod Kumar Jain,PW20, had also informed him that he had seen the accused persons coming out of the said house between 9:00-9:30p.m. going towards the Dhanwanti Bai Dharamshala in a hurried fashion carrying two bags. Based on this information, the first information was lodged, naming the accused persons and their addresses, after which the FIR was registered.

8. The first circumstance relied upon by the prosecution is the "last seen circumstance". PW12, Kailash Chandra, who runs a shop neighbouring the deceased Premchand's establishment and house, is the brother of the deceased Premchand. Hecategorically deposed that on the relevant date at around 6:00-6:30p.m., while he was sitting outside his shop, he saw Accused No. 1,Makrand Singh, Accused No. 2, Raj Bahadur Singh and Accused No. 3,Shyam Sunder entering the house of the deceased carrying a bag containing electrical equipment. He was acquainted with Accused Nos. 1 and 2, and therefore enquired about the purpose of their visit, to which they answered that they had been called to do some electrical repair work in the house of deceased Premchand. He had also asked them about the third person, and they had answered that his name was Shyam Sunder. He further corroborated the evidence given by PW26 with regard to finding the dead bodies, and the broken open chest. He further stated that he mentioned about the accused persons entering the house to PW26 and others soon after the discovery of the bodies.

9. Another important witness for the prosecution case is Vinod Kumar Jain, PW20, who is a nephew of the deceased Premchand. He testified that on the 4th of January, 2003 at around 9:00p.m., while he was returning home from his shop, which is nearby, he saw the three accused persons coming out of the house of the deceased, and Accused No. 1,Makrand Singh and Accused No. 2, Raj Bahadur Singh were

A carrying a bag each, walking in a hurried fashion towards the Dhanwanti Bai Dharamsala.He further supported the version of PW26 about finding the bodies and learning about the robbery. He also deposed that he had discussed with the people gathered at the scene of the crime, including PW26, about him seeing the accused persons exiting the houseof the deceased on the previous night.

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10. The Investigating Officer, K.D. Sonakiya deposed as PW35 before the Trial Court. He had been present at the scene of the incident from the start and completed the investigation.

11. The second incriminating circumstance against the accused C persons is the recovery of various articlesbased on their statements. All the accused persons have confessed to committing the crime and have led to the recovery of the stolen gold and silver ornaments and cash hidden at various places in their respective houses. A country-made pistol was also seized at the instance of Accused No. 1 from his possession. Other incriminating material seized at the instance of the accused persons D includes the blood-stained clothes of the accused and the blood-stained weapons *suja* and chisel at the instance of Accused No.2 and Accused No.1 respectively. The key to the lock used to lock the house from outside after the commission of the crime was also seized from a vacant land beside the house of Accused No. 1 based on his statement.

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Ashish Jain, PW26 is the witness for the recovery of all the materials relating to the incident.

12. The post-mortem of the three dead bodies was done by a team of three doctors out of which Dr. Renu Sharma, PW21 and Dr. U.P.S. Kushwaha, PW22 were examined by the Trial Court. Upon a F perusal of the Post-Mortem Reports, we find that on the body of the first deceased Premchand, there were five injuries which were all lacerated wounds. Upon the body of the second deceased Anandi Devi also, five lacerated wounds were found. On the body of the third deceased Preeti, three lacerated wounds, one incised wound and one contusion G were identified. All the said injuries were ante-mortem in nature and sufficient to cause the death of a person in the ordinary course of nature. The cause of death of all the deceased was opined to be shock due to haemorrhage, with the time of death between 12-24 hours prior to the post-mortem, i.e. between 12 noon of 4th January and 12 noon of 5th January. The Doctor PW22 in his cross-examination has deposedthat

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one injury wasinflicted by a hard and sharp weapon, and the rest of the injuries were inflicted by a hard and blunt weapon on the deceased. A

13. The deceased Premchand's hand was found by the police to be clutching some hair, which was taken and sent to the Forensic Science Laboratory along with the seized blood-stained clothes, weapons and blood recovered from the floor of the scene of the crime. Hair samples of Accused Nos. 1 and 2 were also sent along with these samples to the FSL for examination. The FSL has found that the hair recovered from the hand of the deceased was similar in nature to both the hair samples of Accused No. 1 and Accused No. 2 (but the results were inconclusive nevertheless) and that the blood stains found on the clothing and weapons were identified ashuman blood. Out of the stains that could be identified, the blood was identified asbelonging to group 'O'.Fingerprint marks were seized from the tea tumblers found by the police at the scene of the crime and were also sent for FSL examination. The samples of the fingerprints of the accused persons were also sent along with it for identification. The fingerprint expert opinedthat there was similarity between a few prints upon the tea tumblersand the fingerprints of Accused No. 1,Makrand Singh. B C D

14. Learned counsel for the appellant-complainant hasstrongly opposed the acquittal of the accused persons. He took the court through the evidence on record, and urged that the recovery ofthe robbed articles itself should be a sufficient ground for a conviction, thoughit is further supported by other circumstantial evidence. He further argued that the High Court in its majority opinion erred in giving undue importance to small shortcomings in the investigation, because of which justice had to suffer. He also argued that the last seen evidence of PW12 and PW20 along with the evidence of recovery of the stolen ornaments and cash at the instance of the accused persons, from their possession, is not to be ignored. He placed reliance on the recovery of the key used to lock the house from outside after the commission of the crime, at the instance of the first accused, and said that the recovery of the same is conclusive proof of the participation of the accused persons in the said offence. He also argued that finding blood of the group 'O' on the clothes of the accused in light of the recoveries made could only lead to one conclusion, i.e. the guilt of the accused, since this was also the blood group of the deceased persons. However, he admitted that the fingerprint examination report could not be relied upon, and that the hair sample test report was inconclusive. E F G H

A 15. The State of Madhya Pradesh has also filed an appeal against the acquittal by the High Court. The learned counsel for the State, while adopting the arguments of the counsel for the complainant in opposing the acquittal,submitted thatthe circumstantial evidence on record, which is fully proved, would only lead to the conviction of the accused.

B 16. The Supreme Court Legal Services Committee was directed by us to engage a counsel for the accused Respondents since none had appeared for them. An Amicus Curiae was appointed to assist us in relation to the arguments for the Respondents.He supported the majority view taken by the High Court in acquitting the accused persons, in entirety. He argued that there are discrepancies in the evidence relating tothe C arrests made and the alleged recoveries made by the police at the instance of the accused. Learned amicus also stated that out of the recovery witnesses, who are all relatives of the deceased, only PW26 has been examined. The non-examination of other witnesses, especially one Bahadur Yadav (the only independent witness), a servant of Premchand, D who had allegedly assisted the police in the identification of the recovered ornaments by the mortgagees, was said to be crucial for the prosecution case. He further argued that no proper procedure was followed for the identification of the ornamentsby the mortgagees, and the police had taken active interest in the identification of the ornaments, which was suspicious. Lastly, he submitted that the last seen circumstance was not E proved.

17. In a case wherein the High Court has acquitted the accused of all charges, there is a double presumption in favour of the accused, as the initial presumption of innocence is further reinforced by an acquittal by the High Court.In such a case, this Court will keep in mind that the F presumption of innocence in favour of the accused has been fortified by the order of acquittal and thus if the view of the High Court is reasonable and based on the material on record, this Court should not interfere with the same. Interference is to be made only when there are compelling and substantial reasons to do so, and if the ultimate conclusion reached G by the High Court is palpably erroneous, constituting a substantial miscarriage of justice. Moreover, interference can be made if there is amisconception of law or erroneous appreciation of evidence or the High Court has completely misdirected itself in reversing the order of conviction by the Trial Court. (See *State of Rajasthan*v.*Islam and Ors.,* (2011) 6 SCC 343, *State of U.P.* v. *Awdhesh,*(2008) 16 SCC 238, and H *State (Delhi Admin.)* v. *Laxman Kumar and Ors.,*(1985) 4 SCC 476).

18. As mentioned supra, the present case of circumstantial evidence primarily hinges on two main aspects, which is the last seen evidence and the recovery of stolen property.

PW12 and PW20, as discussed above, are the last seen witnesses who saw the entry and the exit of the accused persons from the crime scene, respectively. It has been deposed by the witnesses that soon after the bodies were found, they had discussed amongst themselves about the participation of the accused persons based on the fact that PW12 saw them enter the house of the deceased at around 06:30p.m. on the preceding day, and that PW20 saw them coming out of the house and leaving the area in a hurried manner at around 09:00-09:30p.m. These two witnesses have categorically stated that they had conveyed this piece of valuable information to the complainant PW26 right before he filed the first information. However, there is no whisper of such an important fact anywhere in the first information, Ex. P5 nor the FIR arising from it, Ex. P6. It is only stated in these documents that there was a suspicion that the accused might have caused the said incident as they were seen loitering around the house of deceased Premchand at around 9:00 p.m. of the night of the incident. PW26 has also stated that he learnt about the presence of the accused persons from the verbal dialogue between him and the said witnesses. If PW12 and PW20 had really seen the accused as deposed, the same would have been reflected in the FIR, and theabsence of such a crucial piece of information that PW26 learnt right before filing the first information casts a dark shadow of suspicion over the testimony of the last seen witnesses. Moreover, PW12 and PW20 have deposed that they were present at the spot when the bodies were found. However, their statements were not taken by the police on the same day, rather they were taken subsequently on the next day. Considering the fact that the details of the last seen circumstance as deposed by PW12 and PW20 are not found in the first information (though PW26, the informant was informed about the same by PW12 and PW20 before filing the First Information Report), we are of the opinion that PW12 and PW20 did not see the accused entering or exitingthe house of the deceased, as is sought to be made out by the prosecution. Moreover, there was deliberate delay in recording the statements of these important witnesses with regard to the last seen circumstance. Hence, the statements of PW12 and PW20 were clearly an afterthought.

A 19. The High Court had observed that PW20 is a chance witness, and we find that it has been held rightly so. Moreover, there are discrepancies and contradictions in the statement of PW20, inasmuch asit is only in his testimony that he asserts for the first time that he saw the accused coming out of the house of the deceased, as opposed to walking hurriedly away from the area, towards the Dhanwanti Bai
B Dharamshala. Also, he admitted that he could not remember how many people came out holding bags, and how many came out empty-handed, along with the fact that he didnot usually take the route in front of the house/shop of the deceased to reach his house from his shop, which shows that he is a chance witness. Keeping in mind that this witness
C was related to the deceased, and appears to be a chance witness with material discrepancies in his account, we are inclined to discard his evidence as to the last seen circumstance.

20. The first information given by the complainant PW26 clearly mentions the name of the accused as well as their addresses. It is also
D stated by the witnesses that they are acquainted with the accused persons as they are electricians who frequented the house of the deceased for repair works. Based on the same and corroborated by the statement of PW26, the police could haveeasily arrested the accused. It was stated by the Investigating Officer K.D. Sonakiya, PW35, that the police went
E in search of the accused in order to arrest them at different locations that night itself. However, the material on record shows that the arrests were made only the next morning between 11:00a.m. and 11:30a.m., that too at the houses of the accused persons, which also, incidentally, shows that the accused persons were not absconding, which is unnatural conduct on the part of an offender who knows that he has been observed
F entering the house of the deceased on the day of the offence. Be that as it may, the delay in the arrest, despite clear knowledge of the whereabouts of the accused persons, casts a serious shadow of doubt over the case of the prosecution.

21. As regardsthe recovery of incriminating material at the instance
G of the accused,the Investigating Officer K.D. Sonakiya, PW35, has categorically deposed that all the confessions by the accused persons were made after interrogation, but the mode of this interrogationdoes not appear to be of normal character,inasmuch as he himself has deposed that the accused persons were further grilled and interrogated multiple timesbefore extracting the confessions which lead to the recovery of
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the ornaments, cash, weaponsand key. We find from the totality of facts and circumstances that the confessions that led to the recovery of the incriminating material were not voluntary, but caused by inducement, pressure or coercion. Once a confessional statement of the accused on factsis found to be involuntary, it is hit by Article 20(3) of the Constitution, rendering such a confession inadmissible. There is an embargo on accepting self-incriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. However, if such a statement is made under undue pressure and compulsion from the investigating officer, as in the present matter, the evidentiary value of such a statement leading to the recovery is nullified. It is noteworthy to reproduce the observations of this Court regarding the relationship between Section 27 of the Evidence Act and Article 20(3) of the Constitution in *Selvi*v. *State of Karnataka,* (2010) 7 SCC 263:

> "102. As mentioned earlier "the right against self-incrimination" is now viewed as an essential safeguard in criminal procedure. Its underlying rationale broadly corresponds with two objectives—firstly, that of ensuring reliability of the statements made by an accused, and secondly, ensuring that such statements are made voluntarily. It is quite possible that a person suspected or accused of a crime may have been compelled to testify through methods involving coercion, threats or inducements during the investigative stage. When a person is compelled to testify on his/her own behalf, there is a higher likelihood of such testimony being false. False testimony is undesirable since it impedes the integrity of the trial and the subsequent verdict. Therefore, the purpose of the "rule against involuntary confessions" is to ensure that the testimony considered during trial is reliable. The premise is that involuntary statements are more likely to mislead the Judge and the prosecutor, thereby resulting in a miscarriage of justice. Even during the investigative stage, false statements are likely to cause delays and obstructions in the investigation efforts.
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> 103. The concerns about the "voluntariness" of statements allow a more comprehensive account of this right. If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements—often through methods involving coercion, threats,

A inducement or deception. Even if such involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the person being examined. In this sense, "the right against self-incrimination" is a vital safeguard against torture and other "third-degree methods" that could be used to elicit information. It serves as a check on police behaviour during the course of investigation. The exclusion of compelled testimony is important otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such "short cuts" will compromise the diligence required for conducting meaningful investigations. During the trial stage, the onus is on the prosecution to prove the charges levelled against the defendant and the "right against self-incrimination" is a vital protection to ensure that the prosecution discharges the said onus.

…

133. We have already referred to the language of Section 161 CrPC which protects the accused as well as suspects and witnesses who are examined during the course of investigation in a criminal case. It would also be useful to refer to Sections 162, 163 and 164 CrPC which lay down procedural safeguards in respect of statements made by persons during the course of investigation. However, Section 27 of the Evidence Act incorporates the "theory of confirmation by subsequent facts" i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which "furnish a link in the chain of evidence" needed for a successful prosecution. This provision reads as follows:

> "27. *How much of information received from accused may be proved*.—Provided that, when any fact is deposed to as 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."

134. This provision permits the derivative use of custodial statements in the ordinary course of events. In Indian law, there is no automatic presumption that the custodial statements have been extracted through compulsion. In short, there is no requirement of additional diligence akin to the administration of *Miranda* [16 L Ed 2d 694 : 384 US 436 (1965)] warnings. **However, in circumstances where it is shown that a person was indeed compelled to make statements while in custody, relying on such testimony as well as its derivative use will offend Article 20(3).**

135. The relationship between Section 27 of the Evidence Act and Article 20(3) of the Constitution was clarified in *Kathi Kalu Oghad* [AIR 1961 SC 1808 : (1961) 2 Cri LJ 856 : (1962) 3 SCR 10]. It was observed in the majority opinion by Jagannadhadas, J., at SCR pp. 33-34: (AIR pp. 1815-16, para 13)

> "*13*. … The information given by an accused person to a police officer leading to the discovery of a fact which may or may not prove incriminatory has been made admissible in evidence by that section. If it is not incriminatory of the person giving the information, the question does not arise. It can arise only when it is of an incriminatory character so far as the giver of the information is concerned. If the self-incriminatory information has been given by an accused person without any threat, that will be admissible in evidence and that will not be hit by the provisions of clause (3) of Article 20 of the Constitution for the reason that there has been no compulsion. **It must, therefore, be held that the provisions of Section 27 of the Evidence Act are not within the prohibition aforesaid, unless compulsion [has] been used in obtaining the information.**"
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> (emphasis supplied)

22. We are of the opinion that the recovery of the stolen ornaments, etc. in the instant matter was made on the basis of involuntary statements,which effectively negates the incriminating circumstance based on such recovery, and severely undermines the prosecution case.

23. Furthermore, the prosecution has examined many witnesseswho were alleged to be the pledgors of the said ornaments,

A who identified their ornaments in an identification conducted by the Naib Tehsildar. This was to prove that the recovered ornaments were in fact the ornaments which were robbed from the house of the deceased Premchand and later recovered from the accused persons. We find substance in the argument of the learned Amicus Curiae that this identification was not done in accordance with due procedure. It is
B evident from the testimony of several of the examined pledgors, such as PWs 15, 16 and 28,thatthe identification procedure was conducted without mixing the recovered jewellery with similar or identical ornaments. Additionally, there is nothing on record to show the identity of the pledgors and to prove that the identified ornamentswere pledged by them to the
C deceased Premchand, except for the account books maintained by the deceased Premchand for his business, but these cannot be relied upon. This is because these account books were seized by the police from the possession of Shailendra Kumar Jain, PW11, who is the son-in-law of the deceased. Incidentally, he also runs a similar money-lending businessas a pawn broker in another town. No valid reason is accredited to the
D recovery of deceased Premchand'salleged account books from the possession of his son-in-law. Moreover, these account books were returned to himwithoutany prayer for the same and without following any procedure. Later, it was found that there were additional entries made in the account book after the date of the incident. Moreover, none
E of the witnesses have spoken about the particular entry relating to them in the account books. No signature of any witness is identified and marked in the account books. In other words, none of the witnesses have deposed about any relevant entry found in the account books with reference to their respectivegold/silver articles. All these issues discussed above, coupled with the fact that the investigation officer has put forth
F an artificial and got-upstory in the matter of identification of the ornaments,creates grave suspicion with regard to the recovery of the ornaments, as well as their identification by the different pledgors. Hence, learned Amicus Curiae may be justified in contending, as held by the High Court, that the aspect of recovery is a got-up story, only to suit the
G purposes of the prosecution.

24. The witnesses for the recoveries which were effected at the instance of the accused are Ashish Jain, PW26 and one Sanjeev Jain. Both of them are close relatives of the deceased. Sanjeev Jain has not been examined. Similarly, one Bahadur Yadav was also not examined,

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who was a servant of the deceased Premchand who hadallegedly assisted the police by giving information about the pledgors to locate them to be brought for identification of the recovered articles.The non-examination of these two important witnesses in light of the recoveries adversely affects the prosecution case.

25. Another circumstance which has been contended to point to the guilt of the accused is the recovery of blood-stained weapons at the instance of the accused. A pointed *suja* and a chisel were recovered from the houses of Accused Nos. 2 and 1, respectively, at their instance. However, the prosecution has not established that these are the weapons which were used for the commission of the crime. The medical evidence indicates that the injuries that were found on the bodies of the deceased persons could not have been caused with the weapons seized, and the likelihood of the seized weapons causing the present injuries are very slim, as all the injuries, except one, were lacerations caused by a hard and blunt object.

The blood-stained clothes of the accused persons were also recovered from the houses of the accused at their instance. However, the veracity of the said recovery is doubtful in light of the fact that the said recovery was made two days after the arrest of the accused and the recovery of the stolen articles from the houses of the accused, which the investigating officer had thoroughly searched previously. From Accused No. 3,Shyam Sunder, clothes were recovered hanging from a hook inside his one-room house, which had also been searched previously and from where ornaments had also beenseized before. All these apparent infirmities create nothing but doubts in our minds regarding the guilt of the accused.

26. All the blood-stained items (including the weapons, clothes of the deceased and the flooring and tiles of the spot where the bodies were found) were sent to the FSL for examination, however the reports do not, in any way, help the case of the prosecution. The blood stains were found to be of human blood, however, only the stains on the clothes of Accused No. 2 and Accused No. 3 were found to be of the blood group 'O'. Identification of the rest of the stains was opined to be inconclusive. Although it is argued that the blood group of the deceased persons is 'O', there is nothing conclusive to prove the same. Therefore, no reliance can be placed on the recovery of the blood-stained weapons or clothes of the accused.

A 27. Another incriminating factor as argued by the counsel for the complainant is that the fingerprints of Accused No. 1 were found upon the tea tumblers found at the scene of the crime. We do not agree with the conclusion of the High Court that thefingerprint samples of the accused (used for comparison with thefingerprints on the tumblers) were illegally obtained, being incontravention of the Identification of Prisoners Act, 1920, inasmuch as they were obtained without a magisterial order. Importantly, Section 4 refers to the power of a police officer to direct taking of measurements, including fingerprints:

> "**4. Taking of measurements, etc., of non-convicted persons.—**Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner."

Section 5 ofthis Act provides for the taking of such samples upon an order of aMagistrate, if the Magistrate is satisfied as to its expediency:

> "**5. Power of Magistrate to order a person to be measured or photographed.—**If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898 (5 of 1898)† it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:
>
> Provided that no order shall be made directing any person to be photographed except by a Magistrate of the First Class:
>
> Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding."

However,as affirmed recently by this Court in *Sonvir* v. *State (NCT) of Delhi*,(2018) 8 SCC 24, Section 5 is not mandatorybut is directory,and affirms the bona fides of the sample-taking and eliminates the possibility of fabrication of evidence. The Court also relied on various judgments on the point, including*Shankaria*v. *State ofRajasthan*, (1978) 3 SCC 435, a three-Judge Bench decision of thisCourt to reach this conclusion.While discussing the decision of this Court in *Mohd.*

Aman v. *State of Rajasthan*, (1997) 10 SCC 44, the Court observed at paragraphs 60-62 as follows:

> "**60.** This Court observed that the prosecution has failed to establish that the seized articles were not or could not be tampered with before it reached the Bureau for examination. Further the following was stated in para 8: (*Mohd. Aman case* [*Mohd. Aman* v. *State of Rajasthan*, (1997) 10 SCC 44 : 1997 SCC (Cri) 777] , SCC p. 49)
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> "*8.* … Apart from the above missing link and the suspicious circumstances surrounding the same, there is another circumstance which also casts a serious mistrust as to genuineness of the evidence. Even though the specimen fingerprints of Mohd. Aman had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. *It is true that under Section 4 thereof police is competent to take fingerprints of the accused* but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate."
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> (emphasis supplied)
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> **61. The above observation although clearly mentions that under Section 4 police officer is competent to take fingerprints of the accused but to dispel as to its bona fide or to eliminate the fabrication of evidence it was eminently desirable that they were taken before or under the order of the Magistrate**.
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> **62.** The observation cannot be read to mean that this Court held that under Section 4 police officers are not entitled to take fingerprints until the order is taken from the Magistrate. The observations were made that it is desirable to take the fingerprints before or under the order of the Magistrate to dispel any suspicion…"
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> (emphasis supplied)

Even otherwise, pursuant to S. 8 of the Identification of Prisoners Act, rules have been framed by the Madhya Pradesh government for the purpose of carrying into effect the provisions of the said Act. The

A relevant rules for the matter on hand are Rules 3, 4 and 5, which are reproduced herein:

> "**3. Taking of photographs or measurements.** - Allow his photograph or measurements to be taken under Section 3 or Section 4, shall allow them to be taken under the directions of a
B police officer.
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> **4. Places at which measurements and photographs can be taken.** - (1) Measurements and photographs may be taken-
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> (a) in Jail, if the person whose photograph, or measurements are to be taken, is in Jail;
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> (b) at a police station or at any other place at which the police officer may direct the taking of the measurements or photographs, if the person whose photograph or measurements are to be taken is in police custody.
>
> D (2) If the person whose photograph or measurements are to be taken has been released from jail before his measurements or photograph have been taken or is not in police custody, he shall on receipt of an order in writing from an officer in charge of a Police Station attend at such place as may be specified in such order, on the date and at the time stated therein, for the purpose of having
E his measurements or photograph taken.
>
> **5. Measurements how to be taken.** - (1) Measurements of the whole or of any part of the body may be taken.
>
> (2) The measurements of a woman shall be taken by another woman with strict regard to decency."
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A bare reading of these rules makes it amply clear that a police officer is permitted to take the photographs and measurements of the accused. Fingerprints can be taken under the directions of the police officer. As held by this Court in *Sonvir* (supra), although Section 4 mentions that the police officer is competent to take measurements of
G the accused, but to dispel doubts as to its bona fides and to rule out the fabrication of evidence, it is eminently desirable that they were taken before or under the order of a Magistrate. However, the aforesaid observations cannot be held to mean that this Court observed that under Section 4, police officers are not entitled to take fingerprints until the

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order is taken from a Magistrate. If certain suspicious circumstances do arise from a particular case relating to lifting of fingerprints, in order to dispel or ward off such suspicious circumstances, it would be in the interest of justice to get orders from the Magistrate. Thus there cannot be any hard and fast rule that in every case, there should be a magisterial order for lifting the fingerprints of the accused.

Thus, it cannot be held that the fingerprint evidence was illegallyobtained merely due to the absence of a magisterial order authorizingthe same.

At the same time, we find that in the current facts and circumstances, the absence of a magisterial order casts doubts on the credibility of the fingerprint evidence, especially with respect to the packing andsealing of the tumblers on which the fingerprints were allegedly found,given that the attesting witnesses were not independent witnesses,being the family members of the deceased. Thus, we cannot rule out thepossibility of tampering and post-facto addition of fingerprints, andconcur with the High Court in discarding the fingerprint evidence.

28. It is noteworthy to mention that the DIG of Police had visited the scene of the crime shortly after finding the bodies, which is evident from the deposition of witnesses such as PW1. The DIG, upon seeing three tea tumblers and some electrical equipment at the scene of the crime, inferred that the crime may have been committed by three persons who were electricians. This inference drawn by a high-ranking officer in the police is likely to have impeded the course of investigation and created prejudice against the accused persons. The whole investigation and the prosecution case seem to be concocted around this inference made by the DIG, and such a circumstance does not help the case of the prosecution.

29. In light of the aforementioned discussion and reappraisal of evidence by this Court, we do not find any glaring infirmityin the acquittal granted by the High Court. On the other hand, we find it well-reasoned, and therefore accept the view of the High Court. The appellants have failed to establish that the High Court has erred in its conclusion. Unless any blatant illegality or substantial error in the order of acquittal is proved by the appellants, and as long as the conclusion of acquittal is a possible view based on the circumstances and material on record, this Court is not bound to interfere with the same. As a reasonable suspicion or doubt

A persists in our minds regarding the guilt of the accused based on the case of the prosecution, the scales of criminal justice tilt in favour of acquittal of the accused. In such a scenario, the acquittal of the accused persons is confirmed.

30. At this juncture, we would like to extend our appreciation to
B the learned counsel and especially for the able assistance of Mr. V.N. Sinha, Senior Counsel appointed as the Amicus Curiae.

31. Therefore, Criminal Appeal Nos. 1980-1981 of 2008 are dismissed, and the judgment and order of acquittal of the High Court is maintained.

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Kalpana K. Tripathy Appeals dismissed.