2026 INSC 417

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1864 OF 2024
[Arising out of SLP (Crl.) No. 3788 of 2022]

ANAND JAKKAPPA PUJARI @GADDADAR ...APPELLANT

VERSUS

THE STATE OF KARNATAKA ...RESPONDENT

WITH

CRIMINAL APPEAL NO. 2180 OF 2026
[Arising out of SLP (Crl.) No. 15426 of 2025]

MAHADEV SIDRAM HULLOLLI ...APPELLANT

VERSUS

THE STATE OF KARNATAKA ...RESPONDENT

J U D G M E N T

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:-

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1. Leave granted in SLP (Crl.) No. 15426 of 2025.

2. Since the issues raised in both the captioned appeals are the same, the appellants are co-convicts and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. These appeals arise from the common judgment and order passed by the High Court of Karnataka at Dharwad dated 22.12.2021 in Criminal Appeal Nos. 100096 and 100109 of 2018, respectively (hereinafter, "**the impugned judgment**"), by which the High Court dismissed the appeals preferred by the appellants herein and thereby affirmed the judgment and order of conviction passed by the Trial Court in Sessions Case No. 59 of 2013 holding the appellants herein guilty of the offence punishable under Sections 302, 364, 404, 201 read with Section 34 of the Indian Penal Code, 1860, respectively (for short, "**the IPC**").

I. CASE OF THE PROSECUTION

4. It appears from the materials on record that the complainant, PW-1, Basanagowda @Milan, son of the deceased, filed a complaint, Ex.P.1, on 25.03.2013 with the Mudhol Police Station. In the complaint, Ex.P.1, he stated that on 23.03.2013, at about 12 noon, the deceased left for the house of her daughter viz. Shailashri Lendi, where she stayed till about 1:15 PM. Thereafter, at about 1:25 PM, she left for the house of her

younger brother viz. Suresh Kamakeri. He further stated that from the younger brother's house, the deceased's elder brother viz. Kalappa Hanamanth Kamakeri (Accused No.1) took her to Arihant Gold Shop. From the gold shop, the deceased was dropped at the Bhavani Steel Centre as she wanted to purchase some utensils. At around 5 PM, the deceased left the utensil shop informing the shopkeeper that she would collect the utensils later. It has been further stated that when Suresh called the deceased to take her home from the market, her phone was found switched off. He informed Shailashri, and she in turn informed the complainant. The complainant alongwith his siblings, his brother-in-law, and brothers of the deceased started searching for her. The complainant stated that he got to know the whereabouts of the deceased from the owners of the gold shop and the utensil shop respectively. It has been further stated that the complainant came to know that the deceased's phone was switched off after 5:30 PM. The complainant disclosed the list of items, including jewellery that the deceased had in her possession when she left her home in the morning. Thus, it was stated that the deceased went missing on 23.03.2013 between 5 and 5:30 PM.

5. In such circumstances, the complainant thought fit to lodge the complaint referred to above at the police station. The said complaint was reduced in the form of a First Information Report and was numbered as Cr. No. 59/13 with the Mudhol Police Station.

6. The record reveals that in the evening of 27.03.2013, the Forest Guard working at the Ramadurga Branch viz. Dayananda Rudrappa Dyamanni, PW-2, filed a report, Ex.P.35, with the Ramadurga Police Station. The report stated that while he alongwith Forest Ranger viz. M.G. Mohammad Ali, were on duty and patrolling on the road to Mulluru village of Doddamagadi Village in the reserve forest, they noticed a spot where they found burnt pieces of bones, a piece of burnt light green saree about 4 finger width, small half burnt bone, red coloured broken bangles etc. A burnt skull and two broken jaws were also found about 2-3 ft. far from the ditch. In the report it was stated that it appeared that a dead body of a woman was burnt. Thereafter, they informed their superior officers and the police through the said report.

7. In pursuance of the aforesaid report, the Ramadurga Police Station lodged a First Information Report, Ex.P.36, against unknown persons as Cr. No. 47/2013 for the offence under Sections 302 and 201 of the IPC, respectively.

8. On the strength of the FIR, Ex.P.36, the investigation had commenced. The scene of offence *panchanama*, Ex.P.5, was drawn in the presence of the *panch* witnesses. The inquest *panchanama* of the body of the deceased, Ex.P.4, was drawn in the presence of the *panch* witness. The Circle Police Inspector of Ramadurga made a requisition to the Government Hospital of Ramadurga to visit the spot of offence and examine the skeletal remains of the deceased. The remains of the deceased were

preserved and examined. In the postmortem report, Ex.P.33, the cause of death was kept pending for the want of FSL opinion since the whole body was charred. The said doctor opined that the body was probably burnt with kerosene. The skeletal remains of the deceased were sent for chemical analysis to the forensic science laboratory. The FSL report, Ex.P.34, noted that the probable cause of death was due to head injuries. It also stated that the remains were that of one female, aged more than 35 years.

9. It appears that on 03.04.2013, the complainant, PW-1, filed a second complaint, Ex.P.3, against the deceased's elder brother Kalappa, Anand Jakkappa Pujari @Gaddadar, Imamsab @Haneef, and Mahadev Sidram Hullolli, alleging that they had abducted, murdered and thereafter burnt the body of the deceased to destroy evidence. The complaint stated that while he was searching for his deceased mother, the owner of Bhavani Steel Centre had informed him that he had seen the deceased with Kalappa at about 5:30 PM on 23.03.2013. On the same day, at about 6 PM, Kalappa had stopped his silver Maruti 800 car near Ranna Circle, Mudhol, while coming from Shivaji Circle and the deceased was seen to be sitting in the front passenger seat of the said car. The complainant heard from his acquaintance, PW-7 Ramappa, and CW-17 Thimmanna, that the deceased picked up Anand and two others and travelled towards Lokapur. It has been stated that when the complainant confronted Kalappa, he denied the assertion that the deceased was with him. While the complainant was searching for the

deceased, he came to know that 4-5 days prior, a case had been registered with regard to a woman's body being recovered fully charred somewhere in the Mullur Hills falling with the limits of the Ramadurga Police Station. When the complainant, alongwith his sister and brother-in-law went to enquire at the police station, they were shown few pieces of saree and bangles recovered and collected from the place of occurrence. The complainant identified the items to be of his deceased mother. Therein, the police informed that no gold ornaments were recovered from the spot.

10. The complainant further stated that his mother i.e., the deceased had lent about Rs. 20 lakhs to her elder brother Kalappa and had also given him a gold chain weighing 30 gms to pawn in exchange of money. The deceased used to often force Kalappa to return the money borrowed and the gold chain. It has been further stated that Kalappa on some pretext or the other used to avoid the return of gold chain and the repayment of Rs. 20 lakhs, respectively. When Kalappa sold 10 acres of the family property, the deceased asked him to repay the debt and give equal share of the amount received towards the sale proceeds to the younger brother, Suresh. Thus, according to the prosecution the motive behind the commission of crime was that Kalappa wanted to escape repayment of the debt of Rs. 20 lakhs, return of the gold chain weighing 30 gms, and bestowing a rightful share of the family property to Suresh.

11. On the strength of the aforesaid complaint, the First Information Report, Ex.P.38, numbered as Cr. No. 67/13 for the offence under Sections 302, 364, 404, 201 and 34, respectively was lodged against Kalappa Hanamant Kamakeri [Accused no. 1], Anand Jakkappa Pujari @Gaddadar [Accused no. 2], Imamasab @Hanif [Accused no. 3], Mahadev Sidram Hullolli [Accused no. 4]. The FIR reads thus:-

> "*All the accused persons mentioned in this have kidnapped and murdered the complainant's mother Bebakka w/o Laxmikanta Nadagoudar @ Hunasikatti, Age-52 years at: Metagudda who has given debt Rs. 20 lakh and gold chain (30 gms) to the accused No-1. In order to escape from returning the money and gold chain and also to rob the gold ornaments found on her, they have done this crime and tried to destroy the evidence by burning the body.*"

12. On 04.04.2013, the accused no. 1-Kalappa was arrested from his farmhouse, and the accused nos. 2 [*appellant in SLP (Crl.) No. 3788 of 2022*], 3, and 4 [*appellant in SLP (Crl.) No. 15426 of 2025*], respectively were arrested from the farmhouse of the accused no. 2. On the very same day, the accused persons are said to have expressed their willingness to point out the place from where the deceased was abducted and later murdered, and also the place where the dead body was burnt. Accordingly, the discovery *panchanama*, Ex.P.50 to Ex.P.53, respectively of all the four accused persons was drawn in the presence of the *panch* witness. The statement of *panch* witness, Ex.P.8 was recorded. At the request of the investigating officer, the case registered at the Ramadurga Police Station Cr. No. 47/2013 was

transferred to Mudhol Police Station. Finally, on completion of the investigation, the I.O. filed chargesheet in the Court of Judicial Magistrate First Class, Mudhol, for the offences enumerated above.

13. As the case was exclusively triable by the Sessions Court, the Magistrate, committed the same to the Court of Sessions, Bagalkot. The Sessions Court framed the charge against the accused persons for the offence punishable under Sections 302, 364, 404, 201 read with Section 34 of the IPC, respectively. The accused-appellants pleaded not guilty and claimed to be tried.

14. In the course of trial, the prosecution led the following oral evidence by examining the following witnesses:-

Sr. No.	Prosecution Witness	Particulars
PW-1	Basanagowda @Milana	Complainant; son of the deceased.
PW-2	Dayananda Rudrappa Dyamani	Forest Guard on duty in Mallurugudda reserved forest area.
PW-3	Avvappa Siddappa Angadi	Witness to inquest *panchanama*, spot *mahazar*, Ex.P.4 and 5.
PW-4	Sachin Ramappa Malali	Witness to seizure of phone of A1, Ex.P.7; first *pancha* of disclosure statements, Ex.P.7 to 23.
PW-5	Rakesh Rathanachanda Vora	Owner of Arihant Gold Shop.
PW-6	Ramachandra Tulajanasaa	Owner of Bhavani Steel Centre.

PW-7	Ramappa Thimmappa	Witness of last seen of the deceased with accused persons.
PW-8	Lakshmikanth Pandappa Nadagouda	Husband of the deceased.
PW-9	Raveendra Venkappa Lendi	Son-in-law of the deceased.
PW-10	Ningappa Appanna	Purchaser of the land of the accused no. 1.
PW-11	Ravi	Submitted report on complaint and FIR in Mudhol PS Cr. No. 67/13 to Magistrate, Ex.P.26.
PW-12	Sadashiva V Koli	Seized the mobile phone of the accused no. 1, Ex.P.27; witness to discovery *panchanama*, Ex.P.8(b).
PW-13	Raghavendra Ranganatha Korthi	Prepared sketch of the spot in market, Ex.P.28; road map, Ex.P.29.
PW-14	Ramesh C.	Prepared sketch of the spot in Mullur Hill, Ex.P.30.
PW-15	Vicharasagar Nayak	Witness to photographs being taken on identification of the accused persons.
PW-16	M.M. Dyamanagoudar	Constable at Ramadurga PS; submitted complaint and FIR to Magistrate, Ex.P.32.
PW-17	Dr. Tanaji	Prepared the postmortem report, Ex.P.33.
PW-18	Dr. Dayananda G. Gennur	Professor in Dept. of Forensic Medicine, Vijayapura. Prepared FSL report, Ex.P.34.
PW-19	Saanjeeva Shivananda Baligara	Receiver of PW-2's complaint, registered it as Cr. No. 47/13, Ex.P.35.

PW-20	H.B. Maadinni	Police Constable at Ramadurga PS.
PW-21	H.R. Paatil	Officer at Mudhol PS investigated in missing woman complaint in Cr. No. 59/13, complaint of murder of the deceased in Cr. No. 67/13.
PW-22	M. Pandurangaiah	Officer at Ramadurga PS investigating Cr. No. 47/2013; Signed on Inquest *panchanama*, Ex.P.4.
PW-23	Dr. Chandrashekara Anjigowda	Assistant Director, RFSL; prepared FSL report, Ex.P.43.
PW-24	H.D. Mudaraddi	Investigating officer in Cr. No. 59/13.

15. It also relied upon few pieces of documentary evidence:-

Exhibit	**Particulars**
Ex.P.1	Missing Complaint dt. 25.03.2013 by PW-1.
Ex.P.3	Complaint dt. 03.04.2013 having signatures of PW-1 and 21.
Ex.P.4	Inquest *panchanama* in Cr. No. 47/13 dt. 28.03.213 having signatures of PW-3 and 22.
Ex.P.5	Spot *panchanama* in Cr. No. 47/13 dt. 28.03.2013 where body was burnt having signatures of PW-5 and 22.
Ex.P.7	Mobile seizure *panchanama* of the accused no. 1 dt. 04.04.2013 having signatures of PW-4 and 24.
Ex.P.8	Seizure *panchanama* dt. 04.04.2013 having signatures of PW-4, and CW Basappa.
Ex.P.9 to 23	Photographs.
Ex.P.28 to 29	Sketch maps in Cr. No. 67/13 of the spot from where the accused persons have kidnapped and murdered the deceased having signatures of PW-13 and 24.

Ex.P.30	Sketch map in Cr. No. 59/13 showing seen of offence having signatures of PW-14 and 24.
Ex.P.33	Postmortem report dt. 28.03.2013 by Govt. Hospital Ramadurga under the signatures of CW Dr. Shintre T.L.
Ex.P.34	FSL Report dt. 04.06.2013 by Dept. of Forensic Medicine & Toxicology under the signatures of PW-18.
Ex.P.35	Complaint dt. 27.03.2013 by PW-2.
Ex.P.50 to 53	Voluntary Statement of Accused Nos. 1 to 4

16. Upon completion of recording of the oral evidence, the Trial Court recorded the further statements of the accused persons under Section 313 of the Code of Criminal Procedure, 1973, (for short, "**the CrPC**"). The accused-appellants denied everything. They all stated that they were innocent and had been falsely implicated in the alleged crime.

17. At the conclusion of the trial, the Trial Judge held the accused-appellants and the other two co-accused guilty of the alleged crime and convicted them for the offence punishable under Sections 302, 364, 404, 201 read with Section 34 of the IPC respectively and sentenced them to undergo life imprisonment with fine relying upon the following incriminating circumstances:-

i. The death of the deceased being homicidal.
ii. Discovery of the silver coloured Maruti 800 car, weapon of offence, gold ornaments at the instance of the accused persons.
iii. The accused persons being last seen with the deceased.

iv. Call record details of the accused no. 1 showing his presence at Batakurki around 9 PM.

v. The defence put forward by the accused persons not being established but falsified.

18. The appellants herein being dissatisfied with the judgment and order of conviction and sentence passed by the Trial Court went in appeal before the High Court. The High Court after reappreciation of the oral as well as the documentary evidence on record dismissed the appeals preferred by the appellants herein and thereby affirmed the judgment and order of conviction passed by the Trial Court.

19. In such circumstances referred to above, the accused no. 2 i.e., the appellant in SLP (Crl.) No. 3788 of 2022, and the accused no. 4 i.e., the appellant in SLP (Crl.) No. 15426 of 2025, are here before this Court with the present appeals.

II. IMPUGNED JUDGMENT

20. The findings recorded by the High Court in its impugned judgment may be summarized as under:-

i. *First*, the High Court by relying on the DNA profile examination held that the bones recovered from the Mullur forest were of the complainant's mother. The Court ruled out the possibility of any contamination with the blood sample collected of the PW-1 and the CW-8 Rajesh, respectively, as it was drawn, packed, sealed and sent to RFSL in the presence of the Magistrate. The relevant observations read thus:-

> "*45. Identity of the Body: It is sought to be contended that the body found was not that of Bebakka. The bones found in Mullur forest are that belonging to the deceased Bebakka which has been verified and certified by PW. 23-Dr.Chandrashekar, who has conducted the DNA profile examination and opined that the bones which were found belongs to the mother of PW.1/CW.1-Basanagowda and CW.8-Rajesh. The contention raised that the person who drew the blood of PW.1/CW.1-Basanagowda and CW.8-Rajesh which was sent to forensic examination has not been examined, giving raise to probable contamination is also negated by the fact that the blood was drawn in the presence of the magistrate, packed sealed and sent to the RFSL, thus the non examination of the person who drew the blood of PW.1/CW.1- Basanagowda and CW.8-Rajesh is immaterial and would not have any consequence.*"

ii. *Secondly*, as regards the exact cause of death the High Court looked into the deposition of the PW-17 Dr. Tanaji, wherein it was stated that pieces of burnt skeletal bones were recovered from a pit in the Mullur forest area and a severed skull was recovered from a different spot 20 ft. away from the said pit. Further, the jaw was recovered from some other place. The Court also noted that no skin or flesh was left to be seen on the bones. In such circumstances, the Court held that it would be inconceivable to ascertain whether the death was caused due to strangulation using the plastic wire rope. The relevant observations read thus:-

> "*47. Cause of Death: Coming to the minor discrepancies pointed out by Shri Vijay Naik and Sri Ramachandra Mali, learned counsels appearing for the appellants/accused, one of the*

discrepancies pointed out is that in terms of the postmortem report, the death of the deceased has occurred due to skull injury whereas the case of the prosecution was that the deceased died due to throttling/strangulating. This issue would have to be appreciated on the basis of the material available i.e., the remnants of the body of the deceased available. As is deposed to by the witnesses, more particularly, PW.17/CW.25-Dr.Tanaji who has deposed that various pieces of the body were in the form of bones which were found in a pit in the Mullur forest area and the skull was found at a different spot after 20 ft. from the pit and the jaw was found at another place. There is no skin or flesh available let alone around the neck of the deceased, since admittedly the neck itself was not available. In such a background, in our considered opinion, it is impossible to ascertain if the death has occurred due to strangulation/throttling by using M.O.10 being the plastic wire rope. The skull being found at another place, it is probable that PW.17/CW.25-Dr.Tanaji has mentioned in his Post Mortem report that the death has occurred due to head injury. In the cross- examination, on a suggestion being made that death could have occurred due to any other reason, he has answered in the affirmative. In our considered opinion, the opinion of PW.17/CW.25-Dr.Tanaji is a probable cause of death of the deceased and not the actual cause of the death of the deceased."

iii. *Thirdly*, the High Court observed that the plastic wire rope used to commit the murder, and the 10 liters plastic container used to burn the body of the deceased were discovered at the instance of the accused no. 1-Kalappa from the dicky of the silver Maruti 800 car belonging to him. It was further observed that the gold ornaments were also

discovered at the instance of the accused no. 1-Kalappa. The High Court took the view that the discovery *panchanama*, Ex.P.8, had been proved by independent witness. Further, by relying on the decision of this Court in ***State (NCT of Delhi)* v. *Navjot Sandhu***, reported in **(2005) 11 SCC 600**, the High Court held that the simultaneous statements and discoveries made at the instance of the accused persons would be admissible. The relevant observations read thus:-

> "*49. Recovery: What is also of importance is that M.0.10, the plastic wire rope which was used to commit the murder and M.0.11 the 10 litres capacity of plastic can which was used to burn the body of the deceased were recovered at the instance of accused No.1-Kalappa Hanmanth in the Silver Maruti 800 car belonging to accused No.1-Kalappa Hanmanth, in as much as the plastic Wire rope was in the tool box and the Plastic petrol can was in the dicky of the said car. M.Os.12 to 18 being the gold ornaments/jewelleries were also recovered at the instance of accused No.1-Kalappa Hanmanth wrapped in a handkerchief M.O.19 from a property which belonged to accused No.1-Kalappa Hanmanth.[…] The recoveries being made and the spot of occurrence having been identified on the basis of simultaneous disclosures made by the accused we are of the opinion that the decision of the Apex court in STATE (NCT OF DELHI VS. NAVJOT SANDHU reported in 2005 SCC (Cri) 1715 would apply and such recoveries and statement would be admissible.*"

iv. *Fourthly*, the High Court observed that on 05.04.2013 the PW-7 identified the accused nos. 3 and 4, respectively as the persons who got in the accused no.1's silver Maruti 800 car at Ranna Circle in the evening of 23.03.2013 i.e., the day of

the incident. The Court held that in such circumstances, there was no requirement of a test identification parade to be conducted. The relevant observations read thus:-

> "*51. From the evidence on record it can be gathered that accused No.3-Imamasab and accused No.4-Mahadev Sidram were arrested at 6.30 a.m. on 04.04.2013 and shown to PW.7/CW.16-Ramappa on 05.04.2013 when he identified them as the same persons that he had seen boarding the Maruthi car of Accused No.1 it is only thereafter that the statement of PW.7/CW.16-Ramappa was recorded. In such circumstances there being no dispute as regards the identity, there was no need for a test identification parade to be conducted.*"

v. *Fifthly*, the High Court held that the depositions of PWs 1, 7, 8, and 9, respectively establish that there was motive on the part of the accused no. 1-Kalappa to kill the deceased. The aforesaid witnesses have consistently deposed that the deceased had lent an amount of Rs. 20 lakhs to the accused no. 1-Kalappa, and despite repeated requests he did not repay the money. The accused no. 1-Kalappa had also sold the family property and had retained the sale proceeds all to himself, and had not given the rightful share to Suresh, another brother of the deceased. The Court concluded that there was a serious dispute between the deceased and the accused no. 1-Kalappa. The relevant observations read thus:-

> "*54. Motive: PW.1/CW.1-Basanagowda, PW.7/CW.16-Ramappa, PW.8/CW.7-Lakshmikant and PW. 9/CW .10-Ravindra have categorically deposed that the deceased had lent an amount of Rs.20 lakhs to accused No.1-Kalappa Hanmanth which despite repeated requests by the deceased,*

accused No.1-Kalappa Hanmanth did not make payment of. Hence, there was a friction between the deceased and accused No.1-Kalappa Hanmanth. The accused No.1-Kalappa Hanmanth had sold family property and retained the money from such sale with himself and had not given the rightful share to Suresh, another brother of the deceased and accused No.1-Kalappa Hanmanth due to which the deceased was insisting upon accused No.1-Kalappa Hanmanth to either give him a share in terms of money or buy a property as regards his share which accused No.1-Kalappa Hanmanth did not want to do. It is an account of the above two issues that their being dispute and friction between the deceased and accused No.1-Kalappa Hanmanth in order to put at rest these issues wanted to get rid of the deceased. These depositions of PWs-1, 7, 8 and 9 establish that there was a motive on the part of accused No.1 Kalappa Hanmanth to cause the death of the deceased.[…]."

vi. *Sixthly*, on the last scene theory, the High Court held that the oral testimony of the PWs 1, 5, 6, 7, and 8, respectively clearly establish that on the fateful day, the deceased was in the company of the accused no. 1-Kalappa. The accused no. 1-Kalappa did not explain anything except that he had left the deceased at the utensil shop which was also refuted by the deposition of the PW-6. The relevant observations read thus:-

"*56. Last scene theory: PW.1/CW.1-Basanagowda and PW.8/CW.7-Lakshmikant have deposed that the deceased had at 1130 am gone to the house of her daughter Shaila and thereafter to the house of her brother Suresh from where the deceased had after lunch gone with her brother accused no.1 to the jewellery shop to get her chain, PW. 5/CW .14-Rakesh, the owner of jewellery stop has deposed*

that the deceased and accused No.1-Kalappa Hanmanth came to his shop at 3 p.m. and left together, PW.6/CW.15-Ramachandra the owner of the utensil shop has deposed that deceased and accused No.1-Kalappa Hanmanth came to his shop to buy utensils, left the shop and again came back at about 4:45 p.m. bought two big boxes, informed him that they were not able to take the said boxes and that they would send somebody to collect the boxes later in the night. PW.7/CW.16-Ramappa has deposed that he saw the deceased in the passenger seat of the car-M.O.21 belonging to accused No.1-Kalappa Hanmanth at Ranna Circle at 5:30 p.m. when accused No.2-Anand Pujari, accused No.3-Imamasab and accused No.4-Mahadev Sidram also boarded the said car and the car went towards Lokapur. Thus, it is clear that from after lunch on the ill-fated day, the deceased was in the company of accused No.1-Kalappa Hanmanth. Except to state that he had left the deceased at the utensil shop, accused No.1-Kalappa Hanmanth has not stated anything else, more so, when the deceased and accused No.1-Kalappa Hanmanth left together from the utensil shop which falsifies the contention that accused No.1 had left the deceased at the utensil shop. This being so from the disposition and evidence tended by PW.6/CW.15-Ramachandra who is an independent third party witness. Further more, the deceased and accused No.1-Kalappa Hanmanth were seen at Ranna Circle at 5:30 p.m. i.e., after leaving the utensil shop of PW.6/CW.15-Ramachandra. Hence, this would also falsify the assertion made by accused No.1-Kalappa Hanmanth that he had left the deceased at the utensil shop. The CDR marked at Ex.P.60, indicates that the deceased was in Mudhol at 17.19 hours on 23.03.2013, thereafter, there has been no phone calls to the deceased. The accused No.1-Kalappa Hanmanth was in Mudhol at 17.01 hours on 23.03.2013, but at 21.07 hours he was

at Batakurki i.e., the place where the body was burnt and later found, this also indicates the presence of Accused no.1 at that place."

vii. *Seventhly*, in the aforesaid circumstances, the High Court held that the circumstances established an irresistible conclusion of guilt of the accused persons. It observed that there is no break in the chain of events. The relevant observations read as under:-

"*58. The circumstances above established through evidence lead to an irresistible conclusion of guilt of the accused. All the facts and evidence are consistent, the occurrence of events cannot be explained in any other manner other than the drawing of the conclusion that they are guilty of the offence alleged. The chain of evidence are so complete that they do not leave any reasonable ground for doubt and establish that in all human probability the murder of the deceased has been committed by the accused.[…]*

59. The manner in which the spots were identified and the items seized through the accused categorically indicate and establishes the chain of events as they occurred. There is absolutely no break or weakness in any of the chain of events and of all them stand established."

III. SUBMISSIONS ON BEHALF OF APPELLANTS

21. Mr. Gurudatta Ankolekar, the learned counsel appearing for the accused-appellant [original accused no. 2] made the following submissions:-

i. He submitted that there is no cogent or any reliable evidence to establish the motive attributed for the commission of the crime as the family of the deceased had more than 100 acres

of land, and the deceased was in charge of the financial transactions of the family. In such circumstances, anyone could have had enmity with the deceased. Thus, it cannot be conclusively said that the appellant committed the offence.

ii. As regards involvement of the appellant, he submitted that there is no evidence worth the name on record to connect the appellant with the alleged crime except the testimony of the PW-7 which ought not to have been relied upon as test identification parade of the appellant was not conducted.

iii. He further submitted that it clearly emerges from the testimony of the PW-4 that there was no discovery at the instance of the accused nos. 2, 3, and 4, respectively. In this context, he argued that the application of Section 27 of the Indian Evidence Act, 1872, (for short, "**the Evidence Act**") is erroneous as there has been no discovery of any fact from the spot where the body was allegedly burnt. Thus, both the courts erred in taking the discovery statement made by the accused no. 1-Kalappa as a 'joint statement' on behalf of all the accused persons.

iv. In the last, he submitted that as per the case of the prosecution, the death was due to strangulation, however, the postmortem and the FSL report reveal that the cause of death was injury on the head.

22. In addition to the aforesaid submissions, Mr. Charudatta Mahindrakar, the learned counsel appearing for the accused-appellant [original accused no.4] would submit that the conviction of the appellant is based on weak and incomplete circumstantial evidence with no discovery at his instance. He submitted that the only incriminating circumstances against the appellant is that he was last seen getting into the accused no. 1-Kalappa's silver Maruti 800 car at Ranna Circle, and he was one of the persons arrested alongwith the accused nos. 2 and 3, respectively.

i. In the aforesaid context, Mr. Mahindrakar, with a view to fortify the submission on identification of the appellant highlighted that the PW-7 was not acquainted with the appellant herein. In such circumstances, the absence of a test identification parade could be said to be a crucial missing link in the prosecution's case.

ii. He further submitted that no specific motive has been attributed to the accused no. 4. He submitted that except the aforesaid inadmissible confession there is no independent evidence to prove prior meeting of mind to indicate shared intention to participate in the crime.

iii. He further submitted that all the articles i.e., gold ornaments of the deceased, silver Maruti 800 car, petrol can, rope were discovered at the instance of the accused no. 1-Kalappa from his own farm land and car.

iv. In the last, he submitted that since the prosecution's version is not the only reasonable hypothesis, the chain of evidence could neither be said to be complete nor incapable of explanation, and therefore the impugned judgment be set aside and the appellant be acquitted.

IV. SUBMISSIONS ON BEHALF OF THE RESPONDENT

23. Mr. Avishkar Singhvi, the learned Additional Advocate General, assisted by learned A.O.R. Mr. Himanshu Mishra, would argue that the evidence on record clearly indicates that the deceased was last seen in the company of the appellants, there has been discovery of material objects at the instance of the appellants, the depositions establish the motive behind the crime, and the chain of circumstantial evidence is complete.

i. As regards motive, the learned AAG submitted that the oral testimony of the PWs 1, 7, 8, and 9, respectively, clearly establishes that there was a dispute between the deceased and the accused no. 1-Kalappa over discharge of loan of Rs. 20 lakh and division of family property and thus there was a clear motive for the accused no. 1-Kalappa to commit the crime. The accused no. 1-Kalappa conspired with the accused no. 2, who introduced him to the accused nos. 3, and 4, respectively to weed out the disputes.

ii. In the aforesaid context, the learned AAG submitted that the last seen theory is established from the oral evidence of the PW-5 (gold shop owner), PW-6 (utensil shop owner), and PW-7, respectively. At about 5:30 PM, the PW-7 saw the deceased

with the accused no. 1-Kalappa in his silver Maruti 800 car while the accused-appellants were getting into the said car.

iii. The learned AAG pointed out that the voluntary statements of the accused persons which led to the discovery of fact i.e. the plastic wire rope, 10 liters plastic petrol container, jewellery and silver Maruti 800 car, conclusively connects the appellants with the commission of crime. The learned AAG further submitted that the discovery *panchanama* was proved by independent *panch* witnesses i.e., the PWs 3 and 4, respectively.

iv. In the last, the learned AAG submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment.

V. ISSUE FOR CONSIDERATION

24. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.

VI. ANALYSIS

25. Before adverting to the rival contentions raised on either side, we must at the outset state that the entire case of the prosecution hinges on circumstantial evidence.

26. The prosecution seeks to rely upon the following circumstances for the purpose of establishing the guilt of the appellants beyond reasonable doubt. In other words, according to the prosecution the following circumstances form a chain of evidence excluding every possible hypothesis except the guilt of the appellants.

i. On the date of incident, the deceased left her house at around 11:30 AM to visit CW-9 Shaila i.e., her daughter's house. She was there till 1:15 PM. From her daughter's house, the deceased went to the house of her younger brother, CW-13 Suresh. The deceased is said to have reached there at 1:30 PM.

ii. At about 3:30 PM, the deceased left from CW-13's house with her elder brother i.e. the accused no. 1-Kalappa, in his silver Maruti 800 car, as she wanted to get some utensils exchanged at the market.

iii. At about 3:45 PM, the deceased reached the gold shop with the accused no. 1-Kalappa and enquired about gold rate and left stating that they would visit again in two-three days.

iv. At about 4:30 PM, the deceased alongwith the accused no. 1-Kalappa reached the utensil shop and got two small containers exchanged for two large containers. At 5:15 PM, she left the shop stating to the shop owner that she would return in some time to pick up the exchanged containers. The deceased was seen going towards the accused no. 1-Kalappa's silver Maruti 800 car.

v. At about 5:45 PM, the deceased was last seen by the PW-7 with the accused no. 1-Kalappa in his silver Maruti 800 car, and the accused nos. 2 to 4, respectively later getting into the said car. The car travelled towards Lokapur.

vi. When the deceased did not return to her home, the PW-1, CW-8 Rajesh, CW-9 Shaila and CW-10 Ravindra (husband of the deceased), respectively started searching for the deceased and enquired at the gold and utensil shop.

vii. After few days i.e. on 27.03.2013, while on patrolling duty, the PW-2 spotted burnt bones, a skull, a piece of burnt saree, a piece of bangle in the Mullur forest area. In pursuance, an FIR was lodged at the Ramadurga Police Station.

viii. When the PW-1 was informed that a case was registered with the Ramadurga Police Station in connection with recovery of a charred body of an unidentified woman, he identified the deceased's saree (MO-1) and bangles (MO-2) at the police station. He informed that no gold ornaments were found at the spot where the skeletal remains were found.

ix. As per the FSL report, Ex.P.34, the skeletal remains were identified to be of a woman, aged more than 35 years. The time of death was assigned to be 3 to 6 months prior to examination.

x. As per the DNA report, Ex.P.43, the bones of the deceased matched with the PW-1 and CW-8 Rajesh as her biological offspring.

xi. All four accused persons were arrested and their disclosure statements, Ex.P.50 to 54, respectively, were recorded. The accused no. 1-Kalappa pointed out the place where the accused persons committed the murder of the deceased and also the place where the deceased's body was burnt. All the other three accused made simultaneous disclosure statements.

xii. A silver Maruti 800 car in which the deceased was abducted; 5 ft. plastic wire rope (MO-10); 10 liters plastic container (MO-11); gold ornaments (MO-12 to 18) were discovered in furtherance of the voluntary disclosure statement of the accused persons.

27. The logical process involved in the admission and consideration of circumstantial evidence has been explained by *Wigmore on Evidence* in paragraph 32 et seq. The test for the admissibility of evidence to prove a circumstantial fact was expressed in the following words:-

> "*The evidentiary fact will be considered when, and only when, the desired conclusion based upon it is a more probable or natural, or at least a probable or natural hypothesis, and when the other hypotheses or explanations of the fact, if any, are either less probable or natural, or at least not exceedingly more probable or natural"* (paragraph 32, page 421).
> *"Where even the possibility of a single other hypothesis remains open, Proof fails, though it suffices for Admissibility if the desired conclusion is merely the more probable, or a probable one, even though other hypotheses, less probable or equally probable remain open. It is thus apparent*

that, by the very nature of this test or process, a specific course is suggested for the opponent. He may now properly show that one or another of these hypotheses, thus left open, is not merely possible and speculative, but is more probable and natural as the true explanation of the originally offered evidentiary fact" (paragraph 34, page 423).

28. In the aforesaid context, Kenny states that:-

> "*An amount of testimony which is not sufficient to rebut the presumption of innocence entirely (i.e., to shift the burden of proof so completely as to compel the prisoner to call legal evidence of circumstances pointing to his innocence), may yet suffice to throw upon him the necessity of offering, by at least an unsworn statement, some explanation. If he remain silent and leave this hostile testimony unexplained, his silence will corroborate it, and so justify his being convicted"* (page 388).

29. The principle that criminal courts should bear in mind is, in the words of C.B. Pollock:-

> *"To make a comparison between convicting the innocent man and acquitting the guilty is perfectly unwarranted. There is no comparison between them. Each of them is a great misfortune to the country and discreditable to the administration of justice. The only rule that can be laid down is that in a criminal trial you should exert your utmost vigilance and take care that if the man be innocent he should be acquitted, and if guilty that he should be convicted."* (quoted in Donough's Principles of Circumstantial Evidence, 1918, 158).

30. From the above, the following propositions emerge:-

1. Circumstantial evidence to justify conviction must be consistent with any reasonable or rational hypothesis of guilt of the accused.
2. When the inference of guilt from the proved incriminating facts is a more natural and probable hypothesis than the other, the onus of offering an explanation for the incriminating facts lies upon the accused. If he does not offer any explanation, or falsely denies the very existence of the incriminating facts, it is itself a circumstantial fact against him, even if the court is in a position to imagine an explanation. The guilt is the legitimate inference from the incriminating facts and the added circumstantial fact of failure or refusal to offer an explanation for the incriminating facts because it is not reasonable or rational to say that the accused would fail or refuse to offer an explanation consistent with his innocence if he could. It is immaterial in such a case whether the Court can imagine an explanation or not.
3. If the inference of guilt from the proved incriminating facts is a less natural or probable hypothesis than the other, the Court cannot draw it and the accused must be acquitted whether he offers any explanation or not.
4. If the inference of guilt from the proved incriminating facts is as much a natural or probable hypothesis as any other, the accused may be called upon to explain and if he fails or refuses, the Court may treat it as an additional circumstantial fact and infer his guilt. Or it may take

judicial notice of the other hypothesis even without any explanation by the accused and acquit him.

31. In a catena of decisions, it has been consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the tests laid down by this Court in ***Sharad Birdhichand Sarda* v. *State of Maharashtra***, reported in **(1984) 4 SCC 116**. The relevant observations read thus:-

> "*153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*
> *It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*
> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
> *(3) the circumstances should be of a conclusive nature and tendency,*

(4) they should exclude every possible hypothesis except the one to be proved, and
(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

(Emphasis supplied)

32. The picture that emerges on cumulative assessment of the materials on record is that it was original accused no. 1, namely, Kalappa who had disputes with his sister i.e., the deceased. Kalappa had borrowed a huge amount from his sister and was not ready and willing to repay the said amount. Kalappa is also said to have disposed of one ancestral property and declined to share the sale proceeds with his younger brother, namely, Suresh. This was not liked by the deceased. Due to all these disputes, the relations between Kalappa and his sister were strained. Going by the case of the prosecution as it is without adding or subtracting anything, Kalappa wanted to get rid of his sister and in such circumstances, he sought help of the other three co-accused including the two appellants before us.

33. The aforesaid appears to be the actual position considering the oral evidence on record. The appellants before us as such had nothing to do with the deceased. In other words, the appellants had no axe to grind against the deceased. When we are talking about motive, the appellants had no motive to eliminate the deceased. The question is what role the appellants could be said to have played in the alleged crime. The appellants could be said

to be accomplice in the alleged crime. An accomplice is a person who voluntarily and knowingly participates in the commission of a crime with the principal offender.

34. An accomplice is one who is associated with an offender or offenders in the commission of a crime or one who knowingly or voluntarily helps and cooperates with others in the commission of the crime. In other words, a guilty associate or partner in crime or who is somehow connected with the crime. He is an associate in the crime committed whether as a principal or accessory. In the *New Oxford Dictionary*, it is stated that the word "accomplice" may be spelt as "*a complice*" meaning a partner in crime, an associate in guilt.

35. It was held by the Oudh High Court in the case of ***Jagannath* v. *Emperor***, reported in **AIR 1942 Oudh 221**, that contribution to a crime could take place in several ways. Accomplice is categorized as follows:-

    i. Principal in the First Degree
    ii. Principal in the Second Degree
    iii. Accessory Before the Fact
    iv. Accessory After the Fact

36. By a 'principal in the first degree' means the actual offender. In other words, the man in whose guilty mind lay the latest blamable mental cause of the criminal act. Almost always, of course, he will be the man by whom this act itself was done. A 'principal in the second degree' is a person who aids and abets

another in the perpetration of a crime and common law has always been equally punishable with the actual door of the deed. In other words, the principal in the second degree is one by whom the actual perpetrator of the felony is aided and abetted at the very time when it is committed. [**See**: Kenny's Outlines of Criminal Law]

37. We shall now proceed to consider whether there is any cogent and reliable evidence to hold the two appellants guilty of the alleged crime as accomplice. As discussed above, there are two circumstances we need to look into insofar as the two appellants are concerned:-

(i) Last seen together with the deceased; and

(ii) Discovery of fact in the form of disclosure statement relevant under Section 27 of the Evidence Act.

A. <u>Last seen together with the deceased</u>

38. We looked into the oral testimony of the PW-7 Ramappa Timappa Mareguddi. The PW-7 in his examination in chief has deposed as under:-

> *"There is a distance of 3-4 Km in between Halaki village and Metagudd village and I know the family of Nadagouda of Metagudd and their lands come in between Halaki and Kamakeri and they were doing agriculture since from their ancestors. That about 100 acres land is there to the family of Nadagouda and money transaction in the family is looked after by Bebakka and accused No-1 who is before the Court is elder brother of Bebakka. I know C.W.17 and one woman given from*

Timmanna's family to C.W.8 as such I know C.W.17.

That about 3 or 3 1/2 years back one day at about 05-30 p.m. I was standing in Ranna Circle of Mudhol, at that time C.W.17 also came there and we were talking there at that time accused No.1 and Bebakka were came in Maruti 800 car from Mudhol Shivaji circle towards Ranna circle and at a distance vehicle stopped and accused No. 2 to 4 were boarded the said car, hence C.W.17 gone near the car to talk to his relatives before he reach the car was gone, the said vehicle gone towards Lokapur later C.W-17 had been to his village and I had been to my village.

That after 4-5days of same we heard that Bebakka has not returned, as such I informed C.W.7 husband of the deceased (siq) that, I and C.W.17 saw Bebakka and Kalappa, after one week of the same I heard Bebakk's dead body found in Mullur hill and in that regard there is complaint lodged. Later police called me to police station and inquired me and I told regarding the Bebakka gone in car and police have shown the accused persons and I identified them as the persons gone in car on that day. Police have informed me that, these four accused have murdered Bebakka and burnt.

I came to know that, as accused No.1 borrowed hand loan from Bebakka and when Bebakka insisted him to return the loan and also give share to her younger brother, as such accused No.1 was unhappy with Bebakka and along with other accused committed her murder."

(Emphasis is ours)

39. The cross-examination of the PW-7 reads as under:-

"Our lands and lands of C.W-1 are not near. Since from the ancestors our family knows the family of C.W-7 and we use to go to their house and after

missing of Bebakka on that day, next and other day also their family members searching for her and on those days I didn't accompanied them. Next day we didn't inform C.W-7 about Bebekka went by the car. After four days of the incident I told C.W.7 regarding I saw the Bebakka. On that day C.W-7 and I had not been to police station and told regarding missing of Bebakka. After 10-12 days of incident police recorded my statement. I didn't have any problem to inform police after 4-5days after missing of Bebakka. It is denied that police have recorded my statements as convenient to this case.

I deposed that I do not know on that day why C.W.17 came to Ranna circle Mudhol. C.W-17 is in Ranna circle for going to his village and I was also standing there to go to my village. C.W.17 belongs to Kamaladinni Mudalagi. It is admitted that, people travel through Belalagi, Mahalingapura to reach Mudhola from Mudalagi. It is denied that, there is 30k.m. from Mudalagi to Mudhola, it is 40k.m. I don't know that, it will be 70k.m. if we go through Yadavada, Kuragoda, Masiguppi from Mudhol. It is denied that, C.W.-17 has not come to Ranna Circle, I & C.W.-17 didn't have any conversation. It is admitted that, I am close to C.W-7 & C.W-1. It is admitted that, C.W-17 & C.W- 7 are relatives. Further it is denied that as I know C.W.7 and C.W.1 and we are being relatives of C.W.17 for that reason C.W.17 and I are deposing falsely that we have seen the accused with Bebakka going in car and C.W.1 and 7 have given their name to the police in his case.

Further denied that I am deposing falsely that, when I tried going near the car to talk with relatives the car passed away. Further denied that I am deposing falsely that, after 4-5 days of the incident I and CW.17 told CW.7 regarding taking of Bebakka by accused persons. It is denied that, I'm

deposing falsely that, police have taken my statement after 10-12days of the incident. It is also denied that, I am deposing falsely that, police have told me that, four accused have murdered Bebakka and burnt.

Further denied, as the Bebakka given money to accused No.1 and accused No.1 unable to return the hand loan and as such he along with other accused committed her murder and burnt her and by listening to the CW.7 I am deposing falsely before the court. Further it is denied that CW.7 has agreed to sell the land and took Rs.40 lakh as consideration and as he is not executing the sale deed made false allegation against accused No-1 and other accused persons. I don't know the names of accused No-3 & 4."

40. Thus, according to the PW-7, on one particular day at around 5:30 PM, he had seen the deceased sitting in Maruti 800 car along with her brother i.e., Kalappa somewhere near Mudhol Shivaji Circle and at that point of time the appellants and the third co-accused are alleged to have got into the said car. Thus, relying on the oral testimony of the PW-7, the prosecution seeks to argue that all the four accused persons were last seen in company of the deceased.

41. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case, the courts should look for some corroboration.

42. In ***State of U.P.* v. *Satish*** reported in **(2005) 3 SCC 114**, this Court observed:-

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

43. By now, it is a well settled position of law that the circumstance of "last seen together" does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. The Courts should look for some corroboration.

44. For the present, we proceed on the footing that the accused persons were last seen along with the deceased as deposed by the PW-7. However, it would be too risky to reach the conclusion that the appellants before us are guilty of a serious crime like murder, in their capacity as accomplice, solely on this piece of

circumstance of "last seen together". We shall examine whether there is any other incriminating piece of circumstance to lend credence to the circumstance of last seen together.

B. <u>Discovery at the instance of the accused-appellants</u>

45. Apart from calling the two *panchas* at the police station for the purpose of drawing a discovery *panchanama* the Investigating Officer (I.O.) adopted a very unusual procedure. He recorded confessional statements of each of the accused persons. We looked into those confessional statements which the Trial Court exhibited in evidence i.e., Exhs. 50 to 53 respectively. In each of the confessional statements, the accused persons made a clean breast of their crime. These confessional statements, as such could be said to be hit by Section 25 of the Evidence Act and could not have been exhibited. For the time being, we ignore this and proceed further.

46. It appears from the materials on record that the appellants were arrested on 04.04.2013 at around 6:30 AM. It is the case of the prosecution that while they were in police custody, they on their own free will and volition expressed their willingness to point out the place from where the deceased was abducted, later on killed and the body was burnt. In this regard, the I.O. is said to have called two *panchas* (independent witnesses) for the purpose of drawing the discovery *panchanama*.

47. We straightaway proceed to look into the oral evidence of the *panch* witnesses the PW-4, namely, Sachin Ramappa Malali. The examination-in-chief of the PW-4 reads thus:-

> *"Sachin has deposed that, about 3 1/2 years back one day he along with C.W-6 Basappa were going from Metagudd towards Mudhol at about 07.00am, when we were passing in-front of police station, they called us and asked to which village we belongs to and when we told that we are from Metagudda, they told that C.P.I has calling us and took us to the Police Station. <u>There police have shown four accused persons and in which we identified accused No-1, Kalappa and accused No.2 Ananda and told that we are not familiar with accused No-3 & 4.</u>*
>
> *Later, police told us that all the accused have committed murder of woman by name Bebakka and they are going to prepare panchanama and asked us to come with them. Then accused No-1 has produced his Samsung mobile in which one BSNL and another Vodafone Sims were there. Later, police have pasted a slip on the mobile in which they have signed and then prepared panchanama in laptop in the police station and took print after reading over the same, I and C.W-6, Basappa have signed on it. Witness has identified their signature on the said inquest; it was marked at Ex.P-7, his signature on Ex.P-7 has marked at Ex.P-7(a). I can identify the mobile & Sims which was seized from accused no-1. Witness has identified mobile and Sims which were before the court, mobile and Sims were marked at M.O-9.*
>
> *Later, police brought a Cruiser vehicle and I along with four accused, four police, C.W-6 Basappa, C.P.I and P.S.I boarded the vehicle and accused No-1 Kalappa first took the vehicle to Bhavani steel shop, then accused No.1 told that, from Bhavani*

Steel Shop he picked Bebakka in his car, police have drawn panchanama and took photograph.

Later, again when we sat in the cruiser vehicle, accused No.1 told us to turn the vehicle towards Lokapur and on Lokapur road after crossing Jeeragal at a distance of 2km accused No.1 told to take the vehicle towards Ingalagi cross, after passing 1km stopped the vehicle and there we all got down from the vehicle and there accused told that they have committed murder of Bebakka by putting wire rope to her neck and there also police have drawn panchanama.

Then accused took the vehicle towards Mullur hill and after passing Lokapur, Betakurki, Ramdurg at a distance of 4km at Mullur hill accused No.1 asked to take the vehicle in a katcha road after passing 1Km stopped the vehicle and then Kalappa and all of us got down from the vehicle and other 3 accused were there in vehicle. Later accused No.1 took them near a crossing road where there was a three feet deep and four width ditch and told that they had burnt Bebakka there. Later three accused were brought one after the other and they also showed the same spot where they had burnt Bebakka and there police drew panchanama and took photographs.

Later, accused No.1 after all boarding on the vehicle told CPI to take the vehicle towards Metaguud village and from Salahalli, Dondikatti, Halagi we gone to Metagudd village. Later accused No.1 told to drive the vehicle towards land and there in the land one house was there and one 800 car was packed. There accused took us and shown that in that car and informed that, he has kidnapped Bebakka and same is Maruti 800 of silver colour. Later accused No.1 opened the door and from tool box produced one plastic wire rope about 5 feet in length and told that from which he

has committed murder by putting it to her neck, then from Dickey he has produced one plastic can in which he has took petrol. Later police have seized rope, can and car under panchanama.

Later, accused No.1 took us behind the cattle shed and there he produced one handkerchief in which he had put the golden ornaments in which two patlis, four bilwars, one bendawale, one Venkataraman locket chain, one nuptial knot, one suttungur, one gold ring with stone, and police have seized all the material under panchanama.

Later, police have taken my and C.W-6 Basappa's signatures on all the five pancahnamas and on all the spot police have taken photographs. Under panchanama Ex.P-8 rope can and car were seized which were marked at M.O-10 and 11. Photograph of car marked at Ex-P-9 and CD at Ex.P-9(a). During the drawing of panchanama Ex.P-7 and Ex.P-8 14 photographs have been taken which were marked at Ex.P.10 to Ex.P-23. I will identify the ornaments if I see now."

(Emphasis is ours)

48. A plain reading of the oral testimony of the PW-4 would indicate that when the PW-4 reached the police station, he noticed that four individuals were arrested in connection with the alleged crime. The I.O. informed the PW-4 that all the four accused had committed murder of a woman by name Bebakka and the police would like to draw a discovery *panchanama*.

49. The PW-4, thereafter, proceeded to depose how the original accused no. 1-Kalappa produced his Samsung mobile, other articles etc. What is most relevant to note is that according to

the PW-4, the first person to get down from the police vehicle was Kalappa, and it was Kalappa who led the police party through a *kaccha* road and pointed out the place where the dead body of the deceased was burnt. According to the PW-4, later the other three accused including the appellants before us one after the other pointed out the same spot. Again, what is most relevant for us is to note that the PW-4 has not deposed anything about any particular statement made by the appellants in his presence.

50. The oral evidence of the PW-4 insofar as discovery is concerned should be looked into and appreciated keeping in mind the principles of law as explained by a Three-judge Bench decision of this Court in the case of ***Ramanand @Nandlal Bharti* v. *State of Uttar Pradesh***, reported in **(2023) 16 SCC 510**. We quote the relevant paragraphs as under:-

> *"55. Section 27 of the Evidence Act, 1872 reads thus:*
>
> > *"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."*
>
> *56. <u>If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his bloodstained clothes then</u>*

the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

57. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that

the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW 2 Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the bloodstained clothes. The second panch witness, namely, Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the bloodstained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth."

(Emphasis Supplied)

51. The manner of proving a disclosure statement under Section 27 was also explained in ***Mohd. Abdul Hafeez* v. *State of A.P.***, reported in **(1983) 1 SCC 143**, which reads thus:-

> *"5.[…] If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person.[…]."*
>
> (Emphasis supplied)

52. The conditions necessary for the applicability of Section 27 of the Evidence Act are broadly as under:-

    1. Discovery of fact in consequence of an information received from accused;
    2. Discovery of such fact to be deposed to;
    3. The accused must be in police custody when he gave information; and
    4. So much of information as relates distinctly to the fact thereby discovered is admissible — Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828.

53. We may refer to and rely upon a Constitution Bench decision of this Court in ***State of U.P.* v. *Deoman Upadhyaya***, reported in **1960 SCC OnLine SC 8**, wherein, para 65 explains the position of law as regards Section 27 of the Evidence Act. It reads thus:-

> *"65. The law has thus made a classification of accused persons into two : (1) those who have*

the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their statements are not admissible, and in the case of the second category, only that portion of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says:"I pushed him down such and such mineshaft", and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft."

(Emphasis Supplied)

54. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in ***Pulukuri Kotayya* v. *King Emperor***, reported in **1946 SCC OnLine PC 47**, which have become *locus classicus*, in the following words:-

"10.[…]It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were

discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

(Emphasis supplied)

55. Alongwith the oral testimony of the PW-4, we also looked into the oral testimony of the I.O. i.e., PW-24, namely, Holebasappa Devareddy Mudareddy which reads thus:-

> *"I am working as CPI of Mudhol from February 2012 to 03.10.2012. On 03.04.2013 I had taken over the case file in this case from C.W.31 and perused the investigation done so far. Then instructed C.W.31 and perused the investigation done so far. Then instructed C.W.31 and his staff for searching accused persons at about 06.30a.m produced them in Mudhol police station. The report submitted by C.W-31 in that regard is already marked as Ex.P-39 and witness signature marked as Ex.P.39 (b). During the enquiry accused have admitted the commission of guilt as such arrested them and followed the arrest procedure. Then all the four accused have given their voluntary statements as per Ex.P.50 to Ex.P.53 and witness signatures have been marked as Ex.P.50 (a) to Ex.P.53 (a). Accused Nos. 1 and 3 have signed and accused Nos.2 and 4 have put their thumb impressions.*
>
> *Later accused No.1 Kalappa has produced his mobile and two SIMS are seized in the presence of C.W.5/PW-4 and 6 Basappa (siq) from 07.30*

to 08.00 pm at Mudhol police Station, said panchanama marked as Ex.P.7 and witness signature marked as Ex.P.7 (b). Witness has identified M.O.9. During the panchanama photograph Ex.P.10 is taken.

Later the accused stated that they would show the places where they committed the offence and where they have kept the materials used for commission of offence. Then along with C.W.5 and 6, I and C.W.31 and his staff along with accused boarded in a private cruiser bearing No.KA-48/M-3769 and the first accused took us to Tambak chowk Bhavani Steel shop from where the accused No.1 had picked up his sister Bebakka. We drew spot panchanama between 09:45 to 10:00 AM and prepared rough sketch and took photographs. Rough Sketch marked at Ex.P.54 and witness signature at Ex.p.54 (a) and photograph marked at Ex.P.11

Later the accused said that they would show the place where they had killed the deceased and then we travelled via Shivaji Circle towards Yadwad cross, Jeeragal, Jeeragal to Ingalagi on a katcha road after crossing 1km near the land of Bhimashi Ramappa Uppar asked to stop the vehicle and got down from the same and showed the spot where they had killed deceased and in the presence of Panchas from 10.20 to 10.45 a.m. drawn panchanama and prepared rough sketch and taken photograph. Said rough sketch map is marked at Ex.P.55 and witness signature marked at Ex.P.55 (a) and photograph marked at Ex.P.12.

Then accused told us that they would show the spot where they had burnt the deceased and they proceeded towards Batakurki, Ramadurg and from Ramadurg at a distance of 4km gone

in a Mulluru hill and on the left side hill at a distance of 1km inside took them and showed a ditch where they had burnt the deceased. All the accused were taken separately to the said spot and they have shown the same place, as such prepared the rough sketch map and took photograph there. Rough sketch map marked at Ex.P.56 and witness signature marked at Ex.P.56 (a) and Photographs Ex.P.13 to 17 was identified. We have executed panchanama from 11.45 to 12.30, from the spot not seized any thing as earlier to them the Ramadurga police have seized those thing as earlier to them the Ramadurga police have seized those things in their P.S. Cr.No.47/2013 and they have got information in that regard.

Later accused No.1. told that, he would show the vehicle used for committing murder, rope used for committing offence and later took them to his farm house from Ramadurga via Salahalli, Tondikatti, Metagudd and Jaliberi limits and stopped the vehicle in front of his house. Where he has shown the vehicle Maruti Suzuki bearing No.KA 48/M4843 and one white rope from dash board of the car and one 10 ltrs plastic cane in which they have took petrol and produced all the things. There from 02.00 to 02.45p.m. drawn the panchanama and seized the same and also taken photograph. Rope and can are marked at M.O.10 and M.O.11. Witness has identified the vehicle he seized. (Vehicle was given to interim custody to the accused no-1 as per the order.)

Then accused No.1 told them that he will show the ornaments taken from deceased body and took them behind the cattle sheet and there by digging the land took a hand kerchief and produced the ornaments and in the presence of Panchas from 02.20 to 03.20 seized the same

which are marked at M.0.12 to M.0.19 and taken photographs Ex.P.18 to Ex.P.23 during the panchanama, said panchanama is already marked at Ex.P.8 and witness signature marked at Ex.P.8(c). Later we returned to the station along with seized material objects. Then called C.W.1, C.W.7 to C.w.15 and shown the accused and seized materials to them and recorded their further statements. C.W.14 and C.W.15 have given their statements as per Ex.P.24 and Ex.P.25. Then sent the accused for medical examination and sent them along with remand application to produce before the court. Witness has identified the accused present before the court."

(Emphasis is ours)

56. What emerges from the oral testimony of the PW-24 i.e., the I.O. is that all the accused persons led the police party to the place where the deceased is alleged to have been killed. However, *first*, it is the accused no. 1, namely, Kalappa who got down first from the police vehicle and showed the spot where the deceased was killed. *Secondly*, the accused persons are said to have shown the place where they had burnt the body of the deceased. Each of the accused was taken separately to the said spot and each of the accused is said to have shown the same place. Rest of the discoveries according to the I.O. were at the instance of the original the accused no. 1-Kalappa.

57. We do not propose to outright discard the evidence in the form of discovery solely on the ground that a joint disclosure statement was recorded by the I.O. without indicating the precise statement made by each of the accused persons. The

argument before us on behalf of the appellants is that it cannot be said with certainty whether all the four accused persons simultaneously made the statement or each stated separately one after the other and with what interval. It was argued that joint disclosure statement being a statement by more than one person had failed to be of any use insofar as Section 27 of the Evidence Act was concerned.

58. Insofar as joint disclosure statement is concerned, the position of law is well settled as explained by this Court in the case of ***Navjot Sandhu*** (*supra*). We quote the relevant paragraph as under:-

> "*145. Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures.[…]Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the section to more than one person. But, that is too narrow a view to be taken. Joint disclosures, to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. "A person accused" need not necessarily be a single person, but it could be plurality of the accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so*

substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the standpoint of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr Gopal Subramanium. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel."

(Emphasis supplied)

59. This Court in ***Nagamma* v. *State of Karnataka*** reported in **2025 SCC OnLine SC 2038**, wherein one of us, K. V. Viswanathan, J., was a part of the Bench, pithily explained that joint or simultaneous disclosure statements are not out of the purview of Section 27. The relevant observations read thus:-

> "*27. Disclosure statements taken from one or more persons in police custody do not go out of the purview of Section 27 altogether, as held in State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru7 and reiterated in Kishore Bhadke v. State of Maharashtra8. While asserting that a joint or simultaneous disclosure would per se be not inadmissible under Section 27, it was observed that it is very difficult to place reliance on such an utterance in chorus; which was also held to be, in fact, a myth. Recognising that there would be practical difficulty in placing reliance on such evidence, it was declared that it is for the Courts to decide, on a proper evaluation of evidence, whether and to what extent such a simultaneous disclosure could be relied upon. In Kishor Bhadke, while affirming the above principles in Navjot Sandhu, the facts revealed were noticed, wherein the information given by one, after the other, was without any break, almost simultaneously and such information was followed up by pointing out the material thing by both the accused, in which circumstance it was held that there is no reason to eschew such evidence.*"
>
> (Emphasis supplied)

60. In ***State Govt., M.P.* v. *Chhotelal Mohanlal***, reported in **AIR 1955 Nag 71**, it was held that simultaneous statements made by accused persons are not *per se* inadmissible in evidence and

are liable to be considered if the discovery made in consequence thereof affords guarantee about the truth of the statements. The aforesaid case pertained to theft of bales from the train. Evidence was sought to be given that two of the accused A and B, respectively had made certain simultaneous statements to police in consequence of which the five bales of cotton i.e., the subject of offence were discovered. The statement was to the following effect, "*I and B have kept (them) hidden at mile 313 in the jungle near the railway line, 3 bales in the nala and 2 bales in the bushes. I can go and point out them. B and I together have concealed the bales for which I shall go and point out*". B's statement was as follows: "*All these 5 bales were kept hidden on the same day in the night before sun-rise. I am prepared to go and point. I may be excused.*" The two accused then took the police to the spot. A then pointed out two places wherefrom two bales of cloth were recovered. B then pointed out another place wherefrom three bales of cloth were recovered. Though the giving of information was simultaneous and the recording of their statements was part of the same transaction there was no satisfactory evidence to show as to who made the statement first. The High Court held that in the circumstances, the respective statement made by each of the accused was admissible against him as the pointing out of the different places by the different accused afforded some guarantee about the truthfulness of their statements.

61. In the above referred decision, the High Court placed its reliance on ***Lachhman Singh* v. *State***, reported in **(1952) 1 SCC 362**.

The Government pleader had strongly relied upon this decision because that was also a case where the accused persons made statements disclosing that the dead bodies of the persons murdered were thrown in a *nala* and thereafter, the police party with the accused went to the *nala* where each of them pointed out a place where different parts of the dead body were discovered. But the 'initial pointing out' was by accused S. This Court held:-

> *"11. The learned counsel for the appellants cited a number of rulings in which Section 27 has been construed to mean that it is only the information which is first given that is admissible and once a fact has been discovered in consequence of information received from a person accused of an offence, it cannot be said to be re-discovered in consequence of information received from another accused person. It was urged before us that the prosecution was bound to adduce evidence to prove as to which of the three accused gave the information first. The Head Constable, who recorded the statements of the three accused, has not stated which of them gave the information first to him, but Bahadur Singh, one of the witnesses who attested the recovery memos, was specifically asked in cross-examination about it and stated:*
>
> *"I cannot say from whom information was got first". In the circumstances, it was contended that since it cannot be ascertained which of the accused first gave the information, the alleged discoveries cannot be proved against any of the accused persons.*
>
> *It seems to us that if the evidence adduced by the prosecution is found to be open to suspicion*

and it appears that the police have deliberately attributed similar confessional statements relating to facts discovered to different accused persons, in order to create evidence against all of them, the case undoubtedly demands a most cautious approach. But, as to what should be the rule when there is clear and unimpeachable evidence as to independent and authentic statements of the nature referred to in Section 27 of the Evidence Act, having been made by several accused persons, either simultaneously or otherwise, all that we wish to say is that as at present advised we are inclined to think that some of the cases relied upon by the learned counsel for the appellants have perhaps gone farther than is warranted by the language of Section 27, and it may be that on a suitable occasion in future those cases may have to be reviewed.

It may be that several of the accused gave information to the police that the dead bodies could be recovered in the Sakinala, which is a stream running over several miles, but such an indefinite information could not lead to any discovery unless the accused followed it up by conducting the police to the actual spot where parts of the two bodies were recovered. From the evidence of the Head Constable as well as that of Bahadur Singh, it is quite clear that Swaran Singh led the police via Salimpura to a particular spot on Sakinala, and it was at his instance that bloodstained earth was recovered from a place outside the village, and he also pointed out the trunk of the body of Darshan Singh. The learned Judges of the High Court were satisfied, as appears from their judgment, that his was "the initial pointing out" and therefore the case was covered even by the rule which, according to the counsel for the

appellants, is the rule to be applied in the present case."

(Emphasis supplied)

62. Section 27 of the Evidence Act is in the nature of an exception to the general rules contained in the two preceding Sections 25 and 26, respectively. Section 25 makes inadmissible any confession by an accused person to a police officer. Under Section 26, no confession by any person while he is in the custody of a police officer shall be proved against such person unless it be made in the presence of a Magistrate. Section 27 says that such part of the information given by an accused person while in the custody of a police officer may be proved against him as distinctly relates to the fact which is thereby discovered. It therefore makes admissible a confession made while in police custody if the other conditions laid in it are fulfilled. Being an exception to the general rule it has to be strictly construed. Section 27 of the Evidence Act does not permit the admission in evidence of the whole of the confession, but of such portion only of it as can be said to relate distinctly to the fact discovered.

63. We are of the view that the courts below committed an error in placing implicit reliance on the discovery part. As explained earlier, the discovery *panchanama* was not drawn in accordance with law. The *panch* witness i.e., the PW-4 has not said a word as regards the exact statement made by the appellants in his presence. The discovery of fact relevant under Section 27 of the

Evidence Act in the form of various objects, place of occurrence etc., was at the instance of the accused no. 1, namely, Kalappa. Kalappa is not before us. We are informed that Kalappa has not preferred any appeal before this Court. There is nothing to even remotely indicate that there was discovery of any fact at the instance of the appellants admissible under Section 27 of the Evidence Act.

64. The information should directly and distinctly relate to the facts discovered. Where, therefore, a fact has already been discovered any information given in that behalf afterwards cannot be said to lead to the discovery of the fact. There cannot be a re-discovery. Where the information as to the fact said to have been discovered is already in the possession of the police, the information given over again does not actually lead to any discovery so that its discovery over again in consequence of the information given by the accused is rightly inadmissible under Section 27 of the Evidence Act.

65. We can, of course, envisage a situation wherein more than one accused makes an oral statement giving the same type of information one after the other in quick succession. But even in such a case, unless the guarantee of the truth and voluntary nature of such statements is obtained by the discovery of a distinct fact, the provisions of Section 27 would not, in any manner, help the prosecution. Take for instance, two or three accused persons make statements in quick succession giving an information of some or similar nature, and then proceed to

discover different facts from different places. In such a case even though the statements made by them is treated as "joint" yet the discovery is not joint because it is the discovery of different facts from different places. Such discoveries guarantee the protection contemplated by Section 27 and therefore can be of good use to the prosecution. In our opinion, the cases of ***Lachhaman Singh*** (*supra*) and ***Chhotelal Mohanlal*** (*supra*) referred above were the cases of this type.

66. It is important to note that in ***Lachhman Singh*** (*supra*) this Court had doubted the correctness of some High Courts' decisions on the question of joint and simultaneous statements. Referring to the facts of that case, this Court clearly observed that even if several accused gave information to the police that dead bodies could be recovered in the "*Sakinala*" the said information was indefinite, and could not have led to any discovery unless the accused followed it up by leading the police to the actual spot from where the parts of the dead bodies were recovered. In the ***Chhotelal Mohanlal*** (*supra*), different facts were discovered from different places by different accused. Thus, in both these cases discovery evidence was accepted only because it could be said that the statement made by each accused related to the facts thereby discovered "distinctly".

67. At one stage of the hearing of these appeals, the learned AAG appearing for the State tried to read some of the contents of the *panchanama* and confessional statements of the appellants as well. We are afraid this is something impermissible in law. The

contents of the *panchanama* are not substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the *panchas* or the persons concerned in the witness box. [See: ***Murli* v. *State of Rajasthan***, **(2009) 9 SCC 417**]

68. In the case before us, the evidence is purely of a joint discovery of the same mental fact said to have been made by all the four accused simultaneously with the result that it is not possible to say which statement of a particular accused relates distinctly to the discovery of a particular mental fact. Thus, in the present case, the safeguards contemplated by Section 27 are not evident, and in the absence of these safeguards, the discovery evidence of two particular places i.e., the place where the deceased was killed and the place where her dead body was burnt cannot be utilized against the appellants.

69. Having reached the conclusion that the discovery evidence cannot be utilized against the appellants, we are now left with only one piece of incriminating circumstance and that is last seen together. We are of the view that it will be too much for us to affirm the conviction of the appellants for a serious offence like murder solely relying on the circumstance of last seen together. The prosecution has to prove its case beyond all reasonable doubt. The prosecution case "may be true" but it is not that of "must be true", and there is a long distance to travel between "may be" and "must be".

VII. CONCLUSION

70. In the overall view of the matter, we have reached the conclusion that the prosecution could be said to have failed to prove its case against the appellants beyond reasonable doubt.

71. In the result both the appeals succeed and are hereby allowed. The impugned judgment and order passed by the High Court is set aside. The appellants are acquitted of all the charges. They be set at liberty forthwith, if not required in any other case.

72. Pending application(s) if any including application for intervention, stand disposed of.

.....J.

(J.B. PARDIWALA)

.....J.

(K. V. VISWANATHAN)

27th April, 2026;

New Delhi