SUPREME COURT OF INDIA REPORTABLE

Bench: Justices B.R. Gavai and Sandeep Mehta

Date of Decision: 10th April 2024

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3869 OF 2023

CRIMINAL APPEAL NO. 2740 OF 2023

[Arising out of SLP (Criminal) Nos. 837 and 1174 of 2024]

RAVISHANKAR TANDON …APPELLANT(S)

VERSUS

STATE OF CHHATTISGARH …RESPONDENT(S)

Legislation:

Sections 302, 34, 120B, and 201 of the Indian Penal Code, 1860

Section 27 of the Indian Evidence Act, 1872

Subject: Appeals against High Court's judgment upholding convictions for murder, conspiracy, and other offences, based on circumstantial evidence and Section 27 of the Evidence Act.

Headnotes:

Acquittal – Murder- Circumstantial Evidence – Reliance on Memorandum Under Section 27 of Evidence Act – Appeals challenging High Court's judgment affirming convictions for murder and conspiracy – Conviction based on circumstantial evidence including memorandum statements under Section 27 of Evidence Act – Discovery of deceased's body in pond at Bhatgaon and involvement of appellants [Paras 3, 12-14].

Inconsistencies in Witness Testimonies – Failure to Establish Discovery Solely on Accused's Information – Contradictions in witness statements regarding the discovery of the body – Witnesses knew about the murder and body's location prior to the recording of appellants' statements under Section 27 – Statements possibly created post-facto [Paras 15-21, 23].

Section 27 of Evidence Act – Inadequate Evidence of Discovery – Investigating Officer's (IO) testimony insufficient to prove discovery of the body based solely on appellants' information – Lack of clear nexus between the information provided by appellants and discovery of the body [Paras 24-25].

Failure to Establish Complete Chain of Circumstances – Prosecution unable to prove a complete chain of circumstances leading exclusively to appellants' guilt – Essential for conviction based on circumstantial evidence [Para 26].

Decision: Appeals allowed – Convictions by High Court and Trial Court set aside – Appellants acquitted of all charges [Para 27].

Referred Cases:

- Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 : 1984 INSC 121
- State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru (2005) 11 SCC 600 : 2005 INSC 333
- Asar Mohammad and Others v. State of Uttar Pradesh3 (2019) 12 SCC 253 : 2018 INSC 985
- Boby v. State of Kerala 2023 SCC OnLine SC 50 : 2023 INSC 23

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted in SLP (Criminal) Nos. 837 and 1174 of 2024.

2. These appeals challenge the judgment and order dated 2nd January, 2023 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal Nos. 194, 232 and 277 of 2013 wherein the Division Bench dismissed the criminal appeals preferred by the appellants, namely Ravishankar Tandon (accused No.1), Umend Prasad Dhrutlahre (accused No.2), Dinesh Chandrakar (accused No.3) and Satyendra Kumar Patre (accused No.4) and upheld the order of conviction and sentence dated 5th February, 2013 as recorded by the learned Additional Sessions Judge, Mungeli (hereinafter referred to as the 'trial court') in Sessions Trial No. 10 of 2012.

3. Shorn of details, the facts leading to the present appeals are as under:-

3.1 On 2nd December 2011, Ramavtar (PW-1) lodged a missing person report being Missing Person Serial No. 10/11 at Police Station Kunda after his son Dharmendra Satnami (deceased) went missing. While an extensive search was being conducted, on the basis of suspicion, the police interrogated the appellants. During the interrogation, the appellants disclosed that they had strangulated the deceased to death on the Bhatgaon Canal Road and had thereafter thrown his body into a pond at Village Bhatgaon. Thereafter, on 3rd December 2011, the police recorded the memorandum statements of accused Nos.1 to 3 at about 10:00 am, 10:30 am and 11:00 am, respectively, whereas the memorandum statement of accused No.4 came to be recorded on 6th December 2011 at 07:00 pm. On the basis of the aforesaid memorandum statements, the police recovered the dead body of the deceased from the pond at Bhatgaon on 3rd December 2011 at about 04:05 pm and the dead body was identified. Thereafter, on the very same day, a First Information Report ('FIR' for short) being No. 402 of 2011 was registered at Police Station Mungeli, District Bilaspur wherein it is recorded that the aforesaid offences were committed between the days of 30th November 2011 and 3rd December 2011. According to the Post-Mortem

Report (Ext. P-22), the cause of death of the deceased was asphyxia due to strangulation and the nature of death was homicidal.

3.2 The prosecution case stems from the memorandum statements of the appellants wherein the appellants had admitted that Dinesh Chandrakar (accused No.3) had instructed Ravishankar Tandon (accused No.1) and Satyendra Kumar Patre (accused No.4) to murder the deceased in exchange for Rs.90,000/-, which was to be paid upon the execution of the said murder. Upon receiving the aforesaid instruction, Ravishankar Tandon (accused No.1) and Satyendra Kumar Patre (accused No.4) along with Umend Prasad Dhritalhare (accused No.2) hatched a criminal conspiracy to kill the deceased and worked out a plan to execute the same. Accordingly, the aforesaid three accused persons called the deceased to Mungeli on 30th November 2011 under the ruse of purchasing silver. While Umend Prasad Dhritalhare (accused No. 2) and Satyendra Kumar Patre (accused No.4) reached Datgaon which fell within the ambit of Police Station Mungeli, on a motorcycle belonging to a relative of Satyendra Kumar Patre (accused No.4), Ravishankar Tandon (accused No.1) and the deceased reached Datgaon by a bus. Thereafter, the three accused persons along with the deceased went to visit the house of the brother-in-law of Satyendra Kumar Patre (accused No.4), namely, Sunil. On that same night, after taking the dinner, they left Sunil's house on the pretext of returning to their homes. However, when they reached near Bhatgaon, Ravishankar Tandon (accused No.1), Umend Prasad Dhritalhare (accused No.2) and Satyendra Kumar Patre (accused No.4) strangulated the deceased to death and in order to screen themselves from the said act of murder, the accused persons tied the dead body of the deceased with his own clothes and stuffed it into a jute sack which had been procured from Sunil's house. Thereafter, the appellants transported the dead body of the deceased to a pond at Village Bhatgaon, on the motorcycle of Satyendra Kumar Patre (accused No.4), and threw the dead body into the said pond, wherefrom it was subsequently recovered.

3.3 Upon the conclusion of the investigation, a charge-sheet came to be filed before the Court of the Chief Judicial Magistrate, Mungeli, Chhattisgarh, wherein accused Nos. 1, 2 and 4 had been charged for the offences punishable under Sections 302 read with 34, Sections 120B and 201 of the Indian Penal Code, 1860 ('IPC' for short) whereas accused No.3 had been charged for the offences punishable under Sections 302 read with 34 and 120B of the IPC. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the Sessions Court.

3.4 Charges came to be framed by the trial court for the aforesaid offences. The accused/appellants pleaded not guilty and claimed to be tried.

3.5 The prosecution examined 18 witnesses and exhibited 37 documents to bring home the guilt of the accused/appellants. The defence, on the other hand, did not examine any witness or exhibit any document.

3.6 At the conclusion of the trial, the trial Court found that the prosecution had proved the case against the appellants beyond reasonable doubt and accordingly convicted accused Nos. 1, 2 and 3 for the offences punishable under Sections 302 read with 34, Sections 120B and 201 of the IPC and convicted accused No. 4 for the offences punishable under Sections 302 read with 34 and 120B of the IPC and sentenced all of them to undergo imprisonment for life along with fine.

3.7 Being aggrieved thereby, the appellants preferred three Criminal Appeals before the High Court. The High Court vide the impugned judgment dismissed the Criminal Appeals and affirmed the order of conviction and sentence awarded by the trial Court.

4. Being aggrieved thereby, the present appeals.

5. We have heard Shri Manish Kumar Saran, learned counsel appearing on behalf of the appellant in Criminal Appeal No. 3869 of 2023, Shri Chandrika Prasad Mishra, learned counsel appearing on behalf of the appellants in Criminal Appeal No. 2740 of 2023, appeals arising out of SLP (Criminal) Nos. 837 and 1174 of 2024, and Shri Praneet Pranav, learned Deputy Advocate General ('Dy. AG' for short) appearing on behalf of the respondent-State at length.

6. Shri Saran and Shri Mishra, learned counsel appearing on behalf of the appellants, submitted that the present case rests on circumstantial evidence. It is submitted that the prosecution has failed to prove any of the incriminating circumstances beyond reasonable doubt. It is submitted that, in any case, the prosecution has failed to establish the chain of proven circumstances which leads to no other conclusion than the guilt of the accused persons. They therefore submitted that the appeals deserve to be allowed and the judgments and orders of conviction need to be quashed and set aside.

7. Shri Pranav, learned Dy. AG appearing on behalf of the respondent-State, on the contrary, submitted that both the High Court and the trial court have

concurrently held that the prosecution has proved the case beyond reasonable doubt. He submitted that the findings of the trial court and the High Court are based upon cogent appreciation of evidence and as such, no interference is warranted.

8. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***, wherein this Court held thus:

"**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

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

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

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

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

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

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

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

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

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

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

9. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be

explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

10. It is settled law that suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

11. In the light of these guiding principles, we will have to examine the present case.

12. The prosecution case basically relies on the circumstance of the memorandum of the accused under Section 27 of the Indian Evidence Act, 1872 (for short "Evidence Act") and the subsequent recovery of the dead body from the pond at Bhatgaon. The learned Judges of the High Court have relied on the judgment of this Court in the case of ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru***[1]. The High Court has relied on the following observations of the said judgment:

"**121.** The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates *distinctly to the fact thereby discovered* that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information

[1] **(2005) 11 SCC 600 : 2005 INSC 333**

conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] : (AIR p. 70, para 10)

"clearly the extent of the information admissible must depend on the exact nature of the fact discovered"

and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said:
(AIR p. 70, para 10)

"*Normally* the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused."

(emphasis supplied)

We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words: (AIR p. 70, para 10) "If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object

subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect."

Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court: (AIR p. 70, para 10)

"In Their Lordships' view 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)

128. So also in *Udai Bhan* v. *State of U.P.* [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251] J.L. Kapur, J. after referring to *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] stated the legal position as follows: (SCR p. 837) "A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence."

The above statement of law does not run counter to the contention of Mr. Ram Jethmalani, that the factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. However, what would be the position if the physical object was not recovered at the instance of the accused was not discussed in any of these cases."

13. As such, for bringing the case under Section 27 of the Evidence Act, it will be necessary for the prosecution to establish that, based on the information given by the accused while in police custody, it had led to the discovery of the fact, which was distinctly within the knowledge of the maker of the said statement. It is only so much of the information as relates distinctly to the fact thereby discovered would be admissible. It has been held that the rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and it can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.

14. We will have to therefore examine as to whether the prosecution has proved beyond reasonable doubt that the recovery of the dead body was on the basis of the information given by the accused persons in the statement recorded under Section 27 of the Evidence Act. The prosecution will have to establish that, before the information given by the accused persons on the basis of which the dead body was recovered, nobody had the knowledge about the existence of the dead body at the place from where it was recovered.

15. The prosecution, insofar as the memorandum under Section 27 of the Evidence Act is concerned, has relied on the depositions of Ramkumar (PW-5) and Ajab Singh (PW-18). According to the prosecution, the statement of Ravishankar Tandon (accused No. 1) was recorded on 3rd December 2011 at 10:00 am. On the same day, the statement of Umend Prasad Dhritalhare (accused No. 2) was recorded at 10:30 am, and that of Dinesh Chandrakar (accused No. 3) at 11:00 am.

Whereas the statement of Satyendra Kumar Patre (accused No. 4) was recorded on 6th December 2011 at 07:00 pm. It will be relevant to refer to the relevant part of the evidence of Ramkumar (PW-5), which reads thus:

"**2.** In front of me, accused Ravishankar have told to the police that at the behest of accused Dinesh, they have killed Dharmender for Rs. 90,000 and made a plan and Ravishankar called Dharmender called him to buy silver and killed him in Bhatgaon stuffed his dead body in a sack and threw it in the pond. On being shown the memorandum statement of Exhibit P- l0 have told to be his signature on Part A to A.

3. Umed had also told the police in front of me that Sattu along with Ravi Shankar had killed Dharmendra and threw him in Bhatagaon's lake on

the advice of Dinesh. Witness Memo statement is Exhibit P-11 and accepts his signature on part A to A.

4. Dinesh had told in front of me that 6 months back he had made a deal with Ravishankar and sattu to kill Dharmender for 90 thousand rupees. Dinesh also told that Shankar had said that the work is done, give him the money. On being shown Exhibit P-12, accepted to have his signature on Part A to A. Witness states that it was seized from the pond in front of me.

5. Village Kunda is 16 km away from my village. It is correct that Dharmendra had come to know about the murder on 3rd. Witness states that it was informed by the police. On that other morning, at about 7 -8 o'clock in the morning, it is correct that on my arrival in village Kunda, my brother-in-law and nephew Narendra had told me about the murder which was done by the accused. By that time we did not reach the spot that's why whether it was Dharmender's body or not I cannot."

6. I went from Kunda to Bhatgaon on 2nd with the police, then he says that at that time it was about two and a half o'clock in the evening. It is correct that when I reached Bhatgaon there were many people of the village. It is correct that because of dead body there were many people there. It is correct to say that police have brought the dead body to Mungeli police station where PM was done.

7. It is correct that accused were brought to Mungeli police station. It is incorrect that I had taken the signature of accused at Mungeli police station. Accused have given the statement at Kunda police station, in front of me. Apart from the accused we were 5-6 other family members in the Police station Kunda. The police took the statement at around 12 o'clock.

……..

14. We have reached Bhatgaon at 4.30-5. And reached Mungeli before sunset. It is incorrect to· say that the police have taken my signature Witness itself states that I have signed in Bhatgaon. It is incorrect to say that I did not read the papers before signing them. Witness says that the I have read the main part. It is incorrect to say that I am seeing accused for the first time today. It is incorrect to say that I know accused by name only, witness states that I know him by face also. It is incorrect to say that the name of the accused was revealed by my brotherin-:law and Narendra it was told by the police."

16. It is to be noted that Ramkumar (PW-5) is the brother-inlaw of the deceased. A perusal of his evidence would reveal that he has admitted that, on his arrival in village Kunda, he was informed by his brother-in-law and nephew Narendra Kumar (PW-2) about the murder of the deceased which was done by the accused persons. He stated that, by that time they had not reached the spot and that is why they were not aware as to whether it was the body of Dharmendra or not. He further admitted that when they reached Bhatgaon, many people of the village were there. He has also admitted that because of the dead body, many people were there. He has further admitted that the accused persons had given their statements at Kunda police station. He has further admitted that they had reached Bhatgaon at around 04:30 pm to 05:00 pm and had reached Mungeli before sunset. He has also stated that he had signed the panchnama at Bhatgaon.

17. It could thus be seen that, according to this witness (PW5), though the statement was taken at Kunda, it was signed at Bhatgaon.

18. Ajab Singh (PW-18) is another witness on the memorandum recorded under Section 27 of the Evidence Act and the subsequent recovery of the dead body. He states that Ravishankar informed the police that Dharmendra had been killed and thrown into the pond. However, he states in examination-in-chief that Umend and Dinesh did not tell anything to the police in front of him. It will be relevant to refer to his cross-examination, which reads thus:

"**4.** It is true that I used to work as Kotwari. It is true that I did not have read the paper. It is true that I had signed 3-4 papers on the instructions of the police. It is true that due to being Kotwar had to visit police station regularly. It is true that I signed on documents on the instructions of the police. It is wrong to say that I signed in police station, Kunda. Witnesses say that it was signed in Dandaon."

19. It could thus be seen that Ajab Singh (PW-18) has clearly admitted that he did not read the papers before putting his signature on them. He has admitted that he had signed 3-4 papers on the instructions of the police. He has also stated that he had signed the statement at Dandaon.

20. Narendra Kumar (PW-2) is the brother of the deceased. He has stated that, after his brother went missing; on the next day at around 08:00 o'clock in the

morning, the police came to his place and informed that his brother Dharmendra had been killed by Ravishankar, Satnami, Umend and Satyendra. After that, they went to Bhatgaon with the police. The extract of the evidence of Narendra Kumar (PW-2) is as under:

"**3.** At around 8 in morning the police came to my place and informed that my brother Dharmendra was killed by Ravishankar, Satnami, Umend and Satyendra. After that we went to Bhatgaon with the police. Ramkumar, Krishna, Banshee had gone with me."

21. A perusal of the evidence of Narendra Kumar (PW-2) read with that of Ramkumar (PW-5) would clearly reveal that the police as well as these witnesses knew about the death of Dharmendra Satnami occurring and the dead body being found at Bhatgaon prior to the statements of the accused persons being recorded under Section 27 of the Evidence Act. All the statements are recorded after 10:00 am whereas Ramkumar (PW-2) stated that at around 08:00 am, police informed him about the accused persons killing the deceased and thereafter they going to Bhatgaon. Ramkumar (PW-5) also admitted that he arrived at village Kunda and on his arrival, he was informed by his brother-in-law and nephew about the murder which was done by the accused persons.

22. We therefore find that the prosecution has utterly failed to prove that the discovery of the dead body of the deceased from the pond at Bhatgaon was only on the basis of the disclosure statement made by the accused persons under Section 27 of the Evidence Act and that nobody knew about the same before that. It is further to be noted that Ajab Singh (PW-18) has clearly admitted that he had signed the papers without reading them and that too on the instructions of the police.

23. The evidence of Ramkumar (PW-5) would show that though his statement was taken at Kunda police station, it was signed at Bhatgaon. As such, the possibility of these documents being created to rope in the accused persons cannot be ruled out. In any case, insofar as the statement of Dinesh Chandrakar (accused No. 3) is concerned, even the statement recorded under Section 27 of the Evidence Act is not at all related to the discovery of the dead body of the deceased. As a matter of fact, nothing in his statement recorded under Section 27 of the Evidence Act has led to discovery of any incriminating fact.

24. Another aspect that needs to be noted is that, the only evidence with regard to recording of the memorandum of accused persons under Section 27 of the Evidence Act is concerned, is that of B.R. Singh, the then Investigating Officer (IO) (PW-16). The relevant part thereof reads thus:

"**1.** ….I wrote the statement of accused Ravi Shankar as per memorandum Ex. P-10 after taking him into custody in which my signature is on part B to B. I wrote the statement of accused· Um end as per his memorandum Ex. P-11 and accused Dinesh as per his memorandum Ex. P-12 in which my signature is on part B to B."

25. It could thus be seen that the IO (PW-16) has failed to state as to what information was given by the accused persons which led to the discovery of the dead body. The evidence is also totally silent as to how the dead body was discovered and subsequently recovered. We find that therefore, the evidence of the IO (PW-16) would also not bring the case at hand under the purview of Section 27 of the Evidence Act. Reliance in this respect could be placed on the judgments of this Court in the cases of ***Asar Mohammad and Others v. State of Uttar Pradesh*** and ***Boby v. State of Kerala***.

26. We therefore find that the prosecution has utterly failed to prove any of the incriminating circumstances against the appellants herein. In any case, the chain of circumstances must be so complete that it leads to no other conclusion than the guilt of the accused persons, which is not so in the present case.

27. In the result, we pass the following order:

(i) The appeals are allowed;

(ii) The judgment dated 2nd January 2023 passed by the High Court and the judgment dated 5th February 2013 passed by the trial court are quashed and set aside; and

---

(iii) The appellants are directed to be acquitted of all the charges charged with and are directed to be released forthwith, if not required in any other case.

28. Pending application(s), if any, shall stand disposed of.