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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

M.M. SUNDRESH; J., ARAVIND KUMAR; J.

CRIMINAL APPEAL NO. 1029 OF 2011; JULY 14, 2025

KUM. SHUBHA @ SHUBHASHANKAR *versus* STATE OF KARNATAKA & ANR.

Circumstantial Evidence – Murder – Motive - Indian Penal Code, 1860 - Sections 120B, 302, 201 - Indian Evidence Act, 1872 - Sections 27, 65B – Held - Upheld conviction of appellant relying on - i. motive of appellant was proved by statement of her close friend who clearly stated that appellant confessed her unwillingness to marry the deceased; ii. Call Record Details (CDR) were proven to be admissible under Section 65-B(4) of Indian Evidence Act (IEA) considering certificates furnished by Airtel and Reliance; iii. CDR proved communications between the accused persons during engagement ceremony of appellant, at the time of incident and even immediately after the incident; iv. Recovery of scooter and iron steel used for attacking the deceased was upheld and separate ‘voluntary’ statements of the two appellants were also recorded; v. delay in sending steel rod for FSL analysis was rejected as a ground to discard the evidence (*Relying on State of M.P. v. Chhaakki Lal and anr. (2019) 12 SCC 326*) vi. Absence of messages on phones, coupled with the failure of accused to offer a sufficient explanation for their exhaustive communications right before incident, would establish the offence under section 201 IPC - Held chain of circumstantial evidence was complete, leading to confirmation of conviction. Appeal dismissed. [*Relied on Kishore Bhadke v. State of Maharashtra (2017) 3 SCC 760; Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116; Paras 54, 56-59, 83-86, 96*]

Constitution of India, 1950 - Article 161 - Power of Governor to grant pardons - Difference between Constitutional power and Statutory power - Scope and purpose of reformation – Held - appellants are allowed to seek pardon from Karnataka Governor under Article 161, considering that appellant committed crime out of frustration of being forced to marry against her will citing that 22 years have lapsed since the incident - Court noted that power under Article 161 is sovereign and wider than statutory powers in sections 473, 474 of BNSS - While statutory powers are derived from laws enacted by legislatures and remain subject to amendment or repeal, constitutional powers originate from the constitution itself - Constitutional powers under Article 161 embodies State’s commitment to humanity and equity, even in the administration of punishment - Court acknowledged the significance of reformation and rehabilitation, especially when the offender is not entirely responsible for the causes leading to crime, and society also has its role in shaping criminal behaviour - Held that Article 161 powers remain inviolable and exercisable when statutory mechanisms exist, ensuring justice is not constrained by procedural norms. [*Relied on Maru Ram v. Union of India & Ors. (1981) 1 SCC 107; Shatrughan Chauhan and An r. v. Union of India & Ors. (2014) 3 SCC 1; Paras 13, 15, 16*]

WITH CRIMINAL APPEAL NO. 1030/2011 CRIMINAL APPEAL NO. 1225/2011 CRIMINAL APPEAL NO. 2943/2025

For Appellant(s) Mr. R Nedumaran, Sr. Adv. Mr. Y Arunagiri, Adv. Mr. Shreyas Kaushal, Adv. Mr. M Sathishkumar, Adv. Mr. P. Soma Sundaram, AOR Mr. T. V. Ratnam, AOR Mr. Siddhartha Dave, Sr. Adv. Ms. Ranjeeta Rohatgi, AOR Mr. Nirnimesh Dube, Adv. Mr. Shreeyash Lalit, Adv. Ms. Sonia Dube, Adv. Mr. Lavam Tyagi, Adv. Mr. Himanshu Vats, Adv. Mr. Ranjit Kumar, Sr. Adv. Mr. Jayant K. Sud, Sr. Adv. Mr. S.

K. Kulkarni, Adv. Mr. Ankur S. Kulkarni, AOR IST Ms. Uditha Chakravarthy, Adv. Mr. Debdeep Banerjee, Adv. Mr. Kartik Jasra, Adv. 2 Mr. Prannit Stefano, Adv. Mr. Shayal Anand, Adv.

For Respondent(s) Mr. Tomy Sebastian, Sr. Adv. Ms. Kiran Suri, Sr. Adv. Mr. S.j. Amith, Adv. Mr. Punith B, Adv. Mr. Alwyn Sebastian, Adv. Dr. Mrs. Vipin Gupta, AOR Ms. Aishwarya Kumar, Adv. Mr. Muhammed Ali Khan, A.A.G. Mr. V. N. Raghupathy, AOR Mr. Omar Hoda, Adv. Ms. Eesha Bakshi, Adv. Mr. Kamran Khan, Adv. Mr. Arjun Sharma, Adv. Ms. Jayanti Singh, Adv. Ms. Gurbani Bhatia, Adv.

J U D G M E N T

M. M. Sundresh, J.

1. The voice of a young ambitious girl, muffled by a forced family decision, created the fiercest of turmoil in her mind. This, backed by an unholy alliance of a mental rebellion and wild romanticism, led to the tragic murder of an innocent young man, while simultaneously destroying the lives of three others.

2. A studied scrutiny of the charges, along with the evidence placed on record led to the confirmation of the conviction rendered against the appellants, by the High Court, for the major offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the “**IPC**”) while upholding the decision delivered by the Court of Sessions. The appellants who are before us seek to assail the life sentence imposed upon them by the Division Bench of the High Court of Karnataka.

3. We have heard learned Senior Counsel Mr. Ranjit Kumar, Mr. S. Nagamuthu, Mr. Siddhartha Dave, and Mr. R. Nedumaran appearing for the appellants, and learned Additional Advocate General (AAG) Mr. Muhammed Ali Khan and learned Senior Counsel Mr. Tomy Sebastian appearing for the respondents, at considerable length. In the process, all the documents placed on record along with the written arguments, are also taken due note of.

CRIME AND ITS CAUSES

4. A crime constitutes a mental rebellion of norms and rules that have been created for the establishment of social order. It can be described as a deviant behavior, triggered by causes which are both distant and immediate. An idea of rebellion against the regulatory norms imposed by the society, thus, leads to a deviant conduct, which often happens through social conditioning and a series of habits. It is the strained mind, irked by alienation and material deprivation, that ignores the moral stage, all while focusing on the avoidance of punishment which might be the consequence of being in pursuit of a self-justified solution to the predicament which afflicts them.

5. There are multiple causes for a deviant behavior. To commit a crime, there is always a cause which, very often, has no nexus with the accused, who is shackled by social constraints thus, making him a victim of his circumstances. Even the genealogy of individuals can very well be influenced due to external environmental factors, such as, family, economy, education and social mores. Deficiencies in these factors are the primary causes for an offence that is ultimately committed. But for these causes, an offence would not have been committed, as it is nothing but a manifestation of the mind, body and action. One can even say that multiple causes are responsible for the crime, both external and internal, while an offender merely plays a role in committing it.

6. Alienation in different forms is one of the major causes for a crime being committed, upon feeling a disconnect from the community, society, or social institutions. Alienated individuals often feel powerless and neglected, which can lead them to feel rejected by the society and its social norms. The breakdown of social norms contributes to a deviant

behaviour, especially when individuals lack clear moral guidance from their communities. Since law keeps changing from time to time, what is legal, may not necessarily be moral. Rapid social change, orchestrated by law, often creates conducive conditions for criminal behaviour.

CRIME AND WOMEN

7. We shall now concentrate specifically on the offences committed by women. If the factors highlighted above are applied in the context of a woman, it would result in heightened prejudices against her, leading to a gendered response of victimization. A woman is pushed into a dark corner by external elements, that contribute substantially to the inequalities in her life. Thoughts of a woman would differ based on the place, person and group that she interacts with. It is the social norms and values which determine an action on her part, that is nothing but a form of her expression.

8. We shall test this proposition through a simple example of a young lady, who is desirous of spreading her ambitious wings, longing for her own independence. A forced marriage, divorcing her from her professional ambitions and curtailing her further education, would certainly warrant a reaction. Such reactions would vary from one woman to another, depending upon the circumstances. For instance, a girl from a middleclass family might react differently compared to one who hails from a poor, or even a rich family. Even amongst these classifications, a decision made by a woman might vary depending upon the impact brought about by the peculiar circumstances in her life. Therefore, she might be put in a position where she would have to choose either of the following options available to her. After making an abortive attempt in getting the family to accept her views, she may leave her parental home without notice, she may turn violent, or even commit suicide. If societal pressure stops her from undertaking any of these measures, and a marriage is forced upon her, her agony would compound and escalate. An unwarranted marriage thrust upon her is the worst form of alienation that she can experience both mentally and physically.

9. In such an instance, a possible solution from her point of view would be different. Social constraint might play a decisive role. Factors such as social stigma, lack of education, inadequate financial support, and perceived notions about the value system, might trigger a variety of responses. These factors do not merely limit her choices—they distort her very perception of freedom, making resistance seem impossible or even immoral. In some cases, she may internalize these pressures, believing that compliance is her only option. In others, she may resist in subtle, often invisible ways—through quiet despair, emotional withdrawal, or even clandestine acts of defiance.

EFFECT OF A CRIME AND ITS REMEDY

10. As a crime is perceived to be an act of resistance against social order, its impact is also felt by society, accordingly. There are primarily two ways to deal with a crime. It can be done either by merely punishing the offender, or by reforming him. Punishment is to be seen from the perspective of the society, as well as the offender. When the punishment is supported by law, it acts as a deterrent to crimes being committed in the society.

11. A mere punishment *per se* would not constitute a remedy for an act of crime. It might change the offender's legal or social status, but would not be sufficient to address the root cause of his actions or remove the psychological and emotional factors that made him commit the crime. The idea therefore, is to reform and rehabilitate the deviant person to bring him back into the fold of society. This reformatory part, thus, assumes a greater

significance. It is more so, when the offender is not entirely responsible for the causes which led to the crime.

12. Society, through its own systemic failures, inequalities, or neglect often plays a role in shaping criminal behavior, and is also responsible for the creation of such behaviour, whether through poverty, lack of education, discrimination, or broken institutions. In that scenario, the offender becomes a victim, requiring adequate measures for treatment by compassionate correction, structural support, and opportunities for genuine transformation. In an attempt to bring the individual back into the social fold, responsibility has to be shared by every other individual, ultimately rebuilding the bonds of community rather than perpetuating cycles of alienation and punishment.

ARTICLE 161 OF THE CONSTITUTION OF INDIA, 1950

13. The Constitution of India, 1950 (hereinafter referred to as the “**Constitution**”) which is the supreme law of the land, encourages the reformation of individuals, by granting them a new lease of life. This is personified by Articles 72 and 161 of the Constitution which empowers the constitutional authorities to grant pardon to convicts. In light of this, we would like to specifically elaborate on the underlying principles pertaining to the powers vested with the Governor under Article 161 of the Constitution.

Article 161 of the Constitution

“161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.”

14. Article 161 of the Constitution has an in-built laudable objective. This Article emphasizes the role of the State to facilitate an offender to be reintegrated into society, after realizing his mistake. This power is sovereign, and is to be exercised on the advice of the Council of Ministers. Thus, it grants the Constitutional Court only a limited power of judicial review.

15. Though the power conferred under Article 161 of the Constitution might sound similar to the statutory powers available under Sections 473 and 474 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the “**BNSS**”), corresponding to Sections 432 and 433 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “**Cr.P.C**”), its powers are much wider. While statutory provisions govern classes of convicts collectively, the prerogative of pardon is generally exercised discretely in specific instances. Therefore, the scope of this power is much broader and is to be applied on a case-to-case basis. A constitutional power is fundamentally different and distinct from a statutory one. While statutory powers are derived from laws enacted by legislatures and remain subject to amendment or repeal, constitutional powers originate from the Constitution itself. Therefore, the power to pardon, reprieve, respite, remit etc. forms part of the constitutional ethos, goal and culture. Unlike statutory provisions, which are tailored to address specific scenarios or population demographics, constitutional powers embody the State’s commitment to a broader ethical vision – one that prioritizes humanity and equity, even in the administration of punishment.

Maru Ram v. Union of India and Ors., (1981) 1 SCC 107

“72. We conclude by formulating our findings:

- (1) We repulse all the thrusts on the vires of Section 433-A. Maybe, penologically the prolonged term prescribed by the section is supererogative. If we had our druthers we would have negated the need for a fourteen-year gestation for reformation. But ours is to construe, not construct, to decode, not to make a code.
- (2) We affirm the current supremacy of Section 433-A over the Remission Rules and short-sentencing statutes made by the various States.
- (3) We uphold all remissions and short-sentencing passed under Articles 72 and 161 of the Constitution but release will follow, in life sentence cases, only on government making in order en masse or individually, in that behalf.
- (4) **We hold that Section 432 and Section 433 are not a manifestation of Articles 72 and 161 of the Constitution but a separate, though similar power, and Section 433-A, by nullifying wholly or partially these prior provisions does not violate or detract from the full operation of the constitutional power to pardon, commute and the like.**

(emphasis supplied)

Shatrughan Chauhan and Anr. v. Union of India and Ors., (2014) 3 SCC 1

“16. Articles 72/161 of the Constitution entail remedy to all the convicts and are not limited to only death sentence cases and must be understood accordingly. It contains the power of reprieve, remission, commutation and pardon for all offences, though death sentence cases invoke the strongest sentiment since it is the only sentence that cannot be undone once it is executed.

17. Shri Andhyarujina, learned Senior Counsel, who assisted the Court as amicus commenced his submissions by pointing out that the power reposed in the President under Article 72 and the Governor under Article 161 of the Constitution is not a matter of grace or mercy, but is a constitutional duty of great significance and the same has to be exercised with great care and circumspection keeping in view the larger public interest. He referred to the judgment of the US Supreme Court in *Biddle v. Perovich* [71 L Ed 1161 : 274 US 480 (1927)] as also the judgments of this Court in *Kehar Singh v. Union of India*, (1989) 1 SCC 204 : 1989 SCC (Cri) 86 and *Epuru Sudhakar v. State of A.P.*, (2006) 8 SCC 161 : (2006) 3 SCC (Cri) 438. ***

19. In concise, the power vested in the President under Article 72 and the Governor under Article 161 of the Constitution is a constitutional duty. As a result, it is neither a matter of grace nor a matter of privilege but is an important constitutional responsibility reposed by the People in the highest authority. The power of pardon is essentially an executive action, which needs to be exercised in the aid of justice and not in defiance of it. Further, it is well settled that the power under Articles 72/161 of the Constitution of India is to be exercised on the aid and advice of the Council of Ministers.

47. It is clear that after the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the authorities to dispose of the same expeditiously. Though no time-limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage viz. calling for the records, orders and documents filed in the court, preparation of the note for approval of the Minister concerned, and the ultimate decision of the constitutional authorities. This Court, in *Triveniben v. State of Gujarat*, (1989) 1 SCC 678 : 1989 SCC (Cri) 248, further held that in doing so, if it is established that there was prolonged delay in the execution of death sentence, it is an important and relevant consideration for determining whether the sentence should be allowed to be executed or not.”

(emphasis supplied)

16. From the above, we would only clarify that, notwithstanding the existence of a Circular or a Rule introduced by way of a statutory power under Section 473 of the BNSS, the constitutional powers granted under Article 161 of the Constitution, can also be exercised in a given case. Thus, even in cases where statutory mechanisms exist, the constitutional mandate under Article 161 of the Constitution remains inviolable and exercisable, in order to ensure that justice in individual cases is not constrained by procedural norms.

FACTUAL BACKGROUND

17. During the month of December 2003, Shubha Shankar (hereinafter referred to as “A-4”), a young girl aged 20 years, was studying in the 5th semester of integrated course, B.A., LL.B. at BMS Law College, Bangalore. PW-10, B.S. Shankarnarayan, is the father of A-4, and an Advocate. PW-12, Vijayalakshmi, is her mother. Arun Verma (hereinafter referred to as “A-1”) was also a student of the same college as A-4, studying in the 1st semester. PW-22, N. Dhanashekar, is his father who was working as a Labour Officer during the said period. At the relevant point of time, Dinesh @ Dinakaran (hereinafter referred to as “A-3”), was a young man aged 28 years, who had been recently married, and had a child. PW-14, Uttam Prakash, is his father and PW-13, Bhavani, is his wife. A-3 and A-1 are cousins, as the sister of PW-14 is the mother of A1. Venkatesh (hereinafter referred to as “A-2”) was a teenager aged 19 years. PW-17, Anandan, is his father. B.V. Girish (hereinafter referred to as the “**deceased**”) was a young man aged 26 years, working as a software engineer at Intel. PW-6, B. Venkatesha, is his father and PW-5, B.V. Ramesh is his elder brother.

18. A-4 and her family, along with the deceased and his family were residents of the same locality in Bangalore, Karnataka. Considering the longstanding cordial relations between the two families, the parents of A-4 extended a proposal to the parents of the deceased during the month of October 2003 for the marriage of A-4 with the deceased. Both the families consented to the said proposal on 20.11.2003, and fixed the date of the engagement ceremony as 30.11.2003. As decided, the engagement ceremony of A-4 and the deceased took place on 30.11.2003 at “Udupi Hall” in the presence of their close friends and relatives. Several photographs, as well as video footage, were captured during the ceremony. The marriage of A-4 and the deceased was decided to be solemnized on 11.04.2004.

19. Two days after the engagement ceremony, on the evening of 03.12.2003, A-4 asked the deceased to take her for dinner to T.G.I. Friday’s Hotel (hereinafter referred to as “**T.G.I.F. Hotel**”) which was situated near Intel, the company where he was working. The deceased agreed to take her and informed his parents and PW-5 about their plan. He picked her up from her house on his scooter at around 06:30 PM, and subsequently, they went to have dinner at T.G.I.F. Hotel.

20. Post dinner, between 09:30 PM - 09:40 PM, the deceased and A-4 informed their parents that they had eaten dinner and were returning home. On their way back, they stopped at the “Air View Point” located at the Airport Ring Road to watch the landing of aeroplanes. At that time, the deceased received fatal injuries on his head at the hands of an unknown assailant, who fled after inflicting the injuries, using a steel rod. A-4, with the help of passers-by, stopped a Maruti car, shifted the deceased to the backseat of the car and admitted him in the Manipal Hospital located at the Airport Road. A-4 informed her father PW-10 about the occurrence, who in turn, passed on the information to PW-12. She also informed PW5 about the same. On receiving the information, PW-5 took his parents and the mother of A-4 to the hospital. By then, PW-10 had also reached the hospital from

his office. Around 02:00 AM in the intervening night between 03.12.2003 and 04.12.2003, all of them returned home except for PW-10 and PW-5 who stayed back at the hospital. In the early morning of 04.12.2003, PW-6, PW-12 and A-4 returned to the hospital. At about 08:05 AM, the deceased was declared dead. PW-5 lodged a written complaint at the police station, based on the information received from A4, on the basis of which the First Information Report (hereinafter referred to as the “**FIR**”) was registered against unknown persons for the offence punishable under Section 302 of the IPC. The said FIR was registered by the police Inspector PW-31, K.A. Nanaiah, who was the 1st Investigating Officer (hereinafter referred to as the “**I.O.**”). Upon investigating, A-1 to A-4 were arrested on 25.01.2004. PW-31 continued the investigation till 17.02.2004, after which the case file was handed over to Dawood Khan, PW-32, who was the subsequent I.O. in the case. A chargesheet was filed on 17.04.2004, followed by a supplementary one on 10.01.2005.

21. Charges were framed by the Trial Court against all the accused persons under Section 120-B, and Section 302 read with Section 120-B of the IPC, while A-4 was additionally charged for the offence punishable under Section 201 of the IPC. 33 witnesses out of 64 listed witnesses were examined before the Trial Court on behalf of the prosecution, while 3 witnesses were examined on behalf of the defence. In total, 111 Exhibits were marked by the prosecution and 17 Material Objects (hereinafter referred to as “**M.O.**”) were placed before the Trial Court. 64 Exhibits were marked by the defence. All the accused were duly informed of the incriminating materials placed against them during the course of recording their statement under Section 313 of the Cr.P.C.

22. The case of the prosecution for proving the guilt of the accused before the Trial Court was based on the premise that A-4 was not willing to get married to the deceased and thus, expressed her grievance to her close friend, A-1. A-1, upon seeing her plight, sought help from his cousin, A-3. A-3 roped in his friend, A-2 in order to eliminate the deceased, so as to stop his marriage with A-4 and thus, the accused persons, in conspiracy with each other, committed the murder of the deceased.

23. On 03.12.2003, A-4, while returning with the deceased on his scooter after dinner, took him to the “Air View Point” located at the Airport Ring Road to watch the landing of aeroplanes. A-1 and A-2 were following them on a scooter (M.O.12), as A-4 was constantly updating A-1 regarding their whereabouts by way of continuous SMSes. A-3 was continuously tracking and giving instructions to A-1 and A-2 throughout the evening by way of voice calls and so, all the accused persons were in constant touch with each other right before the occurrence, which took place sometime between 09:40 PM and 10:00 PM. While the deceased and A-4 were watching the landing of aeroplanes, A-2 struck the deceased multiple times with a steel rod (M.O.11), while A-1 was waiting for him on the scooter. Then, A-2 sat on the scooter behind A-1 as the pillion rider and they subsequently fled the scene. The occurrence was seen by two eyewitnesses, PW-15 and PW-16. After the occurrence, the deceased was admitted to the hospital by A-4, and he succumbed to his injuries on the morning of the following day.

24. For proving the said theory, the prosecution mainly relied upon the evidence of PW-8, PW-11 and PW-23 to establish motive, the Call Detail Records (hereinafter referred to as the “**CDR**”) showing the extensive communications between the accused persons from 25.11.2003 to 04.12.2003, the eye-witness testimonies of PW-15 and PW-16, and the recovery of the steel rod and the scooter at the instance of the accused.

25. PW-8, Hema is the beautician who applied mehendi for A-4 on 29.11.2003 and also dressed up A-4 for the engagement ceremony on 30.11.2003. She deposed that at the time of applying mehendi on 29.11.2003, A-4 hugged her and told her that she was not

willing to get married to the deceased, and requested her to do anything to stop the marriage. A-4 also told PW-8 that even if the engagement were to take place, she would run away and get married to her friend, A-1. PW-8 informed about the same to PW-9, Umasashi who is the maternal aunt of A-4. However, PW-9 asked PW-8 to keep quiet as the engagement had already been fixed, and this would affect the status of the family. PW-8 deposed that on 30.11.2003, when she had gone to the house of A-4 for applying makeup, A-4 told her that if Girish died, the engagement would stop and she would be able to flee with A-1, and his associates would help them do so. PW-8 added that after the death of Girish, when she had gone to the house of A-4 on 05.12.2003, A-4 told her that she had escaped from the marriage as Girish had died as per her wishes, and she could live happily for the next two years.

26. PW-11, Sheetal Rajagopal is a friend of A-4 from the days of her music classes. She deposed that A-4 had not invited her to the engagement ceremony. Thus, she was not aware of the same. However, she stated that one Kamala, a servant who was working at the house of A-4, informed her about the engagement and thus, PW-11 called up A-4 over the telephone and congratulated her. However, A-4 told her that she was unhappy with the idea of the said marriage, and PW-11 made no further enquiry about it.

27. PW-23, Pramod Dixit is a friend of A-4 from Pre-University College. He deposed that they were bosom friends, and in constant touch with each other. He had also attended the engagement ceremony on 30.11.2003. He stated that prior to the engagement, when he had spoken to A-4 on the phone, she confided in him stating that she did not like the lifestyle of the deceased as he disliked visiting expensive hotels and restaurants, whereas she was someone who wanted a fun-loving lifestyle. She also expressed to him that she did not want to get married at such a young age.

28. The CDR brought on record by the prosecution showed that voluminous calls/SMSes were exchanged between all the accused persons during the period ranging from 25.11.2003 to 04.12.2003. It showed continuous calls/SMSes, especially between A-1 and A-4.

29. PW-15 and PW-16 testified to the effect that at about 09:45 PM on the night of 03.12.2003, when they were returning home on their two-wheeler, they saw A-2 hit the deceased with a steel rod on the back of his head, while A-4 was standing at a slight distance away from them. The deceased then fell unconscious. On raising an alarm, A-2 ran away and sat behind A-1 on the scooter, and they fled the scene. PW-15 also added that he helped A-4 by stopping a car which was passing by, and placed the deceased in the backseat of the car with the help of an auto-rickshaw driver. He then drove the scooter of the deceased to his house and with the help of his tenant, informed the Intel security officers who came to his house and collected the belongings of the deceased. PW-16 deposed that he left with the two-wheeler of PW-15.

30. After the accused persons were arrested on 25.01.2004, M.O.11 and M.O.12 which were used for the commission of the offence, were recovered by PW-31 pursuant to the disclosure statements made by A-1 and A-2 under Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as the “IEA”).

31. On 13.07.2010, the Trial Court convicted the appellants for the offence punishable under Section 120-B of the IPC and sentenced them to undergo life imprisonment. A-2 alone was convicted and sentenced to life for the offence punishable under Section 302 of the IPC. Additionally, A-4 was convicted for the offence punishable under Section 201 of the IPC and sentenced to undergo simple imprisonment for a period of 3 years, with the

sentences imposed to run concurrently. The Trial Court rendered the conviction by accepting all the materials put forth by the prosecution as discussed above, with substantial reliance placed upon the CDR and eyewitness testimonies. The Trial Court also found the plea of *alibi* raised by A-1 to be false, and the evidence of PW-9, PW-10 and PW-12 to not be reliable as they were interested witnesses.

32. Appeals were filed before the High Court, both by the State as well as the appellants. While dismissing the appeals filed by the appellants, the High Court was pleased to allow the appeal filed by the State in part, while modifying the conviction of the appellants to one under Section 302 read with Section 120-B of the IPC. The sentence of life imprisonment imposed upon the appellants was confirmed. Assailing the aforesaid decision of the High Court which broadly concurred with that of the Trial Court, the present appeals have been filed.

ARGUMENTS OF THE APPELLANTS

33. For the sake of brevity, we propose to cumulatively deal with the arguments made by the respective Senior Counsel appearing for the appellants.

34. The testimonies of PW-15 and PW-16 have to be disbelieved as they are planted witnesses. There is a delay in recording their statements under Section 161 of the Cr.P.C, especially with respect to PW-16, as his statement was recorded two months after the occurrence, despite his availability throughout the said period. The conduct of PW-15 also makes it difficult to believe his presence at the place of occurrence as, instead of informing the police regarding the incident, PW-15 took the scooter of the deceased to his house, leaving behind his own two-wheeler with PW-16. Despite being an ex-serviceman, he did not take any step whatsoever to report the incident to the police. In fact, it is the I.O. who called him up on the morning of the next day, even before the registration of the FIR by PW-5, and asked him to give his statement as he was an eye-witness to the incident. The source from which the police came to know about the same remains unknown. The evidence of PW-15 also shows that he was known to PW-31 earlier, which casts a doubt on his credibility. There is no clarity in the evidence of PW-15 regarding the presence of PW-16. Additionally, all the witnesses who could have testified to the presence of PW-15 and PW-16 at the place of occurrence, like the occupants of the car in which the deceased was taken to the hospital, the tenant of PW-15 and the Intel security officers have conveniently not been examined by the prosecution, for the reasons best known to them.

35. The evidence adduced by PW-8 is wholly unreliable being contrary to the evidence of PW-9, PW-10, PW-12, PW-6 and PW-31. Her presence at the engagement ceremony has not been proved by the prosecution either by the production of her diary, or the photographs taken on the day of the engagement, making her very presence doubtful. There was an inordinate delay in recording her statement as it was recorded only on 14.01.2004, even though she received the information from A-4 on 05.12.2003 itself, with no explanation for such delay. She has contradicted herself on quite a few occasions, especially with respect to the information given by her to PW-6 and PW-31.

36. The evidence of PW-11 is tainted, as she is an interested witness known to the family of the deceased, evident from the fact that she was accompanied by the sister of the deceased to the Trial Court. Kamala, from whom she got the information regarding the engagement of A-4, has neither been cited as a witness, nor has she been examined by the prosecution. Though she deposed that she had not attended the engagement ceremony, the evidence of PW-10 and PW-12 say otherwise. Her statement was recorded by the police much belatedly in February, 2004.

37. The evidence of PW-23 cannot be relied upon, as he has made a statement out of threat and coercion by the police. His statement recorded by the police is silent about his communication with A-4 after the occurrence. Additionally, his mobile phone was not even secured or seized by the I.O., despite the numerous SMSes exchanged between him and A-4.

38. The reliance placed by the Courts below on the CDR, has no legal basis. The witnesses who deposed in support of the CDR, being PW-24 and PW25, were not competent to do so. Merely because they were working with the Telecom Service Provider (hereinafter referred to as the “**TSP**”) at the relevant point of time, their evidence ought not to be accepted, especially when the competent officers were available. The certificates issued by the TSPs are not in compliance with Section 65-B of the IEA. With respect to the certificate issued by M/s. Reliance Infocomm Ltd. (hereinafter referred to as “**Reliance**”), it is submitted that the certificate dated 29.09.2004 was issued by PW-24 instead of Mr. Ramani, the nodal officer who had actually extracted the data and sent the same to the police. This is a serious error on the part of the investigating agency, as the said Mr. Ramani was working at Reliance till October 2004 and therefore, should have issued the certificate being the only competent officer to do so. It is admitted by PW-24 that the CDR were actually stored in the main server in Bombay, and the output taken therefrom was sent via e-mail to him, after which the printout was taken from the said e-mail. However, the certificate issued by Reliance fails to mention the same and thus, does not satisfy the requirements under Section 65-B(4) of the IEA. Similarly, the certificate issued by M/s. Airtel Bharti Ltd. (hereinafter referred to as “**Airtel**”) also does not satisfy these requirements, as there is no mention of the device from which the output was taken, and the manner in which it was taken. It has not been issued in the prescribed format. With respect to the CDR furnished by Airtel, the same suffers from material irregularities and errors, which show that it has been tampered with by way of a manual intervention. This is supported by the admission made by PW-25 that he had made handwritten entries for the data pertaining to the tower location at the behest of the police. The said data provided by the CDR is also fundamentally unreliable and cannot be used against the appellants as, PW-25 admitted during his cross-examination that the tower has a coverage radius of approximately 6-7 kilometres, which represents an extraordinarily vast area, meaning that any individual within a span of 12-14 kilometres in diameter could potentially be serviced by the said tower. The CDR, even if admissible, do not *per se* implicate the appellants and thus, no inference can be drawn on that basis.

39. With respect to the recovery of M.O.11, an argument was made to the effect that the said recovery cannot be sustained, as the disclosure statements under Section 27 of the IEA were made jointly by both A-1 and A-2. M.O.11 was subsequently recovered from an open space pursuant to their statements. The link required under Section 27 of the IEA is missing as the panch witnesses to the recovery of M.O.11 cannot prove whether the recovery was made pursuant to the disclosure statement of the accused as the same was not recorded in their presence. It was also openly shown to PW-15 at the police station, without properly securing it by way of sealing. There are material contradictions in the evidence as the FSL Report of M.O.11 records the presence of bloodstains on the steel rod, while PW-18, the doctor who conducted the post-mortem, deposed that he could not find any bloodstain on the same. Similarly, there is no clarity in the evidence as to whether M.O.11 is a steel rod or a steel pipe. The recovery of M.O.12 from the house of A-1 also cannot be believed as the said scooter was being used by his sister, DW-3 in Tamil Nadu. The identification of the scooter by PW-15 and PW-16 is also highly doubtful as they could not state the registration number of the vehicle.

40. If the evidence of PW-15 and PW-16 is disbelieved, then it will be a case of circumstantial evidence. There is no sufficient link to connect all the accused. Even as per the case of the prosecution, A-2 was in touch with A-3 alone, except for a few occasions where A-1 also communicated with A-2, and only one communication was made by A-4 to A-2 during the entire alleged period of conspiracy. Furthermore, A-4 was also talking to the deceased. The prosecution has not been able to prove the motive as well, if one was to disbelieve the evidence of PW-8, PW-11 and PW-23. As against A-3, except for the CDR, there is no other material to implicate him. Certainly, this is a case where this Court has to extend the benefit of doubt, as both the Courts below have not taken into consideration the relevant materials. In support of their contentions, the learned Senior Counsel appearing for the appellants relied upon the decisions of this Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors.**, (2020) 7 SCC 1, **Sudershan Kumar v. State of H.P.**, (2014) 15 SCC 666, **Gireesan Nair and Ors. v. State of Kerala**, (2023) 1 SCC 180, **Ramkishan Mithanlal Sharma v. State of Bombay**, AIR 1955 SC 104 and **Manzoor v. State of Uttar Pradesh**, (1982) 2 SCC 72.

ARGUMENTS OF THE RESPONDENTS

41. Learned AAG and learned Senior Counsel, appearing for the respondents submitted that though there are material discrepancies available, the Court will have to see the evidence available as a whole. The presence of A-4 at the place of occurrence is not in dispute. It is a fact which has also been proved by the evidence of PW-5, PW-6, PW-10 and PW-12, supported by the Accident Register. Therefore, the homicide of the deceased, and the presence of A-4 along with the deceased at the place of occurrence stands proved.

42. The testimonies of eye-witnesses PW-15 and PW-16 are consistent with the medical evidence available on record. There are concurrent findings of the Courts below with regards to the quality of their evidence. Moreover, being neutral witnesses with no prior relation to the deceased, they have no reason to falsely implicate the accused.

43. The motive of A-4 to commit the murder of the deceased along with the other accused is proved by the testimonies of PW-8, PW-11 and PW-23. The evidence of PW-8 showed that not only was A-4 unwilling to marry the deceased, but also wanted to elope with A-1. PW-11 also testified regarding the resentment of A-4 towards her marriage with the deceased. The testimony of PW-23, who is in fact a confidant of A-4, is also consistent with the testimonies of PW-8 and PW-11. Thus, there is no reason to discredit his testimony.

44. The testimonies of PW-24 and PW-25, being the competent officers, established the authenticity of the CDR, which were duly proved by way of the requisite certificates under Section 65-B of the IEA. The Courts below upheld the evidentiary value of these records, concluding that the volume, the timing of calls, and SMSes exchanged, strongly indicated a premeditated conspiracy amongst the accused.

45. The recovery of M.O.11 and M.O.12 at the instance of the accused has been consistently believed by both the Courts below. The medical evidence on record also corroborates the usage of M.O.11 to inflict the injuries on the deceased. Further, the plea of *alibi* and the defence raised by A-1 pertaining to the recovery of M.O.12 has been disbelieved by both the Trial Court and the High Court.

46. Considering the recovery coupled with the eye-witnesses' account, duly supported by the CDR and the evidence on motive, which have been accepted by both the Courts below, there is no need for any interference. In support of their contentions, the learned

counsel appearing for the respondents placed reliance upon the decisions of this Court in **Harendra Rai v. State of Bihar and Ors., (2023) 13 SCC 563, Sahabuddin and Another v. State of Assam, (2012) 13 SCC 213, Anees v. State (NCT of Delhi), 2024 SCC OnLine SC 757, Kishore Bhadke v. State of Maharashtra, (2017) 3 SCC 760 and Sajeev v. State of Kerala, 2023 SCC OnLine SC 1470.**

EVIDENCE AND ITS RELIABILITY

47. Before analyzing the evidence on record, we deem it fit to discuss the relevant principles applicable to the facts and circumstances of the present appeals. It is the foundational duty of the Court to make an endeavor and find out the truth. Evidence is the material for unearthing the truth. In order to do so, a fact has to be proved by taking due note of the matters made available before the Court. To prove a fact, the adequate parameter is the degree of probability.

Rajesh Yadav and Anr. V. State of U.P., (2022) 12 SCC 200.

“Principles of law

11. Section 3 of the Evidence Act, 1872:

“3. Interpretation clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context—

— — — — —

“Evidence”.—“Evidence” means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;
- (2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

“Proved”.—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

“Disproved”.—A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.”

12. Section 3 of the Evidence Act defines “evidence”, broadly divided into oral and documentary. “Evidence” under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an “adjective law” highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.

13. **The definition of the word “proved” though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the “matters before it”. The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.**

14. Matters are necessary, concomitant material factors to prove a fact. All evidence would be “matters” but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court’s sojourn in deciphering the truth. Thus, the definition of “matters” is exhaustive, and therefore, much wider than that of “evidence”. However, there is a caveat, as the

court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.

15. Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

16. In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word “matter”, and for that purpose, the definition of the expression of the words “means and includes”, meant to be applied for evidence, has to be imported to that of a “matter” as well. Thus, a matter might include such of those which do not fall within the definition of Section 3, in the absence of any express bar.

17. What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.

18. The word “prudent” has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a Judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a Judge. It is only after undertaking the said exercise can he resume his role as a Judge to proceed further in the case.

19. The aforesaid provision also indicates that the court is concerned with the existence of a fact both in issue and relevant, as against a whole testimony. Thus, the concentration is on the proof of a fact for which a witness is required. Therefore, a court can appreciate and accept the testimony of a witness on a particular issue while rejecting it on others since it focuses on an issue of fact to be proved. However, we may hasten to add, the evidence of a witness as whole is a matter for the court to decide on the probability of proving a fact which is inclusive of the credibility of the witness. Whether an issue is concluded or not is also a court’s domain.

Appreciation of evidence

20. We have already indicated different classification of evidence. While appreciating the evidence as aforesaid along with the matters attached to it, evidence can be divided into three categories broadly, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters.

21. The aforesaid principle of law has been enunciated in the celebrated decision of this Court in *Vadivelu Thevar v. State of Madras*, 1957 SCR 981 : AIR 1957 SC 614: (AIR p. 619, paras 11-12)

“11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that ‘no particular number of witnesses shall in any case, be required for the proof of any fact’. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact to call any particular number of witnesses. In England, both before and after the passing of the Evidence Act, 1872, there have been a number of statutes as set out in *Sarkar’s Law of Evidence* — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well-recognised maxim that “Evidence has to be weighed and not counted”. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding Judge comes into play. **The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:**

- (1) **Wholly reliable.**
- (2) **Wholly unreliable.**
- (3) **Neither wholly reliable nor wholly unreliable.**

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. **It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.** We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.” (emphasis supplied)

48. Thus, the evidence adduced before the Court, can be accepted either in toto or in part. Furthermore, it can also be rejected. A Court shall apply its mind to the evidence available to arrive at a just conclusion.

DISCUSSION

49. We shall first consider the ocular evidence available before us comprising of the testimonies of the eyewitnesses, PW-15 and PW-16.

i. Eye-Witness Testimonies of PW-15 and PW-16

50. PW-15 and PW-16 are the two witnesses who are stated to have been present at the place of occurrence. We have carefully considered the evidence adduced by them. The more closely we scrutinize the testimonies of these witnesses, the less we find ourselves relying on them. This is due to their unnatural conduct and the material discrepancies found between their testimonies. PW-15, despite being an ex-service man and an eyewitness to the incident, did not taken any step whatsoever to report the same to the police. Rather strangely, he took pains to take the scooter driven by the deceased back home and handed it over to his tenant, Mr. Naveen who has also not been examined by the prosecution, despite being a cited witness. On going through the laptop and visiting cards recovered from the scooter of the deceased, PW-15 called the Intel security officer, Radhakrishnan, who came and collected the laptop and scooter. He has also not been examined by the prosecution, even though he was a cited witness. All the while, neither did PW-15 call the police nor did he ask his tenant to call the police. Instead, he was contacted by PW-31 at about 8:30 AM-9:00 AM on 04.12.2003 shortly after the death of the deceased, who told him to give his statement whenever called for. However, PW-15 could not offer any explanation as to how PW-31 got to know his residential number or the fact that he had witnessed the incident. What is strange is that the FIR itself was lodged only at 10:30 AM on the basis of the complaint given by PW-5, the brother of the deceased, which makes one question as to how PW-31 came to know about the presence of PW-15 at the place of occurrence, even before the registration of the FIR. His statement was recorded only on 05.12.2003, even though he was contacted by the police on 04.12.2003 itself. Suffice it is to state that it is impossible for us to accept the evidence of PW-15 on the basis of the discussion made above.

51. PW-16 is another eyewitness whose statement was not recorded by the police for more than two months, until 21.02.2004. This was unusual as PW-15 had intimated him about the call he received from the police on 04.12.2003 itself and the recording of his statement on 05.12.2003. It is also pertinent to note that not only was he meeting PW-15 regularly for a few days after the incident, but had also attended office throughout the said period, indicating that he was very much available, and yet failed to give his statement to the police earlier. The so-called reasons assigned by him for the delay in giving his statement are also contradictory. First, he states that it was due to the fact that he was under stress owing to some personal problems. Immediately thereafter, he states that it was because he did not have the time to do so. The said reasons are not acceptable, as the police knew about his presence much earlier. Apart from his unnatural conduct, there are also material contradictions in the evidence of PW-15 and PW-16 on the identification of A-1 and A-2. We also find that there is no clarity in the evidence of PW-15 on the presence of PW-16.

52. In light of what has been discussed above, we can observe that many of the cited witnesses, including the occupants of the car in which the deceased was taken to the hospital, the tenant of PW-15 and the Intel security officer, who could have testified to the

presence of PW-15 and PW-16 on that fateful night, have not been examined by the prosecution, for the reasons best known to them.

53. Though we find numerous other serious contradictions in the evidence of PW-15 and PW-16, we do not wish to go into it any further, as we have absolute clarity that their presence at the place of occurrence is highly doubtful and therefore, cannot be relied upon.

54. As we have discarded the eyewitnesses' account of the incident, we must note now that the case rests purely on circumstantial evidence. Thus, we must scrutinize the remaining evidence available by keeping in mind the five golden principles laid down by this Court in **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**.

- (1) “the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established,
- (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)

ii. Motive

55. When a case is founded on circumstantial evidence, it is imperative to establish the motive of the accused to commit the offence. This is because it serves as the foundation of the evidentiary chain that ultimately leads to the implication of the accused.

Munish Mubar v. State of Haryana, (2012) 10 SCC 464

“30. In a case of circumstantial evidence motive assumes great significance and importance for the reason that the absence of motive would put the court on its guard and cause it to scrutinise each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. However, the evidence regarding existence of motive which operates in the mind of an assassin is very often not within the reach of others. The said motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to such evil thought in the mind of the assassin. In a case of circumstantial evidence, the evidence indicating the guilt of the accused becomes untrustworthy and unreliable, because most often it is only the perpetrator of the crime alone, who has knowledge of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggests sufficient/necessary motive to commit a crime, it may be conceived that the accused has committed the same.”

(emphasis supplied)

56. On the evidence available on motive, PW-8, PW-11 and PW-23 are the witnesses who have been relied on by the prosecution to prove it.

57. We shall first examine the evidence of PW-8. Firstly, we find her evidence to be tainted, as she was already known to the father of the deceased, PW-6 who stated that

he knew her from 4-5 years ago as they used to see each other in the park while walking. Secondly, not only does she state that she had attended the engagement ceremony of A-4 on 30.11.2003, but also goes to the extent of stating that she had sat in the first row and that photos and videos were taken of the same. However, the prosecution has not made any attempt to prove her presence at the ceremony by producing the said photographs or videos. None of the other witnesses have testified about her presence at the ceremony. Thus, her very presence at the engagement ceremony itself is highly doubtful. Thirdly, there is a huge delay in the recording of her statement by the police, as the same was done only on 14.01.2004. Fourthly, apart from the contradictions in her own testimony, there are material contradictions with the testimonies of PW-6 and PW-31 regarding the place and manner in which her statement was recorded by the police. PW-8 states that her statement was recorded by the police at her house in January 2004. However, this is contradicted by PW-6 who deposed that her statement was recorded by PW-31 and ACP Pemmaiah when she had visited his house in December 2003. She then states that she had conveyed the information about the murder of the deceased to PW-6 on the same day that she had gone to his house in December 2003. But then, she contradicts herself by stating that she had not conveyed the said information to anyone other than the inmates of her house, until the police recorded her statement on 14.01.2004. She further states that the police was already present at the house of PW-6 when she had arrived; however, despite her attempt to speak to them, they did not record her statement at that juncture and did so only a month thereafter, which appears to be rather unusual. This is contradicted by PW-6 who states that he had informed PW-31 over the telephone when PW-8 had come to give some information on the murder of the deceased and the police reached his house only after the arrival of PW-8. PW-31 also contradicts her version by stating that it was PW-8 who had denied recording her statement on that day and not *vice versa*. Though there can be some justification for her contradictions with the testimonies of PW-9, PW-10 and PW-12 who are interested witnesses, the fact remains that it is also contradictory to the evidence of PW-31 and PW-6. We find further contradictions between her statement recorded under Section 161 of the Cr.P.C and her testimony before the Court. We find the conduct of PW-8 to be unnatural as well, similar to the observations made by us on the conduct of PW-15 and PW-16.

58. Regarding PW-11, we find her evidence to be unreliable too, due to the existence of material discrepancies with that of the other witnesses. Firstly, she states for the first time before the Court that it was Kamala, a servant from the house of A-4, who had informed her regarding the engagement of A-4 with the deceased. However, the said Kamala has neither been cited as a witness nor examined by the prosecution to establish the said theory. While she deposes that she did not attend the engagement ceremony, the evidence of PW-10 and PW-12 would suggest otherwise, as they had deposed that she had attended the engagement ceremony as a guest of PW-6. She was also accompanied by the sister of the deceased, Sunitha to the Trial Court which lends credence to the case of the defence that she did attend the ceremony on behalf of the family of the deceased. She also testifies that it was Sunitha and PW-6 who had visited her house soon after she had seen the incident on television, and asked her to recount what she knew. She adds that they were the ones who had informed the police about the same, and to her surprise, the police visited her home four or five days later, which makes the manner in which her statement was recorded by the police a little odd as well. There is also a huge delay in recording her statement under Section 161 of the Cr.P.C, as it was only recorded in February 2004. Therefore, the observations made by us on the conduct of the abovementioned witnesses extends to PW-11 as well.

59. This leaves us with the evidence of PW-23, Pramod Dixit, who went to Pre-University College with A-4. He deposed in clear terms that A-4 confessed to him that she did not want to get married to the deceased, as she felt that they were not compatible. While the deceased had a conservative lifestyle, she wanted a luxurious one, visiting expensive hotels and restaurants. She also disclosed to him that she did not want to get married at such a young age. We are inclined to rely much on this evidence, as we find it to be natural. This is owing to the fact that unlike the aforementioned witnesses, there is nothing on record to show that PW-23 had any prior relationship with the family of the deceased and unlike PW-8 and PW-11, who were not so well-known to A-4, it is not in dispute that PW-23 was close to A-4 and had not only been in touch with A-4 but also her father, PW-10. A-4 has admitted the same in her statement recorded under Section 313 of the Cr.P.C. Thus, there was no reason for PW-23 to have testified against his friend, A-4. Secondly, the evidence of PW-23, which is inclusive of his testimony and the e-mail sent by him to PW-10 on 18.04.2004, marked as Exhibit D-51 categorically establish that A-1 and A-4 were close to each other. Though the extent of the relationship is not known, one could easily infer the bond between A-1 and A-4, and that they were constantly in touch with each other. It is one thing to say that the evidence is not sufficient enough to show that they were in a relationship, but it is sufficient to show that A-4 was disinclined towards her marriage with the deceased and A-1 was a close confidant of hers. PW-23 also goes to the extent of mentioning in his e-mail sent to the father of A-4 that he did not have a good opinion about A-1, but was hesitant to tell A-4 about the character of A-1, fearing that she might mistake him to be making false allegations out of jealousy. Therefore, we are inclined to rely on the evidence of PW-23 to not only demonstrate that A-4 was unwilling to marry the deceased, but also to show the close relationship between A-1 and A-4. At this juncture, we would also like to refer to the admission made by PW-10 in his testimony that A-1 used to come to his house for doing moot court rehearsals with A-4, which establishes that A-1 and A-4 were close to each other.

iii. Call Detail Records

60. Having found the motive to commit the offence proved, we shall now concentrate on the CDR available on record, which shows the extensive communications exchanged between the accused persons before the incident, on the day of the incident and after the incident. We would like to go in-depth on this aspect, as the case now rests on circumstantial evidence, having disbelieved the testimonies of the eye-witnesses.

61. Apart from the meticulous arguments made by learned Senior Counsel, Mr. Tomy Sebastian appearing on behalf of the complainant, much effort has also been undertaken by our Office with respect to the correlation of the CDR, already filed and taken on record. Records from the months of October, November and December 2003 have been taken and an endeavor has been made to ascertain the conspiracy hatched amongst the accused persons.

62. On a perusal of the relevant oral and documentary evidence on record, we have no doubt in holding that the prosecution has duly proved that A-1 was in possession of and the user of mobile phone bearing No. 9845017289, A-2 was the possessor and user of mobile phone bearing No. 08036940211, A-3 was the possessor and user of mobile phone bearing No. 08036860795, and A-4 was the possessor and user of mobile phone bearing No. 9845570337. The TSP of the mobile phones used by A-1 and A-4 was Airtel and the TSP of the mobile phones used by A-2 and A-3 was Reliance.

63. Before we analyze the evidence available by way of CDR, it is imperative to prove that the admissibility of the said evidence was strictly in accordance with Section 65-B of

the IEA, as the information pertaining to these CDR is stored in huge servers, which cannot be produced before the Court, and are thus, produced by way of printouts which qualify as secondary evidence.

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“32. Coming back to Section 65-B of the Evidence Act, sub-section (1) needs to be analysed. The sub-section begins with a non obstante clause, and then goes on to mention information contained in an electronic record produced by a computer, which is, by a deeming fiction, then made a “document”. This deeming fiction only takes effect if the further conditions mentioned in the section are satisfied in relation to both the information and the computer in question; and if such conditions are met, the “document” shall then be admissible in any proceedings. The words “... *without further proof or production of the original* ...” make it clear that once the deeming fiction is given effect by the fulfilment of the conditions mentioned in the section, the “deemed document” now becomes admissible in evidence *without further proof or production of the original* as evidence of any contents of the original, or of any fact stated therein of which direct evidence would be admissible.

33. The non obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf — Sections 62 to 65 being irrelevant for this purpose. However, Section 65-B(1) clearly differentiates between the “original” document — which would be the original “electronic record” contained in the “computer” in which the original information is first stored — and the computer output containing such information, which then may be treated as evidence of the contents of the “original” document. All this necessarily shows that Section 65-B differentiates between the original information contained in the “computer” itself and copies made therefrom — the former being primary evidence, and the latter being secondary evidence.

34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where “the computer”, as defined, happens to be a part of a “computer system” or “computer network” (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108 which reads as “... *if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act* ...”. This may more appropriately be read without the words “*under Section 62 of the Evidence Act*,...”. With this minor clarification, the law stated in para 24 of *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108 does not need to be revisited.

60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a “responsible official position” in relation to the operation of the relevant device, as also the person who may otherwise be in the “management of relevant activities” spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the “best of his knowledge and belief”. [Obviously, the word “and” between knowledge and belief in Section 65-B(4) must be read as “or”, as a person cannot testify to the best of his knowledge *and* belief at the same time.]

61. **We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108 , and incorrectly “clarified” in *Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865.** Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor*, (1875) LR 1 Ch D 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

82. But Section 65-B makes the admissibility of the information contained in the electronic record subject to certain conditions, including certification. **The certification is for the purpose of proving that the information which constitutes the computer output was produced by a computer which was used regularly to store or process information and that the information so derived was regularly fed into the computer in the ordinary course of the said activities.”**

(emphasis supplied)

64. There is no doubt that the compliance of this provision is mandatory. However, there is no straitjacket formula to arrive at the conclusion of such due compliance, with specific reference to the CDR. It is the duty of the concerned Court to satisfy itself on such compliance, by taking due note of the requisite certificate produced under Section 65-B(4) of the IEA, coupled with the oral evidence adduced by the competent officer on behalf of the TSP. One must understand that in contrast to the other prosecution witnesses, the one who speaks in support of such certificates, has no other interest in the case and therefore, has to be considered as a Court witness, having no axe to grind with anyone. He deposes on behalf of the TSP, concentrating only with respect to the certificate issued. Thus, in the absence of any fundamental flaw in his testimony, with competency to depose on behalf of the TSP, the Court is expected to take due note of it, accordingly.

65. In the case at hand, while scrutinizing the evidence pertaining to the admissibility of CDR, it is crucial to keep in mind that we are dealing with an offence which was committed in the year 2003, when technology and the laws governing it were still at a nascent stage. On a perusal of the documentary evidence, we find that both the TSPs have furnished the requisite certificates under Section 65-B(4) of the IEA, marked as Exhibit P-50 and Exhibit P-83, and we are duly satisfied with the compliance made thereunder. A certificate not given in the prescribed format *per se* will not make it invalid, especially when the authenticity of these marked documents is not in dispute. The competent officers on behalf of Reliance and Airtel have also deposed affirmatively with respect to the said certificates, as PW-24 and PW-25 respectively. PW-24 was holding the position of Head of Marketing & Sales and Co-ordinator for Statutory Legal Enforcement Agencies at Reliance, Bangalore. PW-25 was holding the position of Assistant Manager as the Nodal Officer of Airtel, Bangalore. Thus, both the witnesses were holding a ‘responsible official position’ at the respective companies, as required under Section 65-B(4) of the IEA. It is not necessary for the said officers to be holding positions of technical expertise, and is enough if they depose to the ‘best of their knowledge or belief’. The contention raised by the appellants that Mr. Ramani was the only competent officer to depose on behalf of Reliance is without substance, as the evidence of PW-24 clearly states that Mr. Ramani had left the organisation and thus, PW-24 being the successor-in-office became the competent officer.

It is not in dispute that PW-24 and PW-25 are the representatives of the respective TSPs. Their testimonies with respect to the certificates and the CDR remain unmistakably clear, despite being subjected to exhaustive cross-examination and, mere discrepancies *per se* would not lead us to hold that there was no due compliance. With respect to the certificate furnished by Reliance, the appellants raised an argument that it was not in conformity with Section 65-B(4) of the IEA, as it did not mention that the main server was located in Bombay, from which the data had been extracted and sent via email to the concerned office in Bangalore. This argument does not hold much water, as this process of extraction and transfer of data was done by authorized employees of the TSP through an electronically defined process, as per established procedures. The alleged discrepancies in certain portions of the CDR, as pointed out by the appellants, cannot eschew the evidence in its entirety. Moreover, it is nobody's case that the entries in the CDR are factually incorrect, nor is there any dispute over the author of these entries. It is also to be kept in mind that there was no specific denial or explanation offered by even the accused persons, when presented with the overwhelming evidence on the numerous calls/SMSes exchanged between them, while recording their statement under Section 313 of the Cr.P.C. Thus, we are inclined to hold that on the facts of the instant case, the CDR furnished by both Reliance and Airtel are admissible in accordance with Section 65-B(4) of the IEA.

66. As we have established the admissibility of the CDR, we may proceed with the evaluation of the voluminous data on CDR, placed on record by the prosecution, showing the unusually high number of communications exchanged between the accused persons during the relevant period of time. On a meticulous analysis of the same, we find that the results are astounding. For the sake of convenience, we would like to categorize the communications appended in **Annexure 'A'** on the basis of the time period during which they were exchanged, as following: October 2003 (**Table 1**), 01.11.2003 to 15.11.2003 (**Table 2**) and 16.11.2003 to 24.11.2003 (**Table 3**). However, for the period between 25.11.2003 to 06.12.2003 (**Table 4 – Table 14**), we would like to analyze it on a day-today basis, as the prosecution seeks to prove the conspiracy between the accused persons, especially placing reliance on the CDR pertaining to the said period. To avoid prolixity, we do not wish to repeat the phone numbers of the persons while discussing the CDR and instead, refer to them by the person itself.

67. The CDR pertaining to the month of October 2003 in Table 1 show the number of calls made by A-4 to A-1, and also by A-3 to A-1. We also take note of the communications made by A-4 to the deceased. The emerging pattern is that it is A-4 who had called A-1 most of the time. Similarly, A-4 has also made calls to the deceased. However, what is to be taken note of specifically, is the difference in the timing of the calls made to A-1 and the deceased. On doing so, we find that A-4 has made majority of the calls to the deceased only during the daytime, while the calls made to A-1 are both during the daytime and the odd hours of the night.

68. Between 01.11.2003 and 15.11.2003, as seen in Table 2, the frequency of communications exchanged between A-1 and A-4 increased multifold, while the ones between A-4 and the deceased decreased significantly. For the said period, there are a whopping 92 communications between A-1 and A-4, as against only 44 with the deceased. Here again, it can be inferred that several communications have been exchanged between A-1 and A-4 during the odd hours of the night.

69. The frequency of communications between A-1 and A-4 increased even more between 16.11.2003 to 24.11.2003, as seen in Table 3. A total of 98 communications have

been logged between them, as against only 22 with the deceased. We would like to draw attention to the glaring disparity in the frequency of their communications as, according to the evidence of PW-5 and PW-10, A-4's parents had made a proposal to the parents of the deceased regarding the marriage during the month of October 2003 itself. The same was finalized on 20.11.2003, when both the families gave their consent to the marriage proposal, and the engagement ceremony was fixed on 30.11.2003. While one would expect a rise in communication between the deceased and A-4 after their pre-engagement rituals, the call records exhibit a completely different story. For instance, on 23.11.2003, 9 communications have been exchanged between A-4 and A-1, while A-4 contacted the deceased only twice. Similarly, on 24.11.2003, 16 communications have been exchanged between A-4 and A-1, as against only 3 with the deceased, which leads us to arrive at the conclusion that A-4 was not interested in her marriage with the deceased, and instead shared a close relationship with A-1. It is to be noted that in a majority of these communications, it is A-4 who has contacted A-1 and not *vice versa*.

70. Now, we shall come to the data available for 25.11.2003 in Table 4. Here again, A-3 has communicated with not only A-1, but also A-4 by way of voice calls. A-1, being in contact with A-3 from 23.11.2003, roped him into the plan and on 25.11.2003, A-3 has made direct contact with A-4 for the first time. On the very same day itself, A-3 has made 9 voice calls to A-4, one after the other, and in short intervals. Thus, it can be inferred that A-3 has actively entered into the conspiracy on the said date. We wish to emphasize on the same, as A-3 is a complete stranger to A-4, and there was no occasion or reason for them to have been in touch.

71. On 26.11.2003, as mentioned in Table 5, there have been further communications between A-4 and A-1 by way of 7 SMSes and 1 voice call. Strangely, there was only one communication made by A-4 to the deceased.

72. On 27.11.2003, as mentioned in Table 6, A-4 contacted the deceased only once, while continuing her communication with A-1 via SMS. The communication between A-3 and A-4 also continued as A-3 has made 8 calls to A-4. We can observe that one call is made immediately after the other, *inter se* the accused persons.

73. On 28.11.2003, as observed in Table 7, a total of 33 calls/SMSes were exchanged between the accused persons, excluding A-2. A total of 19 communications were exchanged between A-1 and A-4, including both SMSes and voice calls, while there were only 5 communications between A-4 and the deceased. It is to be noted that A-1 and A-4 have also engaged in conversations during the odd hours of the night. A total of 10 voice calls were made between A-3 and A-1, out of which majority of the calls were initiated by A-3. It is crucial to note that out of the 4 voice calls between A-3 and A-4, 3 calls were initiated by A-4.

74. Analysis of the CDR for 29.11.2003, a day before the engagement ceremony, as mentioned in Table 8, would show that a total of 11 communications were exchanged between A-4 and A-1, including 10 SMSes and 1 voice call. All the communications were initiated by A-4. Between A-3 and A-4, there were a total of 6 voice calls. We also take note of the calls between A-3 and A-1. It is interesting to note the emerging pattern in some of the calls between the accused, as they have been made one after the other.

75. We would like to emphasize a little more on the CDR for 30.11.2003 in Table 9, as it was the date of the engagement ceremony of A-4 with the deceased. Till 29.11.2003, we could find that the communication was exclusively between A-1, A-3 and A-4. On analyzing the CDR for 30.11.2003, we find that A-2 has come into the picture for the first time. At this

juncture, we would like to refer to the evidence of PW-14, the father of A-3, who admitted that there was a prior friendship between A-3 and A-2. Thus, we would like to infer that it was A-3 who roped A-2 into the plan. On the said date, there were a total of 8 communications between A-4 and A-1, inclusive of both SMSes and voice calls. This shows the unnatural conduct of A-4, as even on the day of her engagement ceremony with the deceased, she was fervently communicating with A-1, lending corroboration to the evidence of PW-23 that she was not willing to marry the deceased.

76. We would also like to draw specific attention to A-4's conduct during the engagement ceremony. Firstly, the photographs taken during the ceremony marked as Exhibit P-15, clearly show that A-4 was holding her phone in her hands throughout the ceremony. Secondly, as per the evidence of PW-10, the engagement ceremony commenced around 7:00 PM. The CDR show that even during the engagement ceremony, A4 has attended 3 calls made by A-3 between 7:00 PM to 9:00 PM. *Qua* the other communications, A-3 has made 2 calls to A-2 and it is to be noted that right after making these calls to A-2, A-3 has contacted A-4 twice, which shows that they were acting in furtherance of their conspiracy.

77. The CDR for 01.12.2003 and 02.12.2003 in Tables 10 and 11 respectively, show the communications between all the accused persons. On 01.12.2003, there were a total of 5 communications between A-4 and A-1, including 3 voice calls and 2 SMSes, as against only one communication between A-4 and the deceased. There were also 3 calls between A-1 and A-3, and 2 calls between A-3 and A-2, all initiated by A-3.

78. For the CDR of 02.12.2003, we would first like to draw attention to the sharp contrast between the frequency of the calls/SMSes on the other days and the frequency of the same on 02.12.2003 showing a dramatic rise, whereby a total of 56 communications were exchanged, several of them taking place one after the other. It is to be noted that this was just a day before the murder of the deceased, and thus, it can be inferred that the accused persons were communicating in preparation for the murder. We note that out of the same, 34 communications were exchanged between A-1 and A-4. It can be seen that as we get closer to the date of the incident, there has been active communication on the part of A-2 as well, since a total of 11 communications were exchanged between A-1 and A-2, out of which 7 were voice calls and 4 were SMSes, and 5 voice calls were also made by A-3 to A-2.

79. Strangely, there were no communications at all between A-1 and A-2 prior to 02.12.2003, but just a day before the incident, 11 communications have been exchanged between them, when they are admittedly strangers. We also take note of the SMS sent by A-4 to A-2. Several of these calls/SMSes have been made consecutively by different accused persons, hinting at a synchronized coordination between them.

80. 03.12.2003 is the date of the unfortunate incident, which is not in dispute. The CDR for the same finds place in Table 12. We find that there were countless communications exchanged between the accused persons on the said day.

81. Between A-1 and A-4 alone, there were 54 communications, of which 45 were SMSes and 9 were voice calls. We would like to do a detailed breakdown of the CDR available for this date, as this was the day the terrible incident took place. For the same, we would like to first establish some foundational facts which are not in dispute. As per the testimonies of PW-5, PW-6 and PW-10, the deceased left with A-4 for the dinner at around 06:30 PM. Admittedly, A-4 and the deceased were together throughout the period ranging from 06:30 PM up until the incident took place. Then, PW-10 has also stated in

his testimony that A-4 called him and informed about the incident sometime between 09:45 PM-10:00 PM. The CDR show that there was a call between A-4 and PW-10 at about 09:56 PM, and the last communication between A-1 and A-4 before the said call took place at 09:39 PM, which leads us to the conclusion that the incident took place sometime between 09:39 PM to 09:56 PM. Thus, we would like to draw specific attention to the communications exchanged between the accused after 06:30 PM. A-1 and A-4 have exchanged 38 SMSes from 06:37 PM to 09:39 PM continuously, one after the other, with an average gap of only 2-7 minutes in between each message.

82. It is rather strange that A-4 was continuously exchanging messages with A-1, during the entire period that she was with the deceased, who was her fiancé at the time. This lends credence to the case of the prosecution that she was giving information to A-1 regarding their whereabouts. Obviously, there were no voice calls made during the said period, as she could not talk to A-1 on the phone with the deceased beside her. With respect to A-1 and A-2, 4 communications have been exchanged between them, with the last call at 05:42 PM. No calls/SMSes were exchanged after that, which brings us to the inference that they were together during the entire period after that. A-3 has made 3 calls to A-2 after 06:30 PM, at 07:39 PM, 08:39 PM and the last one at 09:25 PM, right before the occurrence.

83. After the last communication between A-1 and A-4 at 09:39 PM, there is complete silence with no communication between any of the accused until 09:56 PM, when A-4 informed her father about the incident. The sudden silence between the accused during this crucial period lends credence to the theory put forth by the prosecution that the murder of the deceased was committed by the accused persons in conspiracy. The CDR would also reveal that, after the occurrence, A-4 chose not to inform A-1 about the incident, notwithstanding the numerous communications between them prior to the occurrence, but informed only her father, PW-10. This, we find, is a conduct which is rather very strange. At this juncture, we would also make a reference to the tower location of the calls made by the accused persons. As per the CDR and the evidence of PW-25, the calls made by A-1 and A-4 were recorded from the Carlton Tower located at the Airport Road. Similarly, the calls made/received by A-2 were recorded from the tower in the Domlur area which covers the Airport Road in its radius. Though this does not prove the presence of the accused at the exact place of occurrence, it does prove that A-1 and A-2 were in close proximity of the place of occurrence. Therefore, though the same is not a substantive piece of evidence, it definitely adds muscle to the prosecution's version.

84. Now, we shall consider the CDR available for the period after the occurrence. It has been observed that the communications between the accused have suddenly dried up after the occurrence. After the deceased was assaulted on the head, A-4 admitted the deceased in the hospital at 10:10 PM, as stated in the Accident Register marked as Exhibit P-86. As per the evidence of PW-6, A-4 along with her mother and other family members of the deceased left the hospital around 02:00 AM, and returned to the hospital at around 07:00 AM in the morning. The CDR for 04.12.2003 in Table 13 shows that even during this time, A-4 has sent messages to A-1, in the late night and early morning, which lends credence to the prosecution's theory that A-4 wanted to update A-1 on the critical condition of the deceased. Subsequently, A-3 has made back-to-back calls to both A-1 and A-2 throughout the morning.

85. On 05.12.2003, as observed in Table 14, the communication between A-1 and A-4 became almost nil, with only one communication made by A-1 to A-4, and a few more

between A-1 and A-2. On 06.12.2003, as mentioned in Table 14, there was only a solitary communication between A-1 and A-4.

86. From the aforesaid materials, it is impossible for us to come to any other conclusion, than the one put forth by the prosecution, as the communications between the accused persons are too many, having a distinct pattern, following one after the other and even during odd hours of the night. The sudden rise in communications on the date of the incident and even a day prior to it, followed by a sudden drop in the communications on the very night of the unfortunate incident and days thereafter, consistently point only towards the guilt of the accused and serve as proof of the conspiracy that was hatched to murder the deceased. At this juncture, we would like to point out that while CDR data may not be construed as a substantive piece of evidence, it is certainly to be used for appropriate corroboration. One has to see the attending circumstances to decide the evidentiary value of CDR. For example, where the evidence is so overwhelming and the conduct of an accused is such that he is bound to give a sufficient explanation for it, but fails to do so, as in the instant case, the CDR might even take the position of substantive evidence. Therefore, in a given factual scenario, the Court can place heavy reliance upon the same for the purpose of rendering a conviction. Suffice it is to state that proving the guilt depends upon the degree of probability.

iv. Recovery of M.O.11 and M.O.12

87. Though substantial arguments have been made on M.O.11 and M.O.12, we are inclined to uphold the recovery. It is the case of the prosecution that A-2 was the pillion rider who got down from the scooter (M.O.12) and attacked the deceased using the steel rod/pipe (M.O.11). It is not in dispute that the recovery of M.O.11 was made at the instance of A-2. The same was witnessed by PW-30, who has duly affixed his signature on the seizure mahazar marked as Exhibit P-87. Both the Courts have rightly accepted the evidence of PW-30, who is an independent witness. The evidence of PW-30 cannot be eschewed solely on the ground that the other panch witness was not examined by the prosecution, despite being cited as a witness. The recovery of M.O.11 has been effected from a secluded place in a military compound. It was picked up from the bush, on being identified by A-2. Merely because A-1 was also present during the recovery, one cannot say that the recovery was effectuated on the basis of joint disclosure made by A-1 and A-2, and thus, is inadmissible. Herein, it is pertinent to point out that the 'voluntary' statements of A-1 and A-2 were also recorded separately and marked as Exhibit P-94 and Exhibit P-95 respectively.

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"35. In *State (NCT of Delhi) v. Navjot Sandhu* (SCC pp. 711-12, para 145), this Court has held that a joint disclosure or simultaneous disclosures, per se, are not inadmissible under Section 27 of the Evidence Act. A person accused need not necessarily be a single person, but it could be a plurality of the accused. The Court held that a joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in chorus. **When two persons in custody are interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact which was reduced into writing, such disclosure by two or more persons in police custody do not go out of the purview of Section 27 altogether. What is relevant is that information given by one after the other without any break, almost simultaneously, as in the present case and such information is followed up by pointing out the material things by both of them then there is no good reason to eschew such evidence from the regime of Section 27. Whether that information is credible is a matter of evaluation of evidence.** The courts below have accepted

the prosecution version in this behalf, being credible. Suffice it to say that the disclosure made by Accused 3 about the relevant fact, per se, is not inadmissible.”

(emphasis supplied)

88. The argument raised by the appellants that the link required under Section 27 of the IEA is missing due to the absence of the panch witnesses while recording the disclosure statements of the accused is also not acceptable, on the facts of the case, as the presence of the witness to the disclosure statement is not a mandate and only one of prudence. The mere absence of the witness to the disclosure statement is hardly sufficient to hold that the recovery itself is doubtful.

89. We also find that the argument made to the effect that PW-18 did not find any bloodstain on the weapon during his examination will not hold water as the role of the doctor in this scenario is rather different. The police sent the weapon to him only to seek his opinion as to whether the injuries on the deceased were caused by M.O.11, to which he has rightly deposed in support of his report that the said weapon could have inflicted the injuries on the deceased. With respect to the presence of the bloodstain, we are inclined to rely on the FSL Report, as the report is prepared by technical experts after analysing the weapon using the appropriate equipment, and not merely on the basis of seeing it with the naked eye.

90. With respect to the sealing of M.O.11, we find from the records that it was sufficiently sealed with the letter ‘N’ and also corresponds to the sample sent while tallying with the description. This is evident from all the requisitions made by the police and the FSL Report, where it has been clearly mentioned that M.O.11 was sealed and the seal was intact. Since we have already disbelieved the evidence of PW-15, his account about M.O.11 being kept unsecured in the Police Station is also not tenable. The argument that there is no clarity as to whether M.O.11 is a steel rod or a steel pipe is immaterial as the external appearance of a steel rod and a steel pipe is one and the same. If it is hollow inside, then it is a steel pipe, otherwise it is a steel rod. Here, on the basis of the description of the weapon, we can say that M.O.11 is a steel pipe as it is hollow. PW-30 and PW-31 have clearly testified to the same effect before the Court. The contention raised regarding the delay in sending the weapon to the FSL is also irrelevant as mere delay in sending the weapon to FSL cannot be a ground to discard the evidence pertaining to recovery, which is otherwise cogent as stated by this Court in **State of Madhya Pradesh v. Chhaakki Lal and Anr., (2019) 12 SCC 326**.

“34. For reversing the verdict of conviction, the High Court has pointed out that there was delay in sending the seized gun and pistol (recovered on 1.3.2006) which was sent to the FSL only on 19.4.2006. The High Court has doubted the case of prosecution by observing that apart from delay in sending the seized guns/pistol, there is no material showing as to where the seized weapons were kept during the period from 1.3.2006 to 19.4.2006. **Such delay in sending the recovered weapons to FSL could only be an omission or lapse on the part of the Investigating Officer. Such omissions or lapses in the investigation cannot be a ground to discard the prosecution case which is otherwise credible and cogent....**”

(emphasis supplied)

91. The recovery of M.O.12, was made from the house of A-1 in the presence of PW-30, pursuant to the disclosure statement of A-1. The said factum has been confirmed by PW-30 and PW-31 in their testimony before the Court. The defence raised by A-1 that M.O.12 belonged to his sister DW-3, as it was gifted by their parents in her marriage, and was being used by her in Tamil Nadu cannot be believed as the National Insurance Company based in Bangalore continued to be the insurer of the vehicle at the relevant

point in time. Further, no evidence was brought on record by the defence to show that DW-3 had given any intimation to the RTO in Tamil Nadu to prove that she had shifted the vehicle from the State of Karnataka to the State of Tamil Nadu. Thus, having found no merit, we reject the defence raised by A-1, accordingly. Based on the discussion made above, we are inclined to uphold the recovery of M.O.11 and M.O.12. Now, what is left to be considered by us is the conduct of the accused and the plea of *alibi* raised by A-1 which are relevant facts.

v. Conduct of A-4

92. Firstly, the conduct of A-4 is rather strange for a person who was continuously in touch with A-1 by way of numerous calls/SMSes on a daily basis not only during the period when her marriage proposal with the deceased was under consideration, but also after getting engaged to him. Secondly, we also find her conduct to be unnatural on the day of the incident, as she was constantly communicating with A-1 when she had gone out for dinner with her then fiancé, the deceased. However, she consciously stopped communicating with A-1 immediately after the incident took place. Even when her fiancé was on his deathbed, A-4 was communicating with A-1 and such conduct of hers is inconsistent with her innocence and speaks volumes about their questionable relationship. Thirdly, we also find that A-4, has caused destruction of evidence in order to screen herself and the others from punishment as all the messages in the phone recovered from A-4, especially the ones exchanged on the day of the incident, were found to be deleted. The same was the situation with the phone used by A-1, M.O.13. PW-10 further admits in his cross-examination that there were no messages in the inbox or outbox of M.O.10 when he surrendered the phone to the Investigating Officer on 26.01.2004. PW-33, being the technical expert, has also affirmed that the messages on the phone can only be deleted by manual operation. If the said messages were exchanged between the accused for any other *bona fide* purpose, then it was incumbent upon the accused to explain the same before the Court, which they have failed to do. Thus, the absence of the messages on the phones, coupled with the failure of the accused to offer sufficient explanation for their extensive communications right before the incident, would lead us to draw an adverse inference against A-1 and A-4.

vi. Plea of Alibi

93. Similarly, the Courts rightly drew an adverse inference against A-1 upon finding that the plea of *alibi* raised by him was not proved through the evidence of PW-22 and DW-1. PW-22, the father of A-1, had deposed that A-1 was at the HAL hospital on the night of 03.12.2003 as his father-in-law had been admitted there. Thus, in order to prove the said plea of *alibi*, the discharge summary was marked as Exhibit D-60 and DW-1, who was the Medical Superintendent at the said hospital, was examined by the defence. However, Exhibit D-60 did not contain anything to show that A-1 was present at the hospital during the period in question and DW-1 also admitted in his cross-examination that the hospital did not maintain any records to show as to who had visited the patient at the hospital. Thus, we conclude that A-1 had raised a false plea of *alibi*.

94. From the discussion made above, it is clear that the foundational facts are not in dispute. The case of the prosecution with respect to the homicidal death of the deceased stands duly proved by way of the post-mortem report marked as Exhibit P-35 and the deposition of PW-18 in support of the same which would reveal that the deceased suffered as many as six injuries in total, 'Injury No.2' being the vital injury on the head, and the cause of death was coma as a result of the said head injury. No challenge has been raised by the appellants on the said medical evidence. Similarly, it is the case of A-4 herself that

she was with the deceased during the time of occurrence. This is not only her own case, but also the case of her parents who deposed as PW-10 and PW-12. The said fact is also supported by the Accident Register, marked as Exhibit P-86, which proves that it was A-4 who had admitted the deceased to the hospital on the night of 03.12.2003. PW-29 further supports the said fact by deposing with respect to the Accident Register. Thus, the occurrence itself and the presence of A-4 with the deceased during the time of occurrence is not in dispute. To that extent, we can also say that A-4 was a witness to the incident as she had stated in the spot seizure mahazar marked as Exhibit P-14, that she had seen someone running after assaulting the deceased. Despite being in close proximity of the deceased at the time of occurrence, it is rather strange to note that A-4 was left completely unscathed, despite her stand that both of them were attacked, while the deceased received as many as six injuries. The said fact shows the complicity of A-4 in the crime, especially when the defence has failed to establish any other motive for the homicide of the deceased.

95. Therefore, on the facts assessed above, we find that a case has been made out for confirming the conviction of the appellants. We are inclined to hold so, notwithstanding our disapproval of the evidence adduced by the prosecution, including the testimonies of PW-8, PW-11, PW-15 and PW-16.

96. Thus, we hold that the link for circumstantial evidence stands connected and proved, as the motive has been duly established through the evidence of PW-23, the voluminous CDR stands proved through the evidence of PW-24 and PW-25 who withstood a lengthy and exhaustive cross-examination, and the recovery of the weapon also stands proved. Even in the statements of the accused recorded under Section 313 of the Cr.P.C, there was no acceptable explanation given by them for the numerous communications exchanged between them during the period ranging from 25.11.2003 to 04.12.2003. Insofar as A-3 is concerned, we are inclined to hold that not only did he orchestrate the entire operation for the murder of the deceased by pulling the strings discreetly, but was also actively monitoring, directing and supervising the other accused. He was not only communicating with A-2, but also A-1 and A-4. The CDR shows that a total of 34 voice calls have been made between A-3 and A-4 during the entire period ranging from 25.11.2003 to 03.12.2003, with no communications either before or after the said period. The said evidence is particularly overwhelming and cannot be brushed aside, as admittedly, there was no prior relationship between them, and there was no occasion for them to have communicated extensively when they were strangers to each other, with nothing in common, belonging to different strata of the society. It is A-3, who communicated extensively with A-1, A-2 and A-4. Though arguments have been made by the appellants to the effect that the prosecution has not been able to prove his profession, what is sufficient for us is the crucial role played by A-3.

97. With respect to A-2, he came into the picture at a much later point of time. It is the case of the prosecution that this teenager was roped in at the instance of A-3 to hit the final nail in the coffin. We wish to observe that A-2 was a teenager hailing from an impoverished community, and was engaged in the loading and unloading of goods, as per the evidence of his father PW-17. The connection between A-2 and A-3 also stands proved as admitted by PW-14 in his testimony and thus, we are unable to acquit A-2, due to the recovery and the CDR which stand against him.

98. As stated above, A-4 was in constant communication with not only A-1, but also A-3. She was very much in the know of things and the said communication continued till the final act. Once A-4 expressed her grievance to A-1, he got in touch with A-3, who

facilitated the plan accordingly, by utilizing the service of A-2. In the said course, A-4 has also engaged in the destruction of evidence, as discussed above, in order to screen herself and the others from legal punishment. As we are satisfied with the adequacy of the evidence on record, though for different reasons, we are inclined to uphold the conviction and sentence rendered by the High Court in the impugned judgment. Accordingly, the appeals stand dismissed by confirming the conviction of the appellants rendered by the High Court under Section 302 read with Section 120-B of the IPC and additionally, Section 201 of the IPC for A-4 alone. The sentence of life imprisonment imposed upon them also stands confirmed.

MOVING FORWARD

99. We do not wish to end our judgment by merely rendering a conviction. We do believe that this Court has a little more role to play. Considering that we started our discussion keeping in mind that this unfortunate event would not have occurred, had the family been more sympathetic in understanding the mental predilection and disposition of A-4, it is important for us to make certain observations. Ultimately, A-4 was unable to make a decision for herself, despite being an individual who had attained majority. Having said so, we cannot condone her action as it resulted in the loss of an innocent life of a young man. We would only state at this juncture, that A-4 was made to commit this offence by adopting the wrong course of action in order to address her problem. Years have rolled on since the occurrence of the crime, which was in 2003.

100. The appellants, who committed the offence with adrenaline pumping in their veins, have now reached the middle age. Two out of the four accused persons were teenagers at the time of occurrence, while A-4 had barely crossed that phase. A-3 was a man aged 28 years, and was recently married with one child. As a Court, we seek to view the matter from a different perspective, only for the purpose of giving a new lease of life to the appellants who have committed a heinous crime, notwithstanding the availability of other alternative avenues to resolve the problems faced by A-4. We have also been informed that they have not been put to adverse notice thereafter. Their conduct in the prison is also not adverse. They were not born as criminals, but it was an error of judgment through a dangerous adventure which led to the commission of a heinous crime. It is difficult for us to decide at this stage who influenced the other, although there is a clear meeting of minds.

101. In light of the same, we would like to facilitate the appellants' right to seek pardon by permitting them to file appropriate petitions before His Excellency the Hon'ble Governor of Karnataka. We would only request the constitutional authority to consider the same, which we hope and trust would be done by taking note of the relevant circumstances governing the case.

102. Accordingly, we grant eight weeks' time from the date of this judgment, for the appellants to file appropriate petitions seeking to invoke the power of pardon under Article 161 of the Constitution. Till these petitions are duly considered and decided, the appellants shall not be arrested and their sentence shall remain suspended.

103. The appeals stand dismissed, with the aforesaid liberty.

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