

**Kanchan Vs. Ravindranath and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/1177486](http://sooperkanoon.com/1177486)

**Court :** Karnataka Dharwad

**Decided On :** Sep-08-2015

**Judge :** Anand Byrareddy & the Honourable Mrs. Justice S. Sujatha

**Appeal No. :** Criminal Appeal No. 2839 of 2012 connected with Criminal Appeal Nos. 2761, 2766, 2791, 2793, 2794 of 2012 & 2537 of 2013

**Appellant :** Kanchan

**Respondent :** Ravindranath and Others

**Judgement :**

(Prayers: This Criminal Appeal is filed under section 372 of the Code of Criminal Procedure, 1973, seeking to set aside the judgment and order of acquittal of accused/respondent no,5 and modify the order of conviction and sentence passed against accused/respondent Nos. 1 to 4 and 6 in SC No. 9/29008 dated 11.06.2012, enhance the sentence of accused/respondent nos. 1 to 4 and 6 and convict accused /respondent no. 1 to 6 with death sentence in SC No. 9/2008 registered for the offences punishable under sections 143, 147, 120(B), 109, 364, 342, 376, 302,404, 201, and 203 read with section 149 of the Indian Penal Code, 1860 and award just and reasonable compensation as enshrined in Section 357 of the Code of Criminal Procedure, 1973.

This Criminal Appeal is filed under section 374(2) of the Code of Criminal Procedure, 1973, seeking to call for the records in S.C. No. 9/2008 on the file of

the V Additional District and Sessions Judge, Belgaum, pursue the same, allow the appeal and set aside the order of conviction and sentence dated 11.06.2012.

This Criminal Appeal is filed under section 374(2) of the Code of Criminal Procedure, 1973 seeking to set aside the judgment and order dated 11.06.2012 passed by the V Additional Sessions Judge, Belgaum in S.C. No. 9/2008 convicting the appellant for the offences punishable under sections 143, 147, 364, 368, 302, 201 read with section 149 of the Indian Penal Code, 1860 and acquit the appellant/accused no. 4 in the interest of justice.

This Criminal Appeal is filed under section 374(2) of the Code of Criminal Procedure, 1973 seeking to set aside the order of conviction dated 11.06.2012 and sentence 12.06.2012 passed by the V Additional Sessions Judge, Belgaum in Special Case No. 9/2008.

This Criminal Appeal is filed under section 374(2) of the Code of Criminal Procedure, 1973 seeking to set aside the judgment of conviction and order of sentence dated 11.06.2012 and 12.06.2012 passed by the V Additional Sessions Judge, Belgaum in Special Case No. 9/2008 and acquit the appellant herein of the charges levelled against the appellant by allowing this appeal.

This Criminal Appeal is filed under section 378(1) and (3) of the Code of Criminal Procedure, 1973 seeking to grant leave to the appellant to file appeal against the acquittal of respondent and set aside the order of acquittal of respondent for the offences under sections 143,147, 120(B), 109, 364, 342, 376, 302, 404, 201, 203, read with section 149 of the Indian Penal Code, 1860 and punish the accused for the offences alleged against him and sentence him in accordance with law.)

1. Heard the learned counsel for the appellants and the learned Counsel for the respondents.

2. The appeal in Crl.A No.2839/2012 is filed by the mother of the deceased, seeking enhancement of sentence and challenging the acquittal of accused no.5.

Criminal Appeal No.2793/2012 is filed by accused no.1. Criminal Appeal No.2791/2012 is filed by accused no.2. Criminal Appeal No. 2761/2012 is filed by

accused no.3. Criminal Appeal No.2766/2012 is filed accused no.4. Criminal Appeal No. 2537/2013 is filed by the State, challenging the acquittal of accused no.5. And Criminal Appeal No.2794/12 is filed accused no.6.

These appeals are heard and disposed of together as they are preferred against the same judgment.

3. The facts of the case, as stated by the prosecution, are to the following effect:

Accused no.1 Ravindranath Chougule, along with his father-in-law, on 13.8.2007, had reported to the Kakati Police Station, that his wife Sheetal was missing since 11.08.2007 from 6p.m. It was his complaint that she was to meet him at the Ganesha temple on Hindalga Road, Belgaum and she was to come by bus. But she never turned up. In spite of a frantic search, along with his father-in-law and his father in all the known places that she was likely to visit, he could find no trace of Sheetal and therefore, had lodged a missing complaint at 5.15.p.m., on 13.08.2007.

It was reported on the same day i.e., 13.08.2007, that a dead body of a female aged about 30 was found in Kavali Nala on Jamboti road, within the jurisdiction of the Khanapur Police Station. The dead body was found with injuries and it was reported to the Police by PW.4 and some members of the general public. Since accused no.1 and his father-in-law heard about the dead body of the unknown female, on 13.08.2007, they had visited the mortuary where the dead body was kept and identified the dead body as that of Sheetal. It is only on 22.08.2007 that accused nos.1 and 2 were arrested and on the basis of their voluntary statements to the effect that accused no.1 was having an affair with accused no. 6, Reena Tahsildar, who was an unmarried woman, aged about 28 years and since this affair was known to Sheetal and Sheetal was opposing it and since accused no. 1 and Sheetal were not getting on well, it was decided that she would be eliminated with the assistance of accused no.2 to 5 and accused no.7, who were alleged to be contract killers. And that he had paid them money in order to do so. It was further alleged that accused no. 1 had brought Sheetal to the house of accused no.4, where the other accused were present, except accused no.6, and that he had left her in the house of accused no. 4 on the pretext that he would return soon.

It transpires that she was murdered some time during the night of 11.08.2007 and that on the next day, i.e., 12.08.2007, accused no.2 to 5 and 7 were believed to have transported a dead body in the Honda City car, which was being used by accused no.7 and the car was seen leaving the premises of accused no.4, followed by a Maruti Car driven by accused no.2.

It was the further case of the prosecution that she had been raped and killed by smothering her with a pillow and also by strangulation and the dead body had been taken to the canal area as aforesaid. The dead body was dumped there and a plastic bag containing clothes of herself and her children and a vanity bag of the deceased were thrown into the road side bushes, about 3 kilometres away from the spot and they had also removed the jewellery on the body of Sheetal. It was the said jewellery, namely, a ring that was seized from accused no.3 and who is also said to have lead the investigation officer to the plastic bag containing the clothes of the deceased and her children. A ring set with a white stone was recovered from accused no.5 and further the vanity bag belonging to the deceased was said to have been recovered at the instance of accused no.4 who had indicated the spot where it was thrown away. It was further sought to be established that accused no. 1 had the necessary cash to pay accused nos.2 to 5 and 7, towards the consideration for carrying out the murder of Sheetal, since he had recently sold land and had cash of Rs. 9,00,000/- with him and it was also established that two of the accused had utilised such money that was paid, in discharging loans. Cash of Rs. 2,50,000/- had been recovered from accused no.1. It is this sequence of events that are sought to be established by recourse to the evidence of PWs.14, 15, 16, 17, 18, 22, 24, 26, 50 and 65. For the other witnesses examined namely, PWs1 to 67 are either formal witnesses or witnesses who had turned hostile and therefore were not material to establish the case of the prosecution.

4. The learned Senior Advocate, Shri Ravi B. Naik, appearing for the Counsel for accused no.1 would point out that the court below having found accused no.1 guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (Hereinafter referred to as the 'IPC', for brevity) and having convicted accused No.1 is apparently without following the established principles as to the manner in

which circumstantial evidence could be addressed in finding the accused guilty of the charges. If the established rules are applied to the present case on hand, the prosecution had miserably failed in that regard and there was absolutely no substance in the evidence that was tendered.

In this regard, the learned Senior Advocate would meticulously take this court through the record and would demonstrate that the prosecution was required to firstly establish the motive for the murder. In that, accused no.1 was having an affair with accused no. 6 and hence had decided to eliminate Sheetal so that he could be free to live with Accused no.6. Further on account of this circumstance, accused no. 1 had hired accused nos.2 to 5 and 7 in order to kill Sheetal for a consideration. The case of the prosecution that Sheetal had been picked up at the Ganesha Temple on Hindalga road, by accused no.1 is sought to be established by the evidence of PW.16, a passenger of a bus on which Sheetal was said to have travelled up to the Ganesha Temple and PW.17, the conductor of the bus, who had seen her alight at the Ganesha Temple. Significantly, those witnesses though had identified Sheetal as having travelled by bus and having got off at the Ganesha temple, have not stated that they saw accused no.1 pick her up at the bus stop. There is no evidence of accused no.1 having met Sheetal at the bus stop or anybody else having seen them together. Except that PW.22, who was a neighbour of accused no. 4 and who had a grandstand view of the backyard of the house of accused no.4 from her kitchen window and who is said to have seen accused no.1 bring Sheetal at 5.30p.m., to the house of accused no.4 and they having gone in together. And thereafter since she was on her way to purchase a coconut and while returning, she had seen accused no.1 come out of the house and leave alone and therefore she had concluded that Sheetal was left behind in the house. It is the same witness who had later in the evening is said to have heard the volume of the television set, in the house of accused no.4, turned up at full volume, at about 11p.m., on the same day, i.e., 11.08.2007, and had thought that there was a party going on in the house of accused no.4. It is her further statement that on 12.08.2007, she had gone out of the house at about 5.30p.m., and she returned home at about 8p.m. And at about 10p.m., when she came into her kitchen to wash vessels, from where she could look into the backyard of the house of accused no.4, she had seen accused nos.2,3,4,5 and 7 come out of the

house carrying a bundle and placing the bundle in the boot of the Honda City Car. And the car had been driven away followed by the Maruti car being driven by accused no.2. It is in this fashion that the sequence of events as to the accused no.1 having brought Sheetal to the house of accused no.4 and having enabled them to murder her during the night of 11.08.2007 and thereafter having transported the dead body away from the house and having dumped it at the place where it was found, is sought to be established.

The learned Senior Advocate would also draw attention to the circumstance that PW.22 was said to be living in the house where she was residing for atleast 5 years prior to the incident. Accused no.4 was a married man and his wife, father, mother and sister were all said to be living in that house.

PW.22 does not say whether she had any acquaintance with the mother of accused no. 4, or his sister, or his wife. It is also on record that the father of accused no.4, his mother, his wife were all at home on 11.08.2007. Therefore, it is highly unlikely that Sheetal was raped and killed on 11.08.2007 in the house of accused no.4 in the presence of his parents and his wife and the dead body was kept in the house till 10p.m., on 12.08.2007. This is a preposterous theory put forward by the prosecution only on the evidence of PW.22. PW.22 was not in a position to speak of the movement of people to and from the house for the entire period between 5.30p.m. on 11.08.2007 and 10p.m. on 12.08.2007. The said witness has stated that she saw accused no.1 and his wife Sheetal go into the house of accused no. 4 at 5.30p.m., on 11.08.2007 and that the dead body being transported on 12.08.2007 at about 10p.m. The coincidence of this witness having seen the accused No.1 come along with his wife and accused no.1 leaving her behind and going away and she having remained in the house for more than 24 hours, is indeed a circumstance which is not cogently explained with reference to acceptable evidence which would require much imagination to digest this sequence of events as narrated by the prosecution.

It is contended that there is yet another witness on whose evidence the prosecution has strongly relied on, namely, PW.24, Renuka, who was also a neighbourer facing the front door of the house of accused no.4. She claimed to

have seen accused nos.1 to 5 and 7 regularly meet at the house of accused no.4. Beyond this, she is not in a position to state as to the presence of Sheetal on the fateful day, or otherwise.

It is contended that the circumstance that PW.22 was not acquainted either with accused no. 4 or his family members or with any of the other accused and certainly not accused no. and Sheetal, is evident from the fact that she has not referred to them by name, for she has stated that accused no.1 had come along with a woman on 11.08.2007 to the house of accused no.4. It is only after learning about the name of Sheetal in the newspapers, subsequently as it was a sensational case that was widely reported in the newspapers at the relevant point of time, that she has named the said accused. For otherwise, there is no indication that she was acquainted either with accused no.1 or Sheetal. Therefore, the strange coincidence of the said witness having seen the accused at crucial points of time to embellish the case of the prosecution is evident. It is also evident that she has been tutored to ensure that the accused are framed on the charges that were brought, though on evidence which is flimsy and not readily acceptable.

It is further pointed out that the theory of accused no.1 having hired the other accused namely, accused nos.2 to 5 and 7 in eliminating his wife Sheetal, by paying a large amount of money is sought to be proved by reference to a sale deed executed by him. It is pointed out from the record that the sale deed is executed by accused no.1 not as the owner of the land in question, but as a power of attorney holder. It is therefore not readily acceptable that the money belonged to him and that he could utilise the same in hiring accused no.2 to 5 and 7 in order to eliminate his wife Sheetal. The circumstance that there was no suspicion of accused no. 1 having ventured to commit such an act is also evident from the circumstance that the first person accused no.1 had informed about Sheetal missing was his father-in-law. They had together ventured to lodge a missing complaint and there was no suspicion of any such foul play even at the time that the accused no. 1 and his father-in-law went to identify the body at the mortuary. Even thereafter there was no suspicion of accused no.1 being involved in any such conspiracy. It is on the basis of the voluntary statement said to have been recorded of accused nos.1 and 2 that the prosecution has gone on to develop the

theory as projected above.

It is hence urged that it would hence be dangerous to proceed on the basis of the evidence that is on record, to hold that the case is established on circumstantial evidence in a manner known to law and on the settled principles, which are emphasized and reemphasized by the apex court time and again in order to ensure that in any given case, while dealing with circumstantial evidence, onus being on the prosecution to prove that the chain of events is complete and any infirmity or lacuna in the prosecution case could not be cured by a false defence or plea. The apex court has observed that the conditions precedent before conviction could be based on circumstantial evidence must be fully established, as stated in *Sharad Birdhichand Sarda vs. State of Maharashtra*, AIR 1984 SC 1622, thus

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may" be 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.

(See: *Geejagandha Somaiah vs. State of Karnataka*, AIR 2007 SC 1355)

Therefore, on the basis of the last seen theory or circumstantial evidence that is relied upon in support of the charges against the accused, must be so complete without any missing links, as to arrive at and form a conclusion as to the manner in which events have unrolled. In the present case on hand, the gaps are glaring and

it cannot be said that there is any chain of events which would lead to the case against the accused being established beyond all reasonable doubt. There are doubts aplenty as to the involvement of each of the accused, let alone accused no.1 in the commission of the offence.

The learned Senior Advocate would lastly point out that insofar as the affair between accused no.1 and accused no.6 is concerned, it is on the basis of certain telephonic calls having been exchanged between accused no.1 and accused no.6. This is on the presumption that the telephone to which accused no.1 was making calls belonged to accused no.6. Accused no.1 was a businessman and he was actively engaged in business with the brother of accused no. 6 and the possibility of the cell phone being used by the brother of accused no.6 and the constant exchange of calls between two businessmen being characterised as a love affair between accused nos.1 and 6 is far-fetched.

Further in order to establish that the mobile belonged to accused no. 6 and that there were constant calls between accused nos.1 and 6 by itself would not establish that there was a conspiracy by which accused nos.2 to 5 and accused no.7 had been engaged by accused no.1 to commit the murder of Sheetal.

Further, the call record sheet that was produced in evidence was not marked in evidence in the manner known to law. In that, the competent officer ought to have been examined as a witness in the document being marked and received in evidence. When this being the case, the love affair between accused no.1 and 6 being sought to be established by the evidence of PWs.14 and 15, who were the father in law of accused no. 1 and the maternal uncle of the deceased by itself would not be sufficient to establish that there was a love affair. Nor has the love affair been demonstrated to be of such passion that accused no.1 went to the extent of murdering or having his wife murdered. This would have to be established by independent evidence which would have been available, if indeed accused no.1 was so deeply involved with accused no. 6 and they were known to be moving together to the distress and agony of Sheetal, leading to acrimony between them, which was said to have been noticed by PW.14 and 15 and according to them, this had been narrated to them by Sheetal herself. This ought

to have been established by better evidence and in the absence of the genesis of the manner in which or the motive with which Sheetal might have been murdered, being absent, it cannot be said that the further circumstances fell into place.

Mere alleged recovery of valuables from the other accused also would not establish that they had committed murder at the instance of accused no.1. The recovery of articles, as laid down in several decisions, in the course of investigation, by itself would not be sufficient to establish a serious charge of murder against the accused unless other circumstances are also established by evidence, which is unimpeachable.

Therefore, the learned Senior Advocate would submit that neither are the circumstances established in the manner known to law nor can it be said that the articles recovered by itself prove the guilt of the accused and the manner in which the sequence of events have taken place. Therefore, in the light of the established principles of law and given the facts and circumstances of the present case, the accused no. 1 cannot be said to have committed murder or conspired with the other accused in having committed murder of his wife and hence, the learned Senior Advocate seeks acquittal of accused no.1.

5. Shri V.M.Sheelavant, learned counsel appearing for accused no.2 would point out that the only evidence as against the involvement of accused no.2 is the fact that accused no.2 was seen in the company of accused nos.1 to 5 and 7 by PW.22 and that he was also seen in the company of the said accused by PW.24, the two neighbourers of accused no.4 and that the other witnesses namely, PW.18 is said to have seen accused no.2 along with accused nos.1 and 7 at a bar opposite the lodge, where the said PW.18 was employed. PW.26, a manager in a printing press had, on and off, seen the Honda City Car being parked in the premises of accused no.4. There is no other evidence appearing against the accused of having committed any overt-acts, except that he was also seen going along with accused at 10.00p.m. by PW.22 along with a load which she believed to be the dead body of Sheetal.

It is also pointed out from the post mortem report of the deceased, the blood group of the spermatozoa found in the vaginal smear was of blood group A" and since

accused no.2 also had the same blood group, it was presumed that he had committed rape on the deceased. The learned counsel would point out that merely because the blood group of the spermatozoa was "A", it cannot be presumed that there was rape committed on the deceased. There is no medical opinion furnished in this regard. It is the imagination of the prosecution. Even if the blood group of the seminal stains in the vagina of the deceased was found to be of blood group 'A', it cannot be said that the blood group was either of accused no.1 or of accused no.2. For the Post-mortem report also does not indicate the blood group of the deceased. This, the learned counsel would point out, is indeed shocking as the Post -mortem report also does not contain other particulars, such as the possible time of death which had to be elicited from the Medical Practitioner by calling upon him to furnish those details separately, which is then made available as an after thought. This again is not explained at all. Insofar as the additional report furnished by the Medical Practitioner is concerned, it is on inquiries made by the investigating Officer, that the Medical Practitioner had furnished the same as per Exhibit.P.112, coming much later as an after-thought. Therefore, the medical evidence on the basis of which it is stated that there was rape committed on the deceased and that too by the said accused no.2, is a presumption which cannot be sustained. In the absence of other cogent evidence of any overt acts committed by the accused alleged recovery of a mobile phone and a Maruti car from the accused by itself would not establish his involvement in the case and in the manner that is sought to be stated by the prosecution. Accused no.2 is roped in only on the basis of voluntary statements said to have been made by him and in the absence of any recoveries or direct evidence of his involvement, it cannot be said that the prosecution had made out a case against the respondent - accused no.2.

6. Similarly, the Counsel for accused no.3 would submit that there is absolutely no evidence of any overt act committed by the said accused and the involvement of the accused as hired killers and of the manner in which he had been engaged and the common intention of the said accused in having committed the murder of Sheetal. There is no attempt, made in this direction except that accused no.1 was possessed of necessary funds to pay the accused, who were engaged as hired killers, to commit the murder of Sheetal. There is no recovery made from the said

accused of any such substantial amounts of money which would even suggest that he may have hired them, except one ring which is claimed to be that of the deceased. The further contention that accused no.3 had lead the investigating officer to the spot where the plastic bag had been thrown and it was at his instance that the plastic bag had been recovered. This by itself would not establish the prosecution case when seen in the light of the evidence of other witnesses who have referred to the recovery of the plastic bag.

PW.14 has stated that the plastic bag containing the clothes of the children of Sheetal and of herself was lying about 10 feet away from the dead body. Another witness PW.1 has stated that the plastic bag which was marked as Exhibit P.2 was lying about 10 feet away from the dead body. PW.84 stated that the plastic bag was lying about 100 feet away from the dead body and the statement of the prosecution was to the effect that there was recovery of a plastic bag 3 Kilometres away from the dead body at the instance of accused no.2, would lead to such inconsistency that no court would sustain a charge against accused no.2 on the basis of such recovery and therefore he would submit that a ring which said to be of the deceased and which was said to have been recovered from accused no.2 is not established, except on the say of PW.14, the father of the deceased, who claimed that it belonged to his daughter and that it has been recovered from the possession of the said accused. Such recovery would not establish the commission of the offence as alleged and the involvement of the said accused is in the absence of other circumstances being established, as already stated by the learned Senior Advocate Naik. He would further submit that the very contentions urged by the Senior Advocate Naik would equally apply to accused no.3 insofar as circumstances not having been made out by the prosecution in the manner known to law and therefore, seeks acquittal of accused no. 3.

7. The Counsel for accused no.4 would point out that accused no. 4 was a married man and was living along with his wife, mother, sister and father in the house and on 11.08.2007 when the incident is said to have taken place, they were very much at home. This itself is a circumstance which is not addressed by the prosecution.

Though the mother and father of the accused no.4 were cited as witnesses, they were later treated as hostile witnesses when they had stated that they were at home on the date on which the murder is said to have taken place in the house of accused no.4. This is a circumstance which has not been touched upon by the prosecution nor by the court below, in proceeding on the footing that the theory projected by the prosecution was established beyond all reasonable doubt and the recovery made to establish the guilt of the accused is the recovery of a Television set to possibly establish that it was in the premises of the accused no.4 and full volume had been turned on to drown any other sounds. The recovery of a vanity bag at the instance of accused no.4 is again a circumstance which by itself would not enable the prosecution to bring home the charges against the accused unless other circumstances were established, as already stated.

8. Insofar as accused no.5 is concerned, he has been acquitted, when the very same set of circumstances were alleged against him and though recovery of a ring set with a white stone, which was identified by PWs.14 and 15 was found and that the wife of accused no.5 had repaid the entire loan amount immediately on the very same day of the incident. Therefore, the prosecution seeking to draw a presumption that he was one of the hired killers engaged by accused no. 1 and that he had been paid a very large amount of money and his wife had settled the loan account with the bank is disbelieved by the court below, only on the ground that the witness to the recovery of the ring, from the possession of accused no. 5, had turned hostile and the court below has proceeded to hold that there was a very weak case against accused no.5. The learned counsel would submit that the reasoning of the court insofar as acquitting accused no.5, that the panch witness had turned hostile, would not enable the court to sustain the case against other accused, merely on the basis of the alleged recoveries, when other circumstances were not established. By the same token of reasoning, the learned counsel would submit that accused no.3 would also have to be acquitted.

9. Insofar as accused no.6 is concerned, the learned counsel would point out that there is a theory put-forward by the prosecution of a love affair between accused no.1 and accused no.6, and the manner in which it is sought to be established is on the say of PWs.14 and 15. This again is hear -say, in that, it is their case that

Sheetal during her life time had constantly complained of the affair between accused no.1 and accused no. 6 and that PWs.14 and 15 had in turn advised accused no.1 to mend his ways and to remain faithful to Sheetal and inspite of which accused no.1 had carried on a torrid affair with accused no.6 and this is sought to be established on the further evidence of call records obtained from the service provider M/s Reliance.

PW.65, who was a manager working with M/s Reliance had been examined in support of the case, to establish that there were innumerable calls exchanged between accused no.1 and accused no. 6. This, the learned counsel, would submit was inadmissible in evidence as the Supreme Court has laid down that insofar as establishing the proof of exchange of phone calls between two individuals, would be confidential information that requires to be furnished by a competent officer. In the present case on hand, the manager of the local office of M/s Reliance was not competent to tender any evidence as regards the veracity of the document, namely, the call records which indicates the exchange of phone calls between accused no.1 and accused no. 6.

The counsel would also point out that though the cell phone has been purchased in the name of Accused no.6, it was actually being used by her brother, with whom accused no.1 was a partner in business. This would explain the constant calls between the two. This has been misconstrued and sought to be projected as being indicative of an active affair between Accused nos.1 and 6 and would submit that apart from this flimsy evidence, there is no other evidence of any such love affair or involvement of accused no.6 in the alleged commission of the offence. There is no witness who could speak about the presence of accused no.6 at the relevant point of time. The only two witnesses which the prosecution claims as being direct eye witnesses are PW.22 and PW.24. Both of them have not stated that they had seen accused no.6 present at the scene of crime or at any other time. Therefore, the court below having found that the charges being proved against the accused is unsustainable and accused no.6 would have to be honourably acquitted as there is no material evidence at all against the said accused.

10. Insofar as accused no.7 is concerned, he is no more. It transpires that he was arrested and he was taken by the Police for the purpose of recovery of articles and at that point of time it is alleged that the said accused tried to arm himself with a revolver and attempted to open fire at the Police and the Police were left no other choice, but to retaliate and in the cross fire, he had died. There is a First Information Report and a Post mortem report in that regard. Therefore the case against accused no.7 has abated.

In the above circumstances, the State is before this court questioning the acquittal of accused no.5, to contend that in the face of direct evidence by PWs.22 and 24, who have spoken about his constant presence in the residence of accused no.4 on the fateful day and the accused having been acquitted, merely on the panch witness having turned hostile, by itself cannot be sustained, when the circumstantial evidence, though characterised by the learned counsel appearing for the accused, as being unacceptable evidence, is not complete, as there are missing links in the chain of events which are not established by recourse to the said circumstantial evidence.

11. The learned State Public Prosecutor would assert that given the circumstance of the case, namely that there is the homicidal death of Sheetal and that she had died of strangulation and other injuries and given the further circumstance of the accused being seen together time and again by several witnesses, the only presumption is of the deep conspiracy in having committed the murder in a cold blooded fashion. The prosecution had gathered evidence to demonstrate that accused no.4 had ensured that his wife was not at home and that she had been sent to her parents home on 11.08.2007 as also on 12.08.2007 and that his parents and his sister were not also present in the house and it was in that direction that the said parents had been cited as witnesses. The unfortunate circumstance that they had turned hostile by itself did not establish that they were present at the residence of the accused no.4 on the fateful day. PW.22 has significantly not mentioned their presence, for if they were present in the house there would have been a statement to this effect and nothing has been elicited in the cross-examination of PW. 22. Therefore, it was under a firm belief that the prosecution had made out a water-tight case against the accused, had thought it

fit to examine the parents of accused no.4. At the trial, though the said witnesses having turned hostile is sought to be characterised as a sequence of events not being established in the right perspective. In a matter, where the accused would take extra measures to conceal their actions, the prosecution being called upon to establish the case in the fashion that the accused may desire and the accused may expect, is not the requirement of law and that it would be a tall order for the prosecution to establish such chain of events to the minutest detail.

The chain of events are sufficiently demonstrated by reference to the evidence already on record and therefore it was untenable for the trial court to have acquitted accused no.5, on the specious finding that the panch witness not having supported the recovery of the ring from accused no.5, when there was evidence to indicate that his wife on the very fateful day received a large amount of money and that she had discharged the outstanding loan was sufficient to bring home the charge. Therefore, the learned State Public Prosecutor while justifying the conviction of the other accused would seek to question the acquittal of accused no.5 and would insist that accused no.5 be convicted and the appeals filed by the other accused be dismissed.

12. The learned Counsel for the complainant, the mother of the deceased, would also seek to support the case of the prosecution and would seek enhancement of sentence. It is pointed out that the case had received wide publicity and there was public fear over the actions of the accused and the laxity in the manner of investigation by the Police and any acquittal of the accused on the basis of the arguments canvassed, which did appear impressive, would send a wrong signal to the civic society and such a dastardly act committed by them, in the manner as stated by the prosecution should be dealt with firmly, and since the sentence imposed on the accused is not commensurate with the seriousness of the offence and the evil motive, with which it has been committed and therefore, would seek enhancement of the punishment.

13. On a consideration of the above rival contentions and on a close examination of the record, if we are to assimilate the facts and circumstances, as projected by the prosecution, the case sought to be put forward by the prosecution is that

accused no.1, along with his father-in-law had lodged a complaint with the Kakati Police Station on 13.08.2007 at about 5.15p.m. to the effect that his wife Sheetal was missing since 11.08.2007 and that she was to meet him at the Ganesh temple on Hindalga road, Belgaum and that she never met him there and it is thereafter that accused no. 1 and his father-in-law had received information that the dead body of a unknown woman was recovered from the Kavali nala on Jamboti road and that it was kept in the local mortuary. Accused no.1 along with his father-in-law had visited the mortuary and had readily identified the dead body as being that of Sheetal. It then transpires that the Khanapur Police station, which had registered a case of unnatural death on the recovery of the dead body had proceeded investigate and had ultimately arrested accused no.1 on 22.08.2007 and had recorded the voluntary statement of accused no.1 and they had also arrested accused no.2 on the same day and had also recorded the voluntary statement of the said accused. It is on the basis of the voluntary statements of these accused that the prosecution has reconstructed the sequence of events.

In that, it is the case of the prosecution that accused no.1 was having an illicit affair with accused no.6, Reena and she was an unmarried woman. Accused no.1 had married Sheetal about 12 years prior to the complaint and they had three children aged 8,6 and 4 respectively, and that Sheetal had learnt about the illicit affair between accused no.1 and accused no.6 and there were constant quarrels between them in ibis regard. It also transpires that this had been informed to PW. 14, the father-in-law of accused no.1 and PW.15, the maternal uncle of Sheetal and they had advised accused no.1 not to have any such relationship and to remain faithful to Sheetal, which had further agitated the accused no.1 and therefore, he had plotted the murder of Sheetal by engaging the services of accused nos.2 to 5 and 7 in connivance with accused no.6. Therefore, it was further urged that accused no.1 had brought Sheetal in his car to the house of accused no.4 at 5.30a.m. on 11.08.2015 and he had left her in the house of accused no.4, where accused nos.2,3, 5 and 7 were also present and he had gone away on the pretext that he would return soon. He was seen leaving the house by PW. 22, who was a neighbourer of accused no.4. She had seen accused no.1bring Sheetal to the home of accused no.4 and also that he was seen leaving alone, leaving behind Sheetal. It was further stated that during the night of

11.08.2007, the accused nos.2 to 5 and 7 had committed rape on Sheetal and had strangulated her and it is on 12.08.2007 that they had taken the body in the boot of Honda City Car which was being used by accused no.7 and that there was also a Maruti Car which was driven by accused no.2. PW.22 had seen the accused place a bundle, which was possibly the dead body of Sheetal in the boot of the Honda City Car at 10.00 p.m. on 12.08.2015 and she had seen both the cars leaving the premises of accused no.4.

And on the basis of the voluntary statements of accused nos.1 and 2, it is further reconstructed by the prosecution that the dead body had been brought to the canal aforesaid and it was dumped there. Thereafter about 3 kilometres away from the said spot, they got rid of a plastic bag containing clothes of the children of Sheetal and her own clothes and also her vanity bag which was thrown into the bushes. On their voluntary statement, the other accused had been arrested and recoveries had been made from the accused namely, one ring was recovered from Accused no.3 and at his instance, a plastic bag containing the clothes was also recovered from the bushes which was 3 kilometres away from the spot where the dead body was dumped. A ring set with a white stone was recovered from accused no.5, all of which were identified by PW. 14, the father of Sheetal and it is in this vein that the prosecution had reconstructed the sequence of events in support of the case of the prosecution.

Though the prosecution had examined a total of 87 witnesses apart from the evidence of the formal witnesses, the other witnesses having turned hostile, the prosecution was placing reliance on the evidence of PWs 22, 24, 26, 50 and 65. Therefore, we are required to examine whether the evidence of these witnesses would unerringly lead to a presumption that the sequence of events as narrated by the prosecution stood established.

Insofar as the contention of the prosecution that Sheetal had in fact been met by accused no.1 at 5.30p.m. at the Ganesh temple on Hindalga road is concerned, the evidence of PW. 16, who was a passenger in a bus and PW.17, the conductor of the bus are examined. They have stated that they recognised Sheetal who had travelled on the bus and got off the bus at 5.30 p.m. at Ganesh Temple. They

however do not speak of having noticed accused no.1 being present at the bus stop. Thereafter, the evidence of PW.22 who has stated that she is a neighbourer of accused no. 4 and she had come out of the house at 5.30 a.m., when she saw the accused no.1 bring the woman to the house of accused no. 4 and go inside and then again, when she made a purchase of coconut and was coming back to her house, she had noticed accused no.1 had come out alone and he was going away in his car. Therefore, it was presumed that he had left Sheetal behind. She had further stated that she had noticed the Honda City Car and the Maruti Car parked in the backyard of the house of accused no.4, of which she had a clear view from her kitchen window. According to her, from the kitchen window of her house, she had a clear view of the backyard of the accused no.4 and she was aware that accused nos.2 to 5 and 7 were present in the house when Sheetal was brought there by accused no.1 and later in the evening, she had found that the volume of Television set in the house of accused no.4 was apparently turned up full volume and she was under the impression that there may be a function in the house of accused no.4. It is only later on the next day at about 5.30p.m., after she went to town and came back, at 10p.m. she had come into the kitchen to wash the vessels at which time, she saw accused nos.2,3,5 and 7 come out of the house with a bundle and had placed the same in the boot of the Honda City car. Accused nos.2 and 5 had left in the Maruti Car whereas the other accused had gone in the Honda City car. And it is this evidence coupled with the evidence of PW. 24, who was another neighbourer facing the front door of the house of accused no. 4, who had noticed the presence of the accused in the house of accused no.4 off and on. It is on the basis of these two star witnesses that the prosecution seeks to establish the presence of the accused and the presence of the deceased at the relevant point of time.

Further, insofar as the other witnesses examined, is concerned, PW. 18 was the manager of a lodge, who had seen accused nos.1,2 and 7 visiting a bar known as O.S Bar situated opposite his lodge and to establish that they were acquainted with each other and that they were moving around.

PW.26 is another witness namely, the manager of a printing press, who lived in the vicinity of the house of accused no.4 and it is his case that he had seen the

Honda City Car being used by accused no.7 parked in the backyard of the house of accused no.4 as also the Maruti Car being parked there. The Maruti Car being parked there.

PWs. 14 and 15 are the father of the deceased and the uncle of the deceased, respectively, who have sought to support the case of the prosecution by stating that they were aware of the affair of accused no.1 with accused no.6 and inspite of their advice, the affair had continued and that there was animosity between accused no.1 and Sheetal over the affair that was on.

PW.14 has spoken about the recovery made from the accused and he had also identified the clothes that were found in the plastic bag of the deceased as being that of his grand children and that of his daughter.

The other circumstance which is sought to be established by the prosecution was that a large sum of money of Rs. 9,00,000/- was obtained by accused no.1 pursuant to the sale of certain property and that he had used this money to engage the services of accused nos. 2,5 and 7 in committing the murder of Sheetal and that recovery of Rs. 2,50,000/- was made from the accused no.1 himself. It was also sought to be established that he had withdrawn this money according to the evidence of PW.50 who was the manager of a bank, who had deposed to the effect that the money was withdrawn by the accused just prior to the incident. Hence, the prosecution sought to contend that he had used that money to pay the accused. This was further sought to be established by reference to the circumstance that the wife of accused no.5 had discharged a loan of Rs. 15,000/- immediately on the date of the incident probabilsing the fact that the accused had received a large consideration for committing the murder of Sheetal.

There is also evidence of PW.47 to the effect that the father of accused no.2 had also repaid a loan of a certain sum on 11.08.2007, that is on the very day it was alleged that Sheetal was done to death.

Incidentally, PW.49 was the Sub-Registrar, who had deposed to the effect that there was a sale executed by accused no.1 in favour of the son-in-law of PW.35, who has deposed that his son-in-law had purchased the property from accused

no.1 on payment of a sum of Rs.9,00,000/-, though the sale consideration under the sale deed was shown as Rs.7,50,000/-.

It is on the basis of this evidence, apart from the evidence of panch witnesses who have all affirmed the recoveries made from the several accused. The recovery said to have been made from accused no.1 is a cash of Rs. 2,50,000/-, one mobile phone and a Maruti Car and from accused no.2, another mobile phone. A ring which was said to be that of the deceased, as identified by PW.14, was recovered in the presence of panch witnesses and a plastic bag containing the clothes of the children of Sheetal and her own was identified by PW. 14 and it was at the instance of accused no.3 that the plastic bag was said to have been recovered from the spot where the dead body was found. From accused no.4, a television set that was in his house was seized and that at his instance, a vanity bag belonging to Sheetal was also recovered from near the spot. A ring set with a white stone that was seized from his house which was identified by PW.14 as belonging to Sheetal and it carried the initial of the letter 'R', a possible reference to the name of Ravindranath Chougule, who was accused no.1

On the basis of this evidence, the prosecution has sought to establish the charges against the accused.

It is the settled legal position that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established. 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. The circumstances should be of a conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved. And 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. (See: Hanumant Govind Nargundkar vs. State of Madhya Pradesh, AIR 1952 SC 345; Sharad Birdhichand Sarda vs. State of Maharashtra, (1984)4 SCC 116; State of Raj as than vs. Rajaram, (2003)8 SCC 180).

If we are to interpret the evidence of the said witnesses examined by the prosecution, the last seen theory is established not with reference to the evidence of PW.16 and 17. Though they have claimed to have seen Sheetal get off at the bus station at Ganesh temple on Hindalga road, they have not stated that she was received by accused no.1. For the last seen theory, it is the evidence of PW.22 which may be relevant. She has stated that she saw accused no.1 and Sheetal come to the house of accused no.4 and then she had again seen accused no.1 leaving alone possibly leaving Sheetal behind. She has thereafter not seen Sheetal except that she suspected something amiss. It is only after the news of the murder and the discovery of the dead body etc, was publicised in the local news papers that PW.22 has come out with the version that on 11.08.2007, she had heard the Television set being played at a high volume and she had not heard any cries or other sounds of a struggle for her to suspect that Sheetal was being raped and murdered It is again presumed by her that on the next day, at about 10p.m., when she was in the kitchen, she had seen the accused carrying a bundle in their car, which was presumed to be the dead body of Sheetal. Beyond this, there is no evidence to clearly implicate the accused of having raped and then having murdered her.

The first and foremost requirement of the prosecution to establish the motive behind the murder is that accused no.1 and 6 were having an affair and since Sheetal had raised objection about the same, accused no.1 and accused no.6 had plotted to do away with Sheetal and therefore, had hired the services of accused nos.2 to 5 and 7 to commit the murder of Sheetal for a consideration. Therefore, the motive would have to be established with appropriate evidence. The evidence that is produced by the prosecution is the call record sheet of M/s Reliance, a Service provider, who had furnished the details of the calls exchanged between the cell phone of accused no.1 and purportedly that of accused no.6.

It is the case of the prosecution that from the innumerable calls that were exchanged between accused no.1 and 6 on the fateful day, it was evident that there was a constant communication in order to carry out the sordid act with the help of accused nos.2 to 7. The assertion of such an affair going on between accused nos.1 and 6 is stated by PWs.14 and 15. There are no independent

witnesses examined to establish that there was indeed a love affair between accused no.1 and 6. No independent witness has come forward to say that they were seen moving together and they were spending time together except the say of Pws.14 and 15.

PW.14, the father-in-law of accused no.1 did not have any suspicion of the involvement of accused no.1 or commission of such murder at all. It is only after the discovery of the dead body and after further investigation, he has come out with the version of a love affair and the accused no.1, possibly having engaged the services of accused nos.2 to 5 and 7.

Further, the prosecution has also not placed any evidence to demonstrate that accused nos.2 to 5 and 7 were hired killers who were employed in such activities in any earlier case. There is no such evidence before the court.

Further, the evidence of PW.24, 26 and 18 to the effect that accused no. 1 was constantly seen in the company of the other accused would not indicate that he would be moving around with hired killers, even if his real intention was to carry out the same surreptitiously and in secrecy. It could not be expected that a person engaging the hired killers to be seen moving around with them. This is another circumstance which is not explained by the prosecution. If indeed they were hired killers it is also inexplicable that he would bring Sheetal to the house of accused no.4 and leave her behind and whether she would have tamely stayed behind in the company of strangers, if they were all not known to each other. Therefore, the motive of accused no.1 in having hired accused no.2 to 5 and 7 to murder Sheetal is not made out with any palpable evidence, except the say of PWs.14 and 15. The call details that are furnished is not admissible in evidence, as is the settled law by the apex court.

The learned Additional State Public Prosecutor would readily admit that it is not admissible evidence as any such evidence would have to be placed before the court through a competent officer and the witness examined in support of the call details was not a competent officer. In that view of the matter, it cannot be said that the prosecution has succeeded in establishing the motive which was the most crucial aspect of the matter in proceeding on the presumption that there may have

been a conspiracy to commit the murder of Sheetal.

Coming to the incident itself, the prosecution has put forward a case as to the manner in which the offence was committed, in that, a sketch of the house of accused no.4 is provided a bird's eye view of the several rooms and halls and the spot at which the murder was indicated as having committed. This is a reconstruction based on the voluntary statements of accused nos.1 and 2 and nothing more. Therefore, proceeding on the voluntary statements of accused nos.1 and 2, it cannot be said that the offence was committed in a particular manner as sought to be canvassed by the prosecution in the absence of other tell-tale evidence of such commission of the offences in the house of accused no.4. It is not the case of the prosecution that there were signs of struggle in the house of accused no.4 or that there was other material evidence to indicate that Sheetal had put up a fight and there were injuries on the various parts of her body and that there were signs of rape on Sheetal, to presume that she had been raped and smothered before being strangled.

The medical or the post-mortem report would indicate that there were four injuries on the body of Sheetal, which are as follows:

Ligature marks over the neck with complete circumference transversely tied.  
Thyroid and Hyoid bone fractured.

Lacerated wound over the right cheek oval in shape 2" x 1 1/2" x 2cm (deep)

Lacerated wound over the left cheek, oval in shape at Temporomandibular region measuring 1 1/2" x 1 1/2" x 1 1/2" cm. Deep.

Both the ear pinnas were lacerated

Insofar as the evidence of rape is concerned, the prosecution seeks to rely on a finding as to the vaginal smear of the deceased having been examined and being deduced that spermatozoa which was found on the smear as being of blood group 'A'. It is further surmised that since accused no.2 also had the blood group 'A', it was possible that he had left behind some sperm in the continued rape on the deceased. This presumption again is not very sound as the ejaculate of a healthy

man would carry millions of sperm and since she was a married woman, a sperm being found in her vagina is not unusual and it could not then be deduced that the single sperm that was found in the vaginal smear would be on account of rape being committed and the ejaculate being that of accused no.2. This is a wild surmise which cannot be sustained.

Therefore, the story of rape can also be ruled out as there is no further evidence of the pubic hair of any accused being found in the area of the sexual organs of the deceased or other sign of any intercourse by any of the accused with the deceased and on top of it, it was found that she was fully clothed with even her panty on, when she was found dead. It is not possible to imagine that she had been undressed raped, and murdered and again fully dressed before being dumped in the canal. This sequence is beyond one's imagination.

The further allegation that she was possibly murdered by being smothered with a pillow which was produced and marked in evidence as Exhibit MO. 23 is also not conclusive. In that, there is no sign of any blood or other evidence being available as to the pillow having been used to smother Sheetal to death. There is also no evidence produced to indicate the material used to strangulate her, when there was indication of Sheetal having been strangulated and the cause of death being asphyxia on account of strangulation.

It is also not explained as to how the bite mark was found on the cheek of Sheetal which is the injury described at item no.3 above; It was not attempted to be reconstructed by establishing that the bite mark was caused by any of the accused, for scientifically it was quite possible for a bite mark to be correlated with the structure of the teeth of the accused. This exercise has not been carried out. Strangely, the post-mortem report did not contain crucial details like the possible time of death and the cause of injuries, whether there was any sign of rape etc., and it is as if as an after-thought the said details furnished by the Medical Practitioner and only on the request made by the Inquiry Officer several months after the Post-mortem report was furnished. This again appears to be a crucial lapse on the part of the authorities in proceeding with the investigation and collecting crucial details in bringing home the charges against the accused.

Therefore, the sequence of events from the time Sheetal was missing, namely, around 5.30p.m., on 11.08.2007 and when she was last seen by PWs.16 and 17 and again by PW.22, as stated by the prosecution, along with Accused no.1 and her disappearance thereafter and her body being recovered on 13.08.2007 and the whereabouts of Sheetal and the manner in which she has met her death is left to one's imagination and if we are to accept the case of the prosecution and the manner in which the sequence of events are narrated, it is clearly with reference to the voluntary statements of accused nos.1 and 2 and there is no other evidence which would clearly bring out the sequence of events without any link missing in the manner in which the incident has occurred.

Therefore, it is extremely difficult for this court to accept that the chain of events has been established unerringly. The reliance is placed on the evidence of PWs.22 and 24, who is said to have seen the accused persons is the sheet anchor of the prosecution's case.

On the other hand, PW.24 in fact has not stated about the presence of Sheetal in the house of accused no.4. Hence, the sole witness who has spoken about the presence of Sheetal, that too on the evening of 11.08.2007 is only PW.22. It is indeed a strange coincidence that PW.22 has kept a watch on the house of accused no.4 and has been able to mention the crucial time and date of their acts, which clearly indicates that she wanted to support the case of the prosecution and has ensured that the sequence of events matched the case put forward by the prosecution for otherwise, there is no other independent evidence to establish the movements of the accused in the manner that is sought to be projected.

The other lacuna that can be found in the case of the prosecution is the fact that the sale deed said to have been executed by the accused and the proceeds being used in paying off accused nos.2 to 5 and 7 to commit the murder of Sheetal, is also not established with certainty. It is pointed out from the record that the sale deed executed by the accused was not on his behalf but he had executed the sale deed as a power of attorney holder or an agent of the actual owner of the land. Therefore, it is not evident that the proceeds of the sale was available with the accused to use for this illegal purpose of financing the contract of killing Sheetal.

This is not established with satisfactory evidence. For there is no dispute that there is a homicidal death and that it was Sheetal who was murdered. The fact whether it was at the instance of accused no.1 and whether accused no.2 to 5 and 7 were indeed involved in the commission of the offence falls into a grey area, which is not supported by acceptable evidence and the long gaps which are not explained, as for instance, PW.22 who had last seen Sheetal along with accused no.1 on the evening of 11.08.2007 and her next surmise that it was at 10p.m. on 12.08.2007 her body was removed by the accused in the Honda City Car etc., is a long period during which any event could have happened of which PW.22 was not capable of endorsing with any certainty.

The next claim of PW.22 that after seeing Sheetal on the evening of 11.08.2007 she had not seen Sheetal again and she did not even know that it was Sheetal and it is only later when news items appeared in the local newspapers that she had realised that the affair could have taken place in the house of accused no. 4 and it is on this basis that the prosecution had sought to piece together the sequence of events with reference to the voluntary statements of accused nos.1 and 2 and the evidence of PW.22. This cannot be said would explain the missing links and the movements of the accused during the entire period between 11.08.2007 and 13.08.2007 when the body of Sheetal was recovered.

Insofar as the recovery of a plastic bag containing the clothes of the children of Sheetal and herself and a vanity bag which was recovered at the instance of the accused, according to the prosecution, is also inconsistent. In that, it was the voluntary statement of the accused that after having dumped the body of Sheetal in the canal, they had then thrown the vanity bag and the plastic bag containing the clothes about 3 kilometres away from the spot. However, the panch witnesses who have spoken about the recovery have stated that the plastic bag containing the clothes was about 10 feet away from the body and yet another states that it was about 100 feet away from the dead body.

Insofar as the vanity bag is concerned, this is again recovered from the forest area. The inconsistencies in this regard would again place the recoveries in the area of suspicion as to the actual manner in which it was recovered and whether it

was at the instance of the accused. Though circumstantial evidence coupled with the recovery of incriminating material from the possession of the deceased would certainly bring home the charges, it would be necessary first of all, to establish the circumstantial evidence. Recovery by itself would not be sufficient to bring home the charges. This is the settled legal position.

Therefore, if the circumstantial evidence is held not sufficient to bring home the charges against the accused, it would then not be possible to sustain the charges merely on the basis of the recovery said to have been made. And even the recoveries made of the two rings, recovered from accused no.3 and accused no.5 are concerned, they are identified by PW.14. Insofar as accused no.5 is concerned, the trial court has thought it fit to conclude that on the footing that a panch witness, who had identified the ring had not stood by his statement and therefore it was not established and no case was made out of his involvement in the incident.

Insofar as the ring recovered from accused no.3 is concerned, though it has been identified by PW.14 as that of the deceased Sheetal, there is no other evidence to establish that the ring did indeed belonged to Sheetal. Mere identification by PW.14 could not be held to be sufficient. For this witness was not living along with accused no.1 and his daughter, but he was able to identify not only her saree, but even her under clothes. This is certainly not acceptable. For a father to be able to identify the under clothes of his married daughter, who is not living along with him, is highly impossible. The prosecution would have done well to avoid this kind of evidence being tendered. In any event, such being the statements of the said witness, the identification of the ring by PW.14 again loses its credibility. In that view of the matter, mere recovery of a mobile phone or the car or the Television set would by itself not establish any case against the accused.

The claim that at the instance of the accused, a plastic bag containing the clothes and a vanity bag had been recovered, as already stated, is also not established with any certainty. Consequently, it cannot be said that the prosecution has made out a case against the accused beyond all reasonable doubt.

The learned State Public Prosecutor has placed reliance on several authorities to contend that the circumstantial evidence and the manner in which it should be appreciated would have to be held in favour of the prosecution in the present case on hand.

Firstly, he has referred to a decision in *Manivel and others vs. State of Tamil Nadu*, (2009)2 SCC (Cri) 924, in seeking to assert the proposition and seeks to place reliance on paragraphs 14 and 15. However, the facts of that case were that between 10p.m., on 10.08.1989 and 4 a.m. on 11.08.1989, the appellants are said to have murdered one .Mugamuni by strangulating him to death and throwing his dead body into a well to screen themselves from the offence. The motive for the crime was said to be the grievance which accused no. 1 had against the deceased, because the deceased had married one Nallangal and the said Nallangal had an illicit relationship with accused no. 1 and which relationship continued even after marriage. The deceased was last seen in the company of accused nos. 1 to 5 at about 4a.m on 10.08.1989. When PW.4 questioned the accused as to why they are taking the deceased along with them, they answered that they were going hunting. They were said to be armed with sticks. The deceased was not seen alive thereafter. At about 4a.m, when they were again seen by PW.8, they told that they were returning after hunting. And the deceased was not with them. Therefore, as regards the last seen theory and the conviction based on circumstantial evidence, the Supreme Court had held that the conviction of the appellants under section 302 and the sentence of life imprisonment imposed did not call for interference. The facts of the said case cannot be said to be same as in the present case on hand. Therefore, the law laid down therein on the other hand, would militate against the prosecution, for the Supreme Court in Paragraphs 14 and 15, which the learned Additional State Public Prosecutor seeks to rely upon, which is reproduction of the observations in *Hanumant Govind Nargundkar vs. State of Madhya Pradesh*, AIR 1952 SC 34.3, is to the following effect:

"... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the

circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

The above observations in fact would militate against the case of the prosecution.

Similarly, reliance is placed on a decision in *Paramashivam and others vs. State*, AIR 2014 SC 2936. In the said case, the deceased Mani had taken lease of lands belonging to PW.3 and PW.6. Accused no. 6 was the neighbouring land owner. Since accused nos.1 and 6 threatened the deceased not to quarry certain stone, the deceased had filed a civil suit for permanent injunction restraining accused no. 6 and PWs.3 and 6 from interfering with the quarrying. There was animosity between the deceased and the family of accused no.6.

About 10 days prior to the date of occurrence, accused no.1 and accused no.6 and accused no.7 are said to have threatened the deceased. About four days prior to the date of occurrence accused no.2 and another person had approached the deceased for purchase of stone and since it was late in the night, the deceased had refused to accompany them and asked them to come on some other day. Accused no.2 and another had approached the deceased on 18.01.2004 and asked for stones and the deceased accompanied the accused to the quarry. PWs 1 and 2 witnessed that the deceased went along with accused no.2 and accused no.3. On the same day, namely, 18.01.2004, PWs.8 and 9 who were returning from the petrol pump, saw a white coloured Maruti van parked on the road side. Pw.9 saw the deceased and accused no. 1 sitting inside the Maruti van. On the next day, i.e., 19.01.2004, PW.23 saw the dead body of the deceased on the railway track and had informed the police. It is on the basis of these circumstances, that the accused were charge-sheeted on the ground of last seen theory. It was held that the appellants had murdered Mani and the guilt of the accused had been proved beyond all reasonable doubt. This is again not established in the present case in a similar fashion as the circumstantial evidence

falls short of establishing the long chain of events as sought to be projected by the prosecution.

In *Geejaganda Somaiah vs. State of Karnataka*, AIR 2007 SC 1355, in support of the charges having been brought home on the basis of the recoveries. The facts of that case would indicate that one Chengappa - the deceased, his wife - PW.1 and the accused and most of the witnesses were residents of Garvale village. The accused and the deceased were related. According to the prosecution, Geejagandha family to which the accused and the deceased belonged, owned 348 acres. Out of the same, donation of about 48 acres was made and the remaining area was with the family. There were six sharers in possession of the said remaining area and the deceased was claiming equitable partition and a share in the family land which was opposed by the accused. This had ultimately resulted in the murder of the deceased on 23.09.2005 at about 8p.m. It was noted that there was no dispute that on 21.09.1995, that is, two days before the incident, the Revenue Inspector had visited and inspected the family lands on the request of the deceased, in the presence of the accused on the same day. The accused no. 1 had voluntarily appeared before the Investigation Officer and surrendered. He was taken into custody and on his voluntary statement recoveries were made of a gold chain, a ring and a weapon alleged to have been used in the commission of the offence. These were seized in the manner known to law and his statements on the basis of which the recovery was made were also marked in evidence in line with Section 27 of the Evidence Act, 1872. It is on that basis that the court below had found the appellant guilty. The Supreme Court has refused to interfere with the sentence and conviction. The said case again would turn on the facts of that case and cannot be applied to the present case on hand.

Further, in *Suresh and another vs. State of Haryana*, 2015 CrLJ 661, the facts were that the deceased Devender and his son deceased Abhishek left their factory for home, but did not return home. At about 9.41p.m., when PW.12, the daughter of Devender Chopra gave a call to her father to find out why he was late. She learnt that her father and brother had been kidnapped and a ransom of Rs.50.00 lakh was demanded for their release. She contacted her father's business partner informing him that Devender Chopra and Abhishek Chopra were kidnapped and

the kidnappers had demanded Rs.50.00 lakh on telephone. The kidnappers also talked to the wife of the deceased Devender Chopra at 11a.m., demanding ransom money. There were frequent calls from the kidnappers, which was recorded on audio cassettes. Since the family could not fulfill the demand and offered to pay only Rs. 10.00 lakh, which was not accepted by the kidnappers, the negotiations had continued. The Police were not informed out of fear. But when the kidnappers did not release the victims and finding no way, the matter was reported to the police on 24.12.2000 at 5a.m. The statement of PW.2 was recorded who deputed police officials at a nearby STD booth and had found the accused near a STD booth on Jawala Petrol Pump on Jaipur Highway and he overheard one of the accused telling another that ransom payment not to be reduced below Rs.25.00 lakh. Thereafter, the accused were apprehended. A slip carrying the residential phone number of Devender Chopra was recovered from one of the accused, Manmohan. The accused Ashok had made disclosure statement, Exhibit PS. That Devender Chopra and Abhishek Chopra had been killed and their bodies were thrown in the gutter in Sectors 39 and 46. The mobile phone of Devender Chopra was kept concealed in the house of the accused. The accused Manmohan made similar disclosure statement and that he had concealed the Car of the deceased in his house and a knife in his rented house at Sohna. The accused Suresh had made similar statements and that he had concealed the mobile of the deceased at the shop of his brother at Sohna. The accused Mahesh made a similar disclosure statement and that the suit case of the deceased was concealed in his old house. Accordingly, the recoveries were effected.

In the facts of that case, the accused having been found guilty cannot not be faulted. The principles relating to the manner in which circumstantial evidence and the recoveries could be interlinked in sustaining the case of the prosecution has been reiterated in the said decision as well. All of which militate against the prosecution in the present case on hand and would in fact assist the accused In making out a case for acquittal. Therefore, on an over-all view of the material on record and the facts and circumstances as demonstrated from the evidence of the prosecution, it cannot be said that the charges have been proved beyond all reasonable doubt inviting conviction and sentence.

Consequently, the appeals in Crl.A. No.2761 of 2012, Crl.A. No.2766 of 2012, Crl.A. No.2791 of 2012, Crl.A. No.2793 of 2012 and Crl.A. No.2794 of 2012 are allowed. The accused are acquitted. The accused shall be set at liberty forthwith. The operative portion of the judgment to be transmitted to the Jail authorities, forthwith. The amount of Rs. 2,25,000/- that has been seized from the custody of accused no. 1 shall be returned to him.

The appeals in Crl.A.2839 of 2012 and Crl.A. No.2537 of 2013 are dismissed.

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