RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (DB) No. 142/2022
CNR: RJHC020474732022 | URN: CRLAD / 231U / 2022

Kalaam S/o Saleem, R/o Nayak Mohalla, Baharli, Bundi, P.S. Kotwali Bundi (Rajasthan)
(presently confined in District Jail, Bundi)

----Accused/Appellant

Versus

The State of Rajasthan through P.P.

----Respondent

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Connected With

D.B. Criminal Appeal (DB) No. 112/2022
CNR: RJHC020394272022 | URN: CRLAD / 192U / 2022

Vishnu Nayak S/o Bhanwarlal Nayak, R/o Opp. Tejnarain's home, Gurunanak Colony, Police Station Kotwali District Bundi (Rajasthan) (Presently confined in District Jail, Bundi)

----Accused/Appellant

Versus

State of Rajasthan through P.P.

----Respondent

D.B. Criminal Appeal (DB) No. 143/2022
CNR: RJHC020442972022 | URN: CRLAD / 232U / 2022

Lokesh @ Mongya S/o Shri Lalugiri Goswami, R/o Chouthmal Gurjar ka makan, Baharli Bundi, Thana Kotwali, District Bundi (Raj) (presently confined in District Jail, Bundi)

----Accused/Petitioner

Versus

State of Rajasthan through P.P.

----Respondent

For Appellant(s)	:	Ms. Savita Nathawat with Mr. Amar Kumar Mr. Timan Singh with Mr. Rakesh Saini for Mr. Sanjay Mehrish Mr. Mohd. Haris for Mr. Kumud Singh
For Respondent(s)	:	Mr. Amit Kumar Punia, P.P.

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Judgment

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Date of Conclusion of Arguments : : **28/10/2026**

Judgment Reserved On : : **28/10/2026**

Whether the full judgment or only the operative part is pronounced : : **Full Judgment**

Judgment Pronounced On : : **04/11/2026**

Per Hon'ble Mahendar Kumar Goyal, J.

By way of the aforesaid appeals, the accused-appellants (for brevity, "the appellants") have assailed the legality and validity of the judgment of conviction and the order of sentence dated 04.05.2022 passed by the learned Additional Sessions Judge No.1, Bundi (Rajasthan) (for short, "the learned trial Court") in Sessions Case No.86/2017, whereby while acquitting them of the charge under Section 365/34 IPC, the appellants have been convicted and sentenced as under:-

1. Section 302/34 IPC: Life imprisonment and fine of ₹20,000/- each; in default whereof, two months' additional simple imprisonment.

2. Section 201 IPC: Ten years' simple imprisonment.

3. Section 397/34 IPC: Life imprisonment and fine of ₹10,000/- each; in default whereof, one month's additional simple imprisonment.

4. Section 120-B IPC: Ten years' simple imprisonment and fine of ₹10,000/- each; in default whereof, one month's additional simple imprisonment.

All the sentences were directed to run concurrently.

Briefly stated, the relevant facts are that Devlal submitted a written report dated 09.02.2017-Exhibit P.2 at Police Station Sadar Bundi, District Bundi, stating therein that at about 10:00 AM on

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that day, he received a telephonic message from Dayaram, the ex-Sarpanch, that a dead body of a man, who could be a resident of Silor, was lying near Devpura, Nimach Eye Hospital. It was averred that when he reached Nimach Eye Hospital, on a vacant plot near Riddhi Siddhi Marble, he found the dead body of his younger brother-Shankar S/o Dhanna. It was suspected that his brother was murdered by inflicting an incised injury on his neck with a sharp-edged weapon. It was also stated that his brother had not returned home since the morning of 08.02.2017. Based thereon, FIR No.65 dated 09.02.2017 was registered for the offences under Sections 302 and 201 IPC. After investigation, the appellants were charge-sheeted under Sections 302, 201, 120-B, 365 and 397 read with Section 34 IPC whereunder charges were also framed against them. The appellants pleaded not guilty. After trial, they have been convicted and sentenced, as stated hereinabove.

Assailing the impugned judgment, Shri Mohd. Haris, the learned counsel for the appellant- Lokesh @ Mongya, contended that he has been roped in the crime on the basis of the recovery of a mobile phone allegedly belonging to the deceased, but the prosecution did not lead any evidence to establish that the mobile phone belonged to the deceased. Inviting the attention of this Court to the findings recorded by the learned trial Court in this regard, learned counsel canvassed that the Call Detail Records (hereinafter referred to as "the CDRs") of the Mobile No.968XXXX579-Exhibit P.34 allegedly belonging to him, the Customer Application Form (for brevity, the "CAF")-Exhibit P.36 and the certificate purportedly issued under Section 65-B of the Indian Evidence Act, 1872 (for short, "the Act of 1872") were

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relied upon without appreciating that the same could not be proved by the prosecution in accordance with law. Elaborating on his submissions, learned counsel asserted that the Nodal Officer from the Service Provider was not examined to prove either the CAF or the Certificate under Section 65-B(4) of the Act of 1872 in absence whereof, the documents were inadmissible in evidence.

Learned counsel further argued that similarly, the learned trial Court has relied upon the CDRs of the mobile number allegedly used by the deceased, i.e., Exhibit P.35 and Exhibit P.38, but did not appreciate that the prosecution could not prove that these mobile numbers belonged to or were being used by the deceased. He further asserted that the CDRs were not supported by any certificate under Section 65-B(4) of the Act of 1872. He contended that though the prosecution had relied upon a document-Exhibit P.33 to demonstrate that the mobile phone of the deceased was being used by the appellant after the murder, but the learned trial Court failed to appreciate that neither was the CAF produced by the prosecution to prove that the subject mobile number belonged to the deceased, nor was the Circle Nodal Officer who had allegedly issued the Exhibit P.33, examined to prove it.

In the aforesaid factual context, Shri Mohd. Haris prayed that the finding of conviction recorded against the appellant-Lokesh be quashed and set aside.

Ms. Savita Nathawat, the learned counsel for the appellant-Kalaam, submitted that his involvement in the crime was found by the learned trial Court on the strength of the following incriminating pieces of evidence:-

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1. Discovery of the place from where the deceased was picked up by the appellants and the place where he was murdered;
2. Recovery of currency notes worth ₹6,700/-; and
3. Recovery of his blood-stained shirt and the weapon of offence, i.e., a knife.

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With regard to the discovery of the place from where the deceased was allegedly picked up by him along with the co-accused, on the basis of his disclosure statement-Exhibit P.40, the learned counsel, inviting the attention of this Court to Exhibit P.8, the Site Plan, contended that it was shown therein that the deceased was picked up by the appellants from a place marked "A" which is an English Wine Shop; however, neither any salesman nor any other employee of the shop was examined to lend credibility to the prosecution case that the deceased and the appellants had purchased liquor from the shop, consumed it together, and thereafter, the appellants took the deceased on a motorcycle and murdered him in a vacant plot at the place marked "Z".

With regard to recovery of a sum of ₹6,700/- at his instance, Ms. Nathawat submitted that it was admitted by Abhishek Pareek (PW-19), the Investigating Officer, that the currency notes neither were blood-stained nor carried any special identification mark.

Qua the recovery of his blood-stained shirt and the weapon of offence, i.e., a knife, at his instance, the learned counsel, drawing the attention of this Court to the Seizure Memo-Exhibit P.9, canvassed that the recoveries were from an open yard inside

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the house which was alleged to be owned by him, but the prosecution did not lead any evidence to substantiate the plea of ownership. She further contended that although, in the FSL Examination Report-Exhibit P.47, human blood group "B" was found on the shirt and the knife as also on the clothes of the deceased and the Aadhaar Card of the deceased seized from the scene of crime; but, this fact alone was not sufficient to warrant his conviction.

In view of the above, Ms. Savita Nathawat prayed that the impugned judgment of conviction be quashed and set aside qua the appellant-Kalaam.

Shri Timan Singh, the learned counsel for the appellant-Vishnu Nayak, submitted that his complicity in the crime was found only on the basis of recovery pursuant to his disclosure statement of a motorcycle allegedly belonging to the deceased. Referring to the Seizure Memo-Exhibit P.12 and the Site Plan-Exhibit P.13, he contended that the recovery was from an open place accessible to outsiders. He further argued that the prosecution did not lead any evidence to establish that the subject motorcycle belonged to the deceased or his father, as claimed. He, therefore, prayed that the finding of his conviction may be quashed and set aside.

Per contra, learned Public Prosecutor Shri Amit Kumar Punia, while opposing the submissions and supporting the findings recorded by the learned trial Court, canvassed that the prosecution had established a complete chain of circumstances leading only to the hypothesis of guilt of the appellants. He submitted that the findings of the learned trial Court are well

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reasoned and based on sound legal principles and cogent material available on record. He, therefore, prayed for dismissal of the appeals.

Heard. Considered.

As per the evidence available on record, the dead body found lying in a vacant plot was identified as that of Shankar, brother of the complainant-Devlal.

The postmortem report of the body of the deceased Shankar-Exhibit P.18 shows an incised wound on the neck horizontal at the level of below larynx 11 cm long muscle and vascular and tracheal deep 2 cm wide with regular margin with dry wound.

On dissection, trachea, larynx, right carotid artery and jugular vein were found to be severed. The injuries were antemortem in nature and cause of death was found to be shock and hemorrhage resulting from neck injury. The postmortem report was proved by Dr. D.D. Meena (PW-11) and Dr. Amar Sharma (PW-12), the members of the Medical Board which conducted the autopsy. From the aforesaid evidence, it stands established that it was a case of homicidal death, a proposition not even disputed by the learned counsel for the appellants.

In the absence of any direct evidence, the prosecution case hinges solely on circumstantial evidence. In the much celebrated judgment in **Sharad Birdhichand Sarda Vs. State of Maharashtra: (1984) 4 SCC 116**, their Lordships laid down the following five golden principles to be applied while adjudicating cases based on circumstantial evidence:

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

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

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It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra MANU/SC/0167/1973: 1973 CriLJ 1783 where the following observations were made:

> Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
> (3) the circumstances should be of a conclusive nature and tendency.
> (4) they should exclude every possible hypothesis except the one to be proved, and
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

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If the evidence in the instant case is examined on the touchstone of the aforesaid principles laid down by the Hon'ble Supreme Court of India, we arrive at the following conclusions:-

Indisputably, there was no evidence of 'last seen' and the prosecution case relied only upon the recovery of incriminating evidence from the appellants pursuant to their disclosure statements made under Section 27 of the Act of 1872.

Vide impugned judgment, the learned trial Court has convicted the three appellants, namely, Kalaam, Vishnu Nayak and Lokesh @ Mongya. For convenience, we would like to take up the appellants' cases individually and separately.

Appellant-Kalaam

The learned trial Court found him to be involved in the crime on the basis of the following circumstantial evidence:-

1. Discovery of the place from where the deceased was picked up by the appellant and the place where he was murdered;
2. Recovery of currency notes worth ₹6,700/-; and
3. Recovery of his blood-stained shirt and the blood-stained weapon of offence, i.e., a knife.

Insofar as the discovery of place from where the appellant picked up the deceased is concerned, though, the learned trial Court has acquitted the appellants of the charge under Section 365/34 IPC, but it was held that the deceased was picked up by them from the place marked "X" in the Site Plan-Exhibit P.8 chalked out on verification by the appellant. However, this Court is not convinced that the corresponding information under Section

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27 of the Act of 1872-Exhibit P.40 led to discovery of a new fact. As a matter of fact, except chalking out of Exhibit P.8, there is no other material on record to show and prove that the appellant had picked up the deceased from the place marked "X" in the Site Plan. In the Site Plan, an English Wine Shop is shown at the place marked "A" from which as per the prosecution case, the deceased and the appellant had purchased liquor and consumed it, but conspicuously, neither any sales person nor, any other employee of the shop was examined to lend credibility to the prosecution story.

With regard to discovery of the place where the deceased was murdered, the disclosure statement is dated 13.02.2017, whereas the Site Plan of the scene of crime, i.e., Exhibit P.3, had already been chalked out on 09.02.2017 and, therefore, the disclosure statement of the appellant led to no discovery of a new fact as the scene of crime was already within the knowledge of the prosecution.

In the conspectus of the aforesaid analysis, we are not convinced that the disclosure statement of the appellant-Exhibit P.40 dated 13.02.2017 led to discovery of any new fact and, therefore, could not have been treated as an incriminating piece of evidence against him.

Another incriminating piece of evidence relied upon by the learned trial Court against the appellant was of the recovery of a sum of ₹6,700/- at his instance.

Pursuant to the disclosure statement-Exhibit P.41 dated 14.02.2017, the currency notes worth ₹6,700/- each of ₹100/- denomination were seized on 14.02.2017 vide memo Exhibit P.19.

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As per the prosecution case, the aforesaid currency notes were given to the deceased by Banshi Lal (PW-5). However, in his cross-examination, the PW-5 stated that he was unaware about the denomination of the currency notes. Further, Abhishek Pareek (PW-19), the Investigating Officer, admitted in his cross-examination that the seized currency notes were neither blood-stained nor contained any identification mark. On that premise, we do not concur with the finding of guilt recorded by the learned trial Court against the appellant based on the recovery of the aforesaid currency notes in absence of any evidence that these were the same currency notes which were given to the deceased by Banshi Lal (PW-5).

We are now left with the remaining incriminating piece of evidence relied upon by the learned trial Court against the appellant, i.e., recovery of a blood-stained shirt and a blood-stained knife. Vide Seizure Memo-Exhibit P.9 dated 13.02.2017, a blood-stained shirt and a blood-stained knife were recovered from an almirah inside a room in the house of the appellant. Both the motbir witnesses to Exhibit P.9, namely, Baldev Singh and Sanwal Ram, were the Police Constables. Sanwal Ram (PW-8) stated in his cross-examination that when they went to seize the shirt and the knife in the Police Jeep from the Police Station, the departure was recorded in the daily diary but, it was not made part of the record. It raises a doubt as to veracity of the recovery. Further, he also admitted that no title document was recovered to show that the house was owned by the appellant. He also admitted that when the gate of the house was opened from inside, appellant's sister-in-law was present. The other motbir witness Baldev Singh (PW-

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16) stated in his cross-examination that the shirt and the knife were lying openly in the almirah. He professed ignorance when suggested that all family members of the appellant-Kalaam were residing in the subject house. The Investigating Officer (PW-19) also professed ignorance when suggested that all the family members of the appellant were residing in the same house.

It is evident from the aforesaid analysis that the prosecution could not prove that the place of recovery, i.e., a room in the house was under the ownership or exclusive possession of the appellant-Kalaam. It is also revealed that the subject articles, i.e., the shirt and the knife were lying uncovered and un-hidden; rather, openly in the almirah. Furthermore, although, in the FSL report-Exhibit P.47, the shirt and the knife were found to be containing "B" blood group, the same blood group was also found on the Aadhaar Card, handkerchief, shirt and the *baniyan* of the deceased but, it could not be proved that blood group of the deceased was "B".

Their Lordships have, in **Sonvir alias Somvir Vs. State (NCT of Delhi): (2018) 8 SCC 24** while dealing with an identical issue, held as under:-

> **"26.3.4.** The mere matching of the blood-group of the blood samples taken from the bedsheet at the scene of crime, and the blood-stained shirt recovered from Sonvir @ Somvir (Appellant-Accused No. 2) cannot lead to the conclusion that the appellant had been involved in the commission of the crime.
>
> **26.3.5.** On this issue, reliance can be placed on two decisions of this Court in Prakash v. State of

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> Karnataka [(2014) 12 SCC 133; paragraphs 41 and 45] and Debapriya Pal v. State of West Bengal [(2017) 11 SCC 31; paragraph 8] wherein this Court while deciding cases based on circumstantial evidence had held that mere matching of the blood group cannot lead to the conclusion of the culpability of the accused, in the absence of a detailed serological comparison, since millions of people would have the same blood group."

In the instant case, the prosecution case rests solely upon the recovery of incriminating pieces of evidence from the appellant-Kalaam and as analysed hereinabove, none of the recoveries could be proved against him in accordance with law. On that premise, we are not able to sustain the findings of his conviction recorded by the learned trial Court.

Appellant-Lokesh @ Mongya

In addition to the discovery of the places from where the appellant picked up the deceased and where he was murdered, the other piece of incriminating evidence relied upon by the learned trial Court against the appellant-Lokesh @ Mongya was the recovery of the mobile phone of the deceased.

Insofar as the discovery of the places is concerned, reasons assigned hereinabove by this Court qua the appellant-Kalaam to disbelieve the same, apply on all fours with respect to case of the appellant-Lokesh as well and, therefore, the same cannot be held to be an incriminating piece of evidence against him.

The mobile phone allegedly belonging to the deceased was seized by the Investigating Officer on 12.02.2017 vide Memo Exhibit P.17 from an almirah in the residential house of the appellant. Indisputably, no evidence, either in the nature of a

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purchase bill or otherwise, was produced by the prosecution to establish that the subject mobile was either owned or used by the deceased at the time of his death.

However, as per the Seizure Memo-Ex. P17, the phone had the following two IMEI Nos., i.e., 91144 XXXXXXX 558 and 91144 XXXXXXX 556 and it was the prosecution case that the deceased was using the following two mobile numbers on his mobile phone, i.e., 946XXXX175 and 963XXXX002. The learned trial Court has relied on the CDRs, i.e., Exhibits P.34 and P.35 of the aforesaid mobile numbers to record a finding that the aforesaid mobile belonged to the deceased.

The prosecution has produced a document-Exhibit P.33 issued by the Circle Nodal Officer, Bharti Hexacom Limited, Jaipur showing a mobile number of the deceased and a mobile number of the appellant-Lokesh Kumar.

The CDRs of the Mobile No.963XXXX002 belonging to the deceased were produced as Exhibit P.38 along with the Certificate under Section 65-B(4) of the Act of 1872 as Exhibit P.37.

The prosecution has produced the CAF-Exhibit P.36 to prove that the mobile No.968XXXX579 was issued in the name of the appellant-Lokesh.

From the aforesaid documentary evidence produced by the prosecution, it is apparent that no CAF of the mobile numbers allegedly used by the deceased in the seized mobile was produced. The prosecution relied upon a document-Exhibit P.33 to demonstrate that the Mobile No.946XXXX175 was issued in the name of the deceased-Shankar Lal. However, its perusal does not reflect nature of the document. Further, it does not establish that

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the aforesaid mobile number was issued in the name of the deceased. Moreover, neither the Circle Nodal Officer who had issued it was examined by the prosecution nor any other witness was examined to prove the Exhibit P.33.

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Further, the prosecution had submitted the CDRs of the Mobile No.946XXXX175 as Exhibit P.35 and the CDRs of another mobile number, i.e., 936XXXX002 as Exhibit P.38 supported by the Certificates under Section 65-B(4) of the Act of 1872 as Exhibits P.32 and P. 37, respectively. However, neither the Circle Nodal Officer nor any responsible officer from the Service Provider appeared in the witness-box to prove the CDRs or the Certificates issued under Section 65-B(4) of the Act of 1872. It is trite law that merely exhibiting a document does not amount to proof of the contents thereof. Therefore, in our considered opinion, the learned trial Court committed a grave error in relying upon the CDRs, i.e., Exhibits P.35 and 38, being in the nature of secondary electronic evidence, in the absence of their proof as also for want of proof of the Certificates under Section 65-B(4) of the Act of 1872 submitted alongwith them. On that premise, we have no hesitation in recording a finding that the prosecution failed to prove that the subject mobile numbers, i.e., 936XXXX175 and 963XXXX002 belonged to the deceased.

Moreover, as per the prosecution case, the appellant used the Mobile No. 968XXXX579 in the mobile phone with IMEI Nos. 91144 XXXXXXX 556 and 91144 XXXXXXX 558. To prove it, the prosecution had relied upon the CAF-Exhibit P.36, but none appeared in the witness-box on behalf of the Service Provider to prove the document. Furthermore, its CDRs were submitted as

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Exhibit P.34 with the supporting Certificate under Section 65-B(4) of the Act of 1872 as Exhibit P.32. However, as already observed, neither the Nodal Officer nor any other responsible officer appeared in the witness box on behalf of the Service Provider to prove either of the documents. In view of the aforesaid, we have no hesitation in holding that the prosecution could not prove that the Mobile No.968XXXX579 belonged to the appellant and it was used by him in the mobile phone with IMEI No. 91144 XXXXXXX 556 which belonged to the deceased.

Although, we have noted that the Investigating Officer (PW-19) was suggested during his cross-examination by the learned counsel for the appellant-Lokesh that deceased's mobile phone was recovered from Lokesh but, in our considered opinion, this suggestion itself was not sufficient to warrant a finding of conviction against the appellant-Lokesh in absence of any other incriminating evidence against him.

Dealing with a similar situation, their Lordships have, in **Balu Sudam Khalde & Ors. versus The State of Maharashtra: (2023) 13 SCC 365**, held as under:-

> "It is a cardinal principle of criminal jurisprudence that the initial burden to establish the case against the accused beyond reasonable doubt rests on the prosecution. It is also an elementary principle of law that the prosecution has to prove its case on its own legs and cannot derive advantage or benefit from the weakness of the defence. We are not suggesting for a moment that if prosecution is unable to prove its case on its own legs then the Court can still convict an accused on the strength of the evidence in the form of

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reply to the suggestions made by the defence counsel to a witness. Take for instance, in the present case we have reached to the conclusion that the evidence of the three eyewitnesses inspires confidence and there is nothing in their evidence on the basis of which it could be said that they are unreliable witnesses. Having reached to such a conclusion, in our opinion, to fortify our view we can definitely look into the suggestions made by the defence counsel to the eyewitnesses, the reply to those establishing the presence of the accused persons as well as the eyewitnesses in the night hours. **To put it in other words, suggestions by itself are not sufficient to hold the accused guilty if they are incriminating in any manner or are in the form of admission in the absence of any other reliable evidence on record.** It is true that a suggestion has no evidentiary value but this proposition of law would not hold good at all times and in a given case during the course of cross-examination the defence counsel may put such a suggestion the answer to which may directly go against the accused and this is exactly what has happened in the present case." (Emphasis supplied)

In the conspectus of the aforesaid analysis, we are unable to persuade ourselves to agree with the findings of conviction recorded by the learned trial Court against the appellant-Lokesh.

Appellant-Vishnu Nayak

In addition to the discovery pursuant to his disclosure statement of the place from where the appellant had picked up the deceased and the place where he was murdered, the learned trial Court has relied upon recovery of a motorcycle allegedly belonging to the deceased at his instance.

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Qua the discovery of the places, at the cost of repetition, we hold that the reasons assigned hereinabove with regard to other appellants apply on all fours qua the appellant-Vishnu Nayak as well. Therefore, we do not find the same to be an incriminating piece of evidence against him.

Further, a Bajaj Discover motorcycle with Registration No.RJ08 SF 3708 was recovered by the Investigating Agency on the disclosure statement vide Memo Ex. P.12 from the open verandah in the house of the appellant-Vishnu. Both the motbir witnesses to the Seizure Memo, namely, Sanwal Ram (PW-8) and Baldev Singh (PW-16) admitted during their cross-examination that the place of recovery was an open verandah with no lock on the main gate and it was accessible to all and sundry. Thus, we can safely infer that the place of recovery was not under exclusive possession of the appellant. Most importantly, the prosecution did not lead any evidence to establish that the recovered motorcycle belonged to the deceased. Though the Investigating Officer (PW-19) stated that during investigation, it transpired that the motorcycle was registered in the name of Dhanna Lal, the father of the deceased and its photocopy was part of the record but no such document was exhibited and proved. Moreover, in his cross-examination, the Investigating Officer admitted that no document pertaining to the motorcycle was seized. In view thereof, we are not convinced that the prosecution was able to establish that the motorcycle belonged to the deceased.

Indisputably, there is no evidence of last seen and the prosecution relied only upon the recoveries of incriminating evidence from the appellants. Since it is a case that rests solely

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upon circumstantial evidence, the prosecution was under an obligation to prove a complete and unbroken chain of circumstances leading only to the hypothesis of their guilt. In that factual context, even assuming that the confessional statements of some of the appellants led to the recoveries of some incriminating evidence, this circumstance standing alone is not sufficient to sustain the findings of conviction.

The Hon'ble Jharkhand High Court has, in **Sanjay Kujur vs. the State of Jharkhand, Criminal Appeal (DB) No.1359 of 2023, dated 24.04.2024,** held as under:

> **"21.** Thereafter, the only circumstance, which remains is recovery of murder weapon on confessional statement on pointing out by the appellant. In our opinion a conviction cannot be based solely on the recovery of a murder weapon. There must be some corroborative evidence to establish the guilt of the accused beyond all reasonable doubt. Confessional statement leading to recovery of weapon, stand alone, cannot be a ground of conviction. There must be other credible corroborative evidence. Even if the murder weapon is recovered and it is blood stained also, that does not prove the guilt of the accused. This single circumstance by no means can be a ground to convict the appellant. The other circumstance, except the recovery should also be looked into and there must be some chain and corroboration to convict the appellant. In this case there are no other corroborative material, rather no evidence at all.
>
> **22.** The Hon'ble Supreme Court in the case of **Raja Naykar vs. State of Chhattisgarh** reported in **(2024) 3 SCC 481** at paragraph 29 thereof while referring to the judgment

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rendered in the case of **Mustkeem vs. State of Rajasthan** reported in **(2011) 11 SCC 724** has held as under: -

> "29. It can thus be seen that, the only circumstance that may be of some assistance to the prosecution case is the recovery of dagger at the instance of the present appellant. However, as already stated hereinabove, the said recovery is also from an open place accessible to one and all. In any case, the blood found on the dagger does not match with the blood group of the deceased. In **Mustkeem vs. State of Rajasthan**, this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. Thus, we find that only on the basis of sole circumstance of recovery of bloodstained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt."

Very recently, in **Khalil Pasha & Ors. vs. Abdul Rasheed & Ors.-MANU/SC/0748/2026**, their Lordships held as under:

> "18. Section 27 recovery of the weapon has been proved, and blood stains were found on it, which on chemical analysis was found to be human blood. The prosecution did not confront the eyewitness with the weapon, which the Trial Court was described in a manner, which was not in consonance with the physical appearance of the weapon produced before the Court. Section 27 recovery alone cannot lead to a conviction and here it fails to implicate A4 since there is no connection to the crime proved, but for the human blood found, not indicated to be that of the accused.
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
> 20. The only evidence is the blood stains found on the weapon recovered under Section 27 of the Evidence Act which by itself cannot lead to a finding of guilt without other

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circumstances which provide a complete chain leading to the hypothesis of guilt being the only one possible, excluding any hypothesis of innocence. The facts proved by the prosecution is the homicidal death, the brutal murder of a person and nothing to inculpate the accused except the eye- witness testimonies which are suspect. Our reappreciation of the evidence, manifestly indicates that this was not a fit case for converting the revision petition filed before the High Court to an appeal."

In the conspectus of the aforesaid analysis of the circumstantial evidence led by the prosecution against all the three appellants, we are not satisfied that it established a complete and unbroken chain of circumstances pointing out only to the conclusion of their guilt. Rather, we find the same to be sketchy and not sufficient warranting conviction against the appellants. On that premise, the appeals deserve to be allowed.

Resultantly, the appeals are allowed. The judgment of conviction and the order of sentence dated 04.05.2022 passed by the learned Additional Sessions Judge No.1, Bundi (Rajasthan) in Sessions Case No.86/2017 are quashed and set aside. The appellants are acquitted of the charges framed against them. Since appellant-**Kalaam S/o Saleem** is in jail, he be set at liberty forthwith if not required to be detained in any other case. As, the appellants-**Vishnu Nayak S/o Bhanwarlal Nayak and Lokesh @ Mongya S/o Shri Lalugiri Goswami** are on bail, their bail bonds stand discharged.

We have noticed a disturbing fact in the instant case.The maximum sentence awardable for conviction under Section 201 IPC in a capital offence is 7 years, but the learned trial Court, while convicting the appellants for the said offence, awarded the

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sentence of 10 years. However, in view of the acquittal of the appellants, the above error in the impugned judgment of conviction and order of sentence requires no rectification.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellants namely **Kalaam S/o Saleem, Vishnu Nayak S/o Banwarlal Nayak and Lokesh @ Mongya S/o Shri Lalugiri Goswami** are directed to furnish a personal bond each in the sum of Rs.25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in the event of Special Leave Petition being filed against the judgment or upon grant of leave, the appellants aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

Pending application(s), if any, also stands disposed of accordingly.

(BHUWAN GOYAL),J (MAHENDAR KUMAR GOYAL),J

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