RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Death Reference No. 1/2024
CNR: RJHC021042732024 | URN: CRLDR / 1U / 2024

Rajasthan High Court
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State of Rajasthan through P.P.

----Petitioner

Versus

amgopal @ Gopal son of Kanaram, R/o Aloda, Police Station hatushyamji, District Sikar

----Respondent

Connected With

D.B. Criminal Appeal (DB) No. 488/2024
CNR: RJHC021089812024 | URN: CRLAD / 798U / 2024

Sandeep Gurjar S/o Shri Sheopal, R/o Amarpura, Tan. Aloda, P.S. Khatushyamji, District Sikar. (at present confined in Central Jail, Bikaner).

----Appellant

Versus

State of Rajasthan through P.P.

----Respondent

D.B. Criminal Appeal (DB) No. 497/2024
CNR: RJHC021107392024 | URN: CRLAD / 810U / 2024

Ramgopal @ Gopal S/o Kanaram, R/o Aloda, Police Station Khatushyamji, District Sikar Rajasthan (presently confined in Central Jail, Jaipur)

----Appellant

Versus

State of Rajasthan through Public Prosecutor

----Respondent

D.B. Criminal Appeal (DB) No. 498/2024
CNR: RJHC021100042024 | URN: CRLAD / 811U / 2024

Nandlal son of Jagdish, R/o Aloda, Police Station Khatushyamji, District Sikar Rajasthan (presently confined in District Jail, Sikar)

----Appellant

Versus

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State Of Rajasthan Through P.P.

----Respondent

D.B. Criminal Appeal (SB) No. 3246/2024
CNR: RJHC021044672024 | URN: CRLAS / 5201U / 2024

Rajesh Kumar S/o Shri Phool Chand, R/o Ward No. 3, Reengus, olice Station Reengus, District Sikar (Rajasthan)

----Appellant

Versus

tate of Rajasthan through P.P.

----Respondent

D.B. Criminal Appeal (DB) No. 21/2025
CNR: RJHC020015152025 | URN: CRLAD / 40U / 2025

1. Mahendra Kumar Choudhary S/o Sh. Banwari Lal, aged about 35 Years, R/o Aloda, Police Station Khatushyamji, District Sikar (at present confined at Central Jail, Bikaner.)
2. Madanlal Chandiwal S/o Moolchand, aged about 27 Years, R/o Aloda, Police Station Khatushyamji, District Sikar (at present confined at Central Jail, Bikaner)

----- Appellants

Versus

State of Rajasthan through P.P.

----Respondent

D.B. Criminal Appeal (DB) No. 22/2025
CNR: RJHC020013512025 | URN: CRLAD / 41U / 2025

1. Babulal @ Harnek S/o Sh. Narayan, aged about 39 Years, R/o Aloda, Police Station Khatushyamji, District Sikar (at present confined at Central Jail, Bikaner)
2. Beerbal Dhaka S/o Mothuram, aged about 38 Years, R/o Aloda, Police Station Khatushyamji, District Sikar (at present confined at Central Jail, Bikaner)

----Appellants

Versus

State of Rajasthan through P.P.

----Respondent

D.B. Criminal Appeal (DB) No. 23/2025

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CNR: RJHC020003982025 | URN: CRLAD / 42U / 2025

Sohanlal S/o Shri Bhagirath, R/o Aloda, Police Station Khatushyamji District Sikar (Raj) (presently is confined at Central Jail, Bikaner)

----Appellant

Versus

tate of Rajasthan through P.P.

----Respondent

D.B. Criminal Appeal (DB) No. 24/2025

CNR: RJHC020003462025 | URN: CRLAD / 43U / 2025

1. Mahadev S/o Shri Kanaram, R/o Aloda, Police Station Khatushyamji, District Sikar (presently confined at Central Jail, Bikaner)
2. Parsaram Chopra S/o Shri Mohanlal, R/o Madani, Police Station Khatushyamji, District Sikar (presently confined at Central Jail, Bikaner)

----Appellants

Versus

State of Rajasthan through P.P.

----Respondent

For State	:	Mr. Amit Kumar Punia, P.P.
For Appellant(s)	:	Mr. V.R. Bajwa, Sr. Adv. with Mr. Amar Kumar Ms. Savita Nathawat Mr. R.R. Baisla Mr. Rajveer Singh Gurjar with Mr. Avtar Singh Rathore and Mr. Kapil Nagayach Mr. Rajesh Goswami with Mr. Shiv Kumar Jangir Mr. Garvit Saraswat Mr. Jay Bhardwaj and Ms. Monika Shekhawat Mr. Rahul Sharma with Ms. Chanchal and Mr. Utkarsh Goyal for Mr. Rajneesh Gupta Mr. Narendra Singh Gurjar
Legal Team appointed by RSLSC	:	Mr. N.A. Naqvi, Sr. Adv. with Mr. Susheel Pujari Mr. Dharmendra Gurjar Mr. Happy Sharma

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RAJASTHAN HIGH COURT

Mr. Mohd. Numan and
Mr. Firoz Khan

For Respondent(s) Mr. Ashvin Garg with
Mr. Sandeep Pathak
Mr. Sanjay Khedar
Mr. Mohit Goyal
Mr. Hem Bhushan Vedi and
Mr. Utkarsh Meena

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

Judgment

Date of Conclusion of Arguments : : 16/10/2026
Judgment Reserved On : : 16/10/2026
Whether the full judgment or only the operative part is pronounced : : Full Judgment
Judgment Pronounced On : : 30/10/2026

Per Hon’ble Mahendar Kumar Goyal, J.

The aforesaid death reference as also the connected criminal appeals arises out of the judgment of conviction and the order of sentence dated 30.11.2024 passed by the learned Additional Sessions Judge No.1, Sikar (for short- `the learned trial court') in Sessions Case (CISN 21/2020) CNR No.RJSK01-000354-2020 whereby the accused-appellants (for short-`the appellants’) have been convicted and sentenced as under:

Appellant-Ramgopal @ Gopal

> **Section 302/149 IPC:-** Death sentence and fine of ₹1,00,000/-; in default whereof, one year’s additional imprisonment.
>
> **Section 364/149 IPC:-** Life imprisonment and fine of ₹50,000/-; in default whereof, six months’ additional rigorous imprisonment.

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Section 201/149 IPC:- Three years' imprisonment and fine of ₹20,000/-; in default whereof, three months' additional rigorous imprisonment.

Section 147 IPC:- Two years' rigorous imprisonment and fine of ₹5,000/-; in default whereof, one month's additional rigorous imprisonment.

Section 120-B IPC:- Ten years' rigorous imprisonment and fine of ₹20,000/-; in default whereof, three months' additional rigorous imprisonment.

All the substantive sentences to run concurrently.

Appellants-Mahadev, Mahendra Kumar Choudhary, Sandeep Gurjar, Beerbal Dhaka, Nandlal, Madanlal Chandiwal, Sohanlal, Babulal @ Harnek, Parsaram Chopra

Section 302/149 IPC:- Life imprisonment and fine of ₹1,00,000/-; in default whereof, six months' additional rigorous imprisonment.

Section 364/149 IPC:- Life imprisonment and fine of ₹50,000/-; in default whereof, six months' additional rigorous imprisonment.

Section 201/149 IPC:- Three years' imprisonment and fine of ₹20,000/-; in default whereof, six months' additional rigorous imprisonment.

Section 147 IPC:- Two years' rigorous imprisonment and fine of ₹5,000/-; in default whereof, one month's additional rigorous imprisonment.

Section 120-B IPC:- Ten years' rigorous imprisonment and fine of ₹20,000/-; in default whereof, three months' additional rigorous imprisonment.

All the substantive sentences to run concurrently.

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Appellant-Rajesh Kumar

Section 201 IPC:- Three years' rigorous imprisonment and fine of ₹20,000/-; in default whereof, three months' additional rigorous imprisonment.

All the substantive sentences to run concurrently.

The relevant facts, in a nutshell, are that the complainant Baldev Godara (PW1) submitted a written report-Ex.P1 on 23.10.2019 at about 12.10 PM with Police Station Ranoli alleging that on the previous night at about 11.16 PM five persons named therein and some other persons whose names were not known, summoned his brother Ganpat Lal to the ESSAR petrol pump (for brevity-`the petrol pump'), Palsana Bypass, beaten him and took him away in a passenger vehicle, CCTV footage whereof was available at the petrol pump. Based thereon, an FIR No.0400 dated 23.10.2019 was registered at the Police Station Ranoli, District Sikar for the offences under Sections 365 and 323 IPC. During the course of investigation, dead bodies of Ganpat Lal as also of a woman named Prem were recovered and after investigation, a charge-sheet under Sections 147, 364, 302, 201 read with Sections 149 and 120B IPC was filed against the accused persons, namely, Ramgopal @ Gopal (for brevity-`Ramgopal'), Mahadev, Choturam @ Chotu, Mahendra Kumar Choudhary, Mahendra Gurjar, Rajesh Kumar, Sandeep Gurjar and Beerbal Dhaka. Thereafter, a supplementary charge-sheet under the aforesaid Sections came to be filed against the appellants Sohanlal Jat, Madanlal Chandiwal, Nandlal @ Nandkar and Babulal @ Harnek Faldoliya. After further investigation, the police filed a second supplementary charge-sheet under Sections 147, 302 read

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with Sections 149 and 120B IPC against the appellants Parsaram Chopra and Mahendra Singh Chopra.

Charges under Sections 147, 364, 302, 201 and 120B IPC read with Section 149 IPC were framed against the accused persons, namely, Ramgopal, Sandeep Gurjar, Mahadev, Mahendra Kumar Choudhary, Beerbal, Sohanlal Jat, Madanlal Chandiwal, Nandlal @ Nandkar, Babulal @ Harnek Faldoliya, Parsaram Chopra and Mahendra Singh Chopra. Against the accused persons, namely, Rajesh Kumar and Mahendra Kumar Gurjar, charges were framed under Section 201 read with Section 149 IPC and a charge under Section 176 IPC was framed against the accused Choturam @ Chotu. After trial, while the accused persons, namely, Choturam @ Chotu and Mahendra Kumar Gurjar were acquitted of the charges framed against them, the appellants have been convicted and sentenced, as stated hereinabove.

Pursuant to the directions issued by the Hon'ble Supreme Court of India in the case of **Aman Singh & Anr. Vs. State of Bihar: (2023) 13 SCC 563**, a legal team comprising learned Senior Advocate Shri Nasir Ali Naqvi, assisted by learned counsel S/Shri Sushil Pujari and Dharmendra Gurjar, was appointed by the Rajasthan State Legal Services Committee (for short-`RSLSC') vide order dated 15.09.2026. The State of Rajasthan also submitted nominal roll of the appellant Ramgopal facing the death penalty as well as his psychiatric and psychopathological report furnished by the Medical Board, Psychiatric Centre, Jaipur.

Shri V.R. Bajwa, learned Senior Counsel for the appellants Ramgopal, Mahadev, Parsaram, Mehendra Kumar Choudhary and Madanlal, assailing the impugned judgement of conviction and the

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order of sentence, contended that the findings of the learned trial court are based on conjectures and surmises without being supported by any legally admissible evidence available on record. He asserted that the prosecution has suppressed the true genesis of the case and the FIR-Ex.P11 was hit by Section 162 Cr.P.C. inasmuch as, from the prosecution evidence, it was proved that before approaching the Police Station Ranoli, the complainant party had already lodged a report at the Police Station Khatushyamji which never saw the light of day. He submitted that though the case is based on circumstantial evidence but, the prosecution failed to prove a complete chain of circumstances leading only to the hypothesis of appellants' guilt. Elaborating on his submissions, learned Senior Counsel canvassed that the prosecution relied heavily upon the CCTV camera footage to show their complicity in the crime. He submitted that a set of CCTV cameras was installed at the residence of the appellant Ramgopal, whereas another set of CCTV cameras was installed at the petrol pump. He further submitted that the Digital Video Recorder (DVR) attached to the CCTV cameras installed at the petrol pump was seized vide memo-Ex.P68 on 06.02.2020, i.e., after a delay of about three and a half months from the date of the incident. The DVR from the house of the appellant Ramgopal was seized on 25.10.2019 vide memo-Ex.P33 but was not sealed. Learned Senior Counsel contended that the footage from the DVR seized from the house was copied onto a pen drive-Article 1 which was seized vide memo dated 07.11.2019-Ex.P65 but was also not sealed. Shri Bajwa asserted that although, the DVR seized vide Ex.P33 was deposited in the malkhana on the date of its seizure

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but, there was no corresponding entry recording its removal for the purpose of retrieving its data onto the pen drive-Article 1 on 07.11.2019. Learned Senior Counsel argued that Pawan Kumar (PW19), a Constable, stated that after the pen drive was marked as Article 1, it was not sealed again and the footage analysis report-Ex.P66 was prepared from this unsealed pen drive which compromised its probative value. Inviting the attention of this Court to a letter dated 08.02.2020-Ex.P98 issued by Shri Umesh Kumar, the expert, Shri Bajwa urged that the same was treated as a certificate under Section 65B of the Indian Evidence Act, 1872 (for short-`the Act of 1872'); however, no evidence was led to show that he was an expert competent to issue such certificate. He further canvassed that the certificate did not disclose the details either of the DVR or of the pen drive mentioned therein. Referring to the statement of the Investigating Officer Shri Rajesh Arya (PW65) dated 12.09.2024 when the pen drive-Article 1 was played in the Court, Shri Bajwa submitted that though objections were raised by the defence that in the CCTV footage, faces of the persons were not identifiable on account of low light/poor clarity, but without addressing these objections, the learned trial court placed reliance upon the footage for recording their conviction.

Similarly, qua seizure memo of the pen drive-Article 2-Ex.P14 onto which the CCTV footage from the DVR installed at the petrol pump was retrieved, Shri Bajwa contended that the same was also not sealed. He further submitted that although, the prosecution had relied upon the certificate dated 14.01.2020-Ex.P75 and the letter of even date-Ex.P76, both issued by Shri Shrawn Singh-owner of the petrol pump, as the certificates under

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Section 65B, but the learned trial court did not appreciate that he, as PW-26, had denied having issued any certificate under Section 65B of the Act of 1872. Drawing the attention of this Court to the testimony of the first Investigating Officer, namely, Richpal Singh (PW61), the learned Senior Counsel urged that he had admitted that the appellant-Ramgopal was not seen in the CCTV footage of the petrol pump. He argued that against that backdrop, the learned trial court erred in relying upon the footage analysis report-Ex.P67 of the pen drive-Article 2 to record their conviction. Referring to the statement of the Investigating Officer Shri Rajesh Arya (PW65) dated 12.09.2024 when the pen drive-Article 2 was played in the Court, Shri Bajwa submitted that at that time also, objections were raised by the defence that the persons shown therein were not identifiable as their faces were not clearly visible, which was also admitted by the PW65 during his cross-examination, but the learned trial court erred in placing reliance upon the same to hold them guilty of kidnapping the deceased Ganpat from the petrol pump.

Learned Senior Counsel asserted that before reliance can be placed upon the FSL report/electronic evidence, it is incumbent upon the Court to record a satisfaction that the prosecution has shown an unbroken chain of custody of the samples. However, such a chain was completely absent in the instant case as is evident from the facts narrated hereinabove.

Shri Bajwa also canvassed that neither the DVRs nor the pen drives allegedly containing copied footage were subjected to FSL Examination to rule out a possibility of any tampering therewith. He contended that though there was an allegation against some of

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the appellants that they tried to delete the CCTV footage from the DVR installed at the petrol pump on the very next morning of the incident, i.e., 22.10.2019, but the prosecution is completely silent as to why no such attempt was made with the DVR installed at the house of Ramgopal, which was seized only on 25.10.2019, i.e., four days after the date of incident.

With regard to recovery of the dead bodies at the instance of appellant Ramgopal, Shri Bajwa contended that his disclosure statement was recorded on 23.10.2019 at about 8.15 PM and the bodies were recovered vide memo-Ex.P78 at 9.00 PM on that very day. However, the complainant and some of the other witnesses have stated that the dead bodies were recovered at 5-6 PM on that day rendering the recovery at the instance of the appellant doubtful. In this regard, he further submitted that the learned trial court has relied upon the FSL report wherein human blood was found on the soil and the leaves of the tree seized from the place where the dead bodies were recovered, but ignoring and overlooking that the recoveries were made on 25.10.2019, i.e., two days after the recovery of the dead bodies without any explanation for this delay.

Next, it was contended by Shri Bajwa that qua most of the disclosure statements given by the appellants, the Investigating officer did not utter the exact words, in his Court deposition, said to him by the appellants rendering the disclosure statements inadmissible in evidence.

Learned Senior counsel further contended that as per the prosecution case, the Bolero Car allegedly used by the appellant Ramgopal in disposing of the dead bodies was driven by him to

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Khatushyamji Police Station where it was shown to have been recovered; however, had the appellant used the car to commit the crime, he would not have taken it to the police station.

Qua the appellant Mahendra Kumar Choudhary, learned Senior Counsel submitted that he has been roped in on account of seizure of a Scorpio car and a fan belt allegedly used by him in the commission of the offence. He submitted that, as per the prosecution case, on the fateful night of 21.10.2019, the appellant had brought the deceased Prem in the subject Scorpio car from her maternal uncle's home to her paternal home, where she and Ganpat were murdered. Drawing the attention of this Court to the findings recorded by the learned trial court in this regard, Shri Bajwa contended that to fortify its conclusion, the testimony of Shri Murari Lal Sharma (PW13), the Shift in-charge, Reliance Toll Plaza was relied upon, wherein he had stated that at about 12.22 hours (for convenience, hereinafter referred to as, '00.22 hours') on the night of 22.10.2019, the subject Scorpio car passed through the Toll from Jaipur towards Sikar and the same car passed in the same night at about 03.10 AM back towards Jaipur. He had exhibited the relevant CCTV footage as Exs.P40 and P41. However, during cross-examination he admitted that the Exs.P40 and P41 were open to manipulation and he was unaware whether the Operator had fed wrong data in these documents. With regard to recovery of the fan belt, learned Senior Counsel argued that in the absence of any human blood on it, the appellant could not have been connected with the alleged crime on its basis.

Shri Bajwa contended that the appellant Madanlal Chandiwal was found to be involved in the crime on the strength of recovery,

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at his behest, of a piece of cable and a motorcycle belonging to the deceased. Elaborating on his submission, he canvassed that the cable was neither found to be blood-stained nor sent to FSL examination to prove that it was the weapon of offence used by the appellant in the commission of the offence. With regard to recovery of the motorcycle allegedly belonging to the deceased Ganpat Lal which was made from an open place more than nine months after the date of incident, he argued that the prosecution did not lead any evidence to show that it was lifted by him from the place it was last parked by the deceased Ganpat Lal and disposed of at the place of its seizure.

Shri V.R. Bajwa argued that the appellants Parsaram and Mahadev have been held to be involved in the crime only with the aid of recovery of a piece of cable from each of them. Inviting the attention of this Court to the site plans of seizure of the subject cables- Ex.P131 and Ex.P134, he submitted that the same were recovered from the agricultural field and the residential house of the appellant Ramgopal; however, the prosecution did not lead any evidence to show their presence at that place at the relevant time.

Shri Bajwa, the learned Senior Counsel submitted that the seizure memos of cable recovered from the different appellants reflect that they were of different thickness, although it was the prosecution's case that these were part of the same bundle of the cable which raises a serious doubt as to the veracity of the prosecution case.

He, to buttress his submissions, relied upon the following judgements:

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1. Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh: (2023) 16 SCC 510;
2. Babu Sahebagouda & Ors. Vs. State of Karnataka: 2024 Livelaw (SC) 510;
3. State of Tamil Nadu vs. Ponnusamy & Ors.: 2026 INSC 507;
4. Pooranmal vs. State of Rajashan & Ors.: 2026 INSC 217;
5. Allarakha Habib Memon & Ors. Vs. State of Gujarat: (2024) 9 SCC 546.

Qua the sentence, the learned Senior Counsel submitted that the case did not fall within the category of the "rarest of the rare cases" and, therefore, the death penalty was not warranted.

Shri R.R. Baisla, the learned counsel for the appellant Sandeep Gurjar, contended that he has been found to be involved in the crime on the strength of recovery, on his disclosure statement, of a motorcycle allegedly used for following and catching hold of the deceased Prem and Ganpat, whereas the prosecution led no evidence to show that the deceased fled on a motorcycle and he caught hold of them following them on the subject motorcycle.

Shri Rajveer Singh Gurjar, the learned counsel appearing for the appellant Rajesh Kumar, contended that though he was charged with having attempted to delete the CCTV footage from the DVR installed at the petrol pump; however, he was convicted of the offence under Section 201 IPC and not of an attempt thereof. He further contended that even otherwise, he was not identifiable in the CCTV footage so to connect him with the alleged crime.

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Shri Rajesh Goswami, the learned counsel, canvassed that the appellants Babulal @ Harnek and Beerbal Dhaka were falsely implicated in the case. He urged that Babulal alias Harnek was convicted on the strength of recovery of a piece of cable from his home on his disclosure statement, but the prosecution could not prove that it was used by him in the murder of Prem and Ganpat. Qua the appellant Beerbal Dhaka, learned counsel argued that he was found to be involved in the offence on the basis of recovery, on his disclosure statement, of a passenger vehicle allegedly used in the kidnapping of Ganpat. He contended that in this regard, the prosecution relied upon the CCTV footage of the cameras installed at the petrol pump, which admittedly, did not show registration number of the subject vehicle and it was assumed to be involved in the offence only because "Rainbow Children Academy" was written on its side. Inviting the attention of this Court to the testimony of the Investigating Officer (PW65), learned counsel argued that he did not deny that there could be about 30 such vehicles in the school, and that, in the absence of any incriminating material found in the subject vehicle, the appellant's complicity could not have been held to be proved merely on account of recovery of a vehicle with "Rainbow Children Academy" written on it.

Shri Rahul Sharma, the learned counsel for the appellant Sohanlal, contended that his involvement in the offence was found on the basis of recovery of a piece of cable and discovery of the place, on his disclosure statement, where mobile phone of the deceased Ganpat was allegedly burnt. With regard to the piece of

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cable, he argued that there was no material on record to show that this was used by him in the commission of the offence; recovery whereof, even otherwise, was from an open place. Qua the discovery of the place where mobile phone of Ganpat was burnt, inviting the attention of this Court to its site plan-Ex.P94, learned counsel canvassed that no mobile-related sign was found there.

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Shri Narendra Singh Gurjar, the learned counsel appearing for the appellant Nandlal @ Nandkar, contended that he has been convicted on the basis of recovery of a piece of cable as also of a purse and a PAN card allegedly belonging to the deceased Ganpat Lal. With regard to the recovery of the cable, he adopted the submissions advanced by the other learned counsel. Qua the recovery of the purse and the PAN card of the deceased, learned counsel argued that the recovery was from an open place and that too, about nine months after the date of the incident which was not sufficient to warrant his conviction.

In the aforesaid factual backdrop, learned counsel for the appellants prayed that the death reference be answered in the negative, the appeals be allowed, the impugned judgment of conviction and the order of sentence dated 30.11.2024 be quashed and set aside and they may be acquitted of the charges framed against them.

Learned Senior Counsel Shri Nasir Ali Naqvi, assisted by S/Shri Susheel Pujari and Dharmendra Gurjar, the learned counsels and the members of the legal team appointed by RSLSC vide order dated 15.09.2026, supporting the contentions

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advanced by the learned Senior Counsel for the appellant Ramgopal alias Gopal, submitted that the prosecution could not establish a complete chain of circumstances consistent only with the hypothesis of his guilt. It was asserted that even otherwise, the case did not fall within the category of the "rarest of rare cases" so as to warrant the death penalty.

E Converso, opposing the submissions and supporting the findings recorded by the learned trial court, the learned Public Prosecutor Shri Amit Punia, assisted by S/Shri Ashwin Garg and Sandeep Pathak, learned counsel for the complainant, contended that the judgment is well reasoned and the findings are based on proper appreciation of the evidence and sound legal principles which warrant no interference. It was canvassed that the appellant Ramgopal had lodged a written report-Ex.P110 on 23.10.2019 at the Police Station Khatushyamji, Sikar alleging that on the night of 21.10.2019, his daughter Prem was kidnapped by some unknown persons, whereupon an FIR was registered. However, after thorough investigation, the allegation was found to be false culminating into submission of a negative final report which was accepted by the court. It was submitted that this false FIR was lodged by the appellant Ramgopal only to create an artificial defence to the offences of kidnapping and murder of not only his daughter but also of Ganpat Lal committed by him and his co-conspirators. He submitted that relying upon the testimony of Shri Dharampal (PW 69), the learned trial court has recorded a categorical finding that both the deceased were last seen together on a motorcycle at the petrol pump from where they were

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kidnapped by some of the appellants and taken to the house of the appellant Ramgopal, where they were beaten to death. It was canvassed that their dead bodies were recovered from another place on the disclosure statement of the appellant Ramgopal. It was argued that the involvement of all the appellants in the crime was well established by the footage captured by the CCTV cameras installed at the petrol pump as also at the house of the appellant Ramgopal, which was played in the court from the pen drives, i.e., the Articles 1 and 2, authenticity of which was beyond any doubt. It was asserted that the defective investigation, if any, would not come to aid of the appellants whose guilt was established beyond reasonable doubt. It was also argued that the appellants did not offer any explanation for the incriminating circumstances suggested to them during the course of their examination under Section 313 Cr.P.C. and, therefore, the learned trial court did not err in holding the same to be an important link in the chain of circumstantial evidence while recording their conviction. It was contended that since it was a case of honour killing, the learned trial court did not err in awarding the death penalty to the appellant Ramgopal and the suitable sentences to the rest of the appellants. It was, therefore, prayed that the death reference be answered in the affirmative and the appeals be dismissed. They relied on the judgments of the Hon'ble Supreme Court of India in the cases of C. Muniappan & Ors. vs. State of Tamil Nadu : (2010) 9 SCC 597; Munish Mubar vs. State of Haryana : (2012) 10 SCC 464 and Kumari Shubha alias

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Shubhashankar vs. State of Karnataka and Another : 2025 INSC 830.

Heard. Considered.

As per the prosecution story, it was a case of honour killing. The deceased Ganpat Lal and the deceased Prem, daughter of the appellant Ramgopal were in love with each other which was not acceptable to Ramgopal, resulting in their murder by him in conspiracy with the other appellants.

The postmortem report of the body of the deceased Ganpat Lal-Ex.P80, which was proved by Dr. Ranjit Singh (PW30), Dr. Sukh Chain Singh (PW31) and Dr. Aman Singh Rathore (PW36), the members of the medical board which conducted the autopsy, revealed 22 injuries on his body with a fracture of right parietal-temporal bone. The cause of death opined was to be shock and excessive haemorrhage due to cumulative effect of multiple ante-mortem multiple injuries on the body.

The postmortem report of the body of the deceased Prem-Ex. P81, which was proved by the same members of the medical board, who also conducted her autopsy, reflected a total 12 injuries on her body and the cause of death was opined to be asphyxia due to ligature strangulation.

From the aforesaid evidence, it is established that the deaths were not natural, rather were on account of injuries received in the assault and asphyxia due to strangulation, respectively and, therefore, amounted to culpable homicide, a proposition not even disputed by the learned counsel for the appellants.

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In the absence of any ocular evidence, the prosecution case hinges solely on circumstantial evidence. In the much celebrated judgment in the case of **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:

> **"153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> > (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra 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

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> 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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A three-judge bench of the Hon'ble Supreme Court of India, in **Tomaso Bruno & Anr. vs. State of U.P. : (2015) 7 SCC 178**, authoritatively held that the circumstances from which the conclusion of guilt is drawn should be fully proved and must be conclusive in nature. All the circumstances should be complete, there should be no gap left in the chain of evidence and the circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

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

A perusal of the impugned judgment reveals that the learned trial court has relied upon following circumstances to return a finding of guilt against the appellants:

(1) Last seen,

(2) Recovery of incriminating material on their disclosure statement or otherwise.

(1) Last seen:

So far as the evidence of last seen is concerned, the prosecution has heavily relied upon the CCTV footage to bring home the guilt of the appellants. As a matter of fact, a perusal of the impugned judgment reflects that the CCTV footage was the

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main axis of the circumstantial evidence relied upon by the prosecution. The investigating agency had collected the CCTV footage from two places, i.e., the house of the family of the appellant Ramgopal and the petrol pump. As per the prosecution, the deceased Ganpat Lal was kidnapped from the petrol pump and taken to the house of Ramgopal, where he and Prem were beaten to death.

First, we would like to deal with the CCTV footage obtained from the cameras installed at the house of Ramgopal which, as per the prosecution, shows that Prem was being severely beaten by Ramgopal on the night of 21.10.2019.

The DVR attached to the CCTV cameras installed at the house of the appellant Ramgopal was seized on 25.10.2019 vide memo-Ex.P33. The seizure memo does not reflect that the DVR was sealed at the time of its seizure. It was so admitted by Subhash Chand (PW32) also, the then Constable at the CO office, Sikar Rural and a motbir witness to the seizure memo. Further, the Investigating Officer Rajesh Arya (PW65) also admitted in his deposition dated 26.09.2024 that, till that day, the DVR was lying unsealed.

Moreover, the prosecution witnesses, namely, Subhash Chand (PW32) and the Investigating Officer Rajesh Arya (PW65) admitted during their cross-examination that they had visited the house of Ramgopal almost on a daily basis for three days prior to the seizure of the DVR and had minutely examined the scene of crime, i.e., the house but, conspicuously, they furnished no explanation as to why the DVR was not recovered and seized

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immediately after the incident once they had come to know that the CCTV footage contained therein revealed that Prem was beaten by her father on the night of 21.10.2019. They further admitted that the subject DVR was, at the time of its seizure, under the control of the parents and other family members of the appellant Ramgopal, meaning thereby it was not under his exclusive control and possession.

Moreover, the malkhana register-Ex.P265A reflects that the seized DVR was deposited in the malkhana vide entry number 379 on 25.10.2019, but there is no corresponding entry of it having been taken out on 7.11.2019 for retrieving the footage onto pen drive seized vide memo-Ex.P65. The malkhana In-charge, Shri Nannu Ram (PW67), admitted during his cross-examination that the DVR was deposited in an unsealed condition and was taken out on the date marked "C-D" in the register, i.e., on 14.4.2020. He further stated that the register did not contain any endorsement as to who had taken out the DVR and for what purpose. He also stated that he was unaware of how many months the DVR was out of the malkhana and when it was deposited back.

The CCTV footage from the seized DVR was copied onto a pen drive on 7-11-2019 and the pen drive was seized vide memo of even date-Ex.P65. However, Ex. P65 does not reflect that even the pen drive was sealed, also admitted by Shri Pawan Kumar (PW9)-one of the motbir witnesses during his cross-examination. Further, the seized pen drive was never deposited in the malkhana.

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Additionally, the investigating agency prepared a footage analysis report-Ex.P66 on 7-11-2019 by playing the pen drive in the office computer of the Circle Officer, Sikar Rural. However, the Ex.P66 does not contain the description of the played pen drive. This omission assumes much significance as the pen drive was neither sealed at the time of its seizure nor deposited in the malkhana.

We also find that Shri Subhash Chand (PW32), one of the motbir witnesses to Ex.P66, admitted during his cross-examination that the Investigating Officer attempted at three or four places to get the data in the subject DVR developed but, as the DVR was locked, the attempts remained unsuccessful. However, the Investigating Officer (PW65), taking a contrary stand, stated during his cross-examination that they tried to open the DVR, but could not be done so either by him or his staff.

Further, as per the prosecution case, the footage from the DVR was copied onto the pen drive by Shri Umesh Kumar, who, as PW37, corroborated it. However, taking a conflicting stand, the Investigating Officer (PW65) categorically stated that the footage onto the pen drive was copied by the CCTV expert, i.e., the PW37 through `cut-paste' from the footage contained in the office computer. It is worth noting here that neither the DVR nor the pen drives onto which the footage was copied, were subjected to FSL examination to verify that no tampering was done and the data contained therein was intact.

Furthermore, the prosecution treated Shri Umesh Kumar as an expert as he was operating a computer and CCTV shop in Sikar.

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But, the Investigating Officer (PW65) admitted in his cross-examination that he did not obtain any document to show that PW37 was a technical expert of DVRs and had obtained any training in this regard. As a matter of fact, there was nothing on record to suggest that Umesh Kumar was a technical expert competent to copy data onto the pen drive, either from the DVR or from the computer.

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We further notice that Umesh Kumar (PW37), during his cross-examination, stated that he did not know whether the data and footage in the DVR had been manipulated or tampered with before he copied the same onto the pen drive. He also stated that the pen drive was brought by the police and he was unaware whether it was empty or preloaded. From the aforesaid, it is apparent that even the expert relied upon by the prosecution did not vouch for the authenticity and integrity of the data contained in the DVR and copied onto the pen drive.

Moreover, the prosecution relied upon the letter dated 08.02.2020-Ex.P98 issued by PW37 to the Deputy Superintendent of Police, Circle Sikar Rural, as the certificate under Section 65B of the Act of 1872. However, PW37 admitted during his cross-examination that the typed letter-Ex.P98 was brought to him by the police and that he merely put his signature and seal on it. This fact undermines the integrity and probative value of the certificate issued under Section 65B(4). Further, as per Ex.P98, when Umesh Kumar reached the CO Office, the DVR was already lying there, but the prosecution did not lead any evidence to show who brought it from the malkhana and when. At the cost of repetition,

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we may observe here that as per the malkhana register-Ex.P265A, after it was deposited on 25.10.2019, it was taken out only on 14.04.2020 and not earlier either on 07.11.2019 or on any other day.

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Thus, from the conspectus of aforesaid analysis of the evidence, we find that the DVR installed at the house of the appellant Ramgopal was seized on 25.10.2019, i.e., on the fourth day of the incident, despite the Investigating Officer and other police personnel visiting the house almost on a daily basis for the previous three days and no explanation was furnished as to why it was not seized at the earliest. It is also revealed that the DVR was under the control of the parents and other family members of the appellant Ramgopal and was not in his exclusive control and possession. The DVR was seized in an unsealed condition and was deposited as such in the malkhana on the date of its seizure, i.e., 25.10.2019. Indisputably, it was found in the unsealed condition in the CO office of Sikar Rural on 07.11.2019, when the footage was copied onto the pen drive, but there was no corresponding entry of it being taken out on that day in the malkhana register-Ex.P265A. Moreover, as per prosecution case, the footage from it was copied onto the pen drive which was seized vide memo-Ex.P65; however, we find a contradiction in the prosecution case as to whether the footage onto the pen drive was copied from the DVR, as claimed by PW37 or from the computer through `cut paste' as stated by the Investigating Officer (PW65). We also find that the so-called expert (PW37) did not vouch for the integrity and authenticity of the data contained in the DVR and also

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admitted that he did not examine the pen drive to see whether it was blank or preloaded. It is also revealed that the pen drive was seized vide Ex.P65 on 07.11.2019, but was neither sealed nor deposited in the malkhana. The pen drive-Article 1 was played in Court on 12.09.2024 during the course of testimony of the Investigating Officer (PW65) but the prosecution did not lead any evidence to show where the pen drive was lying from the date of its seizure, i.e., 07.11.2019, till it was played in the Court on 12.09.2024.

It is trite law that, before any electronic evidence/ sample can be relied upon against an accused, it is bounden duty of the prosecution to establish a safe and unbroken chain of custody. Their Lordships have, in **State of Tamil Nadu Vs. Ponnusamy and others, MANU/SC/0498/2026 : 2026 INSC 507**, while rejecting the gait analysis report relied on by the prosecution to show the complicity of the accused in the crime, held that the CCTV footage could not be relied upon on account of serious apprehensions regarding its mishandling and an inconsistent chain of custody. It was observed that the pen drive onto which the CCTV footages were copied, was kept by the officer copying it and was never examined as a witness by the prosecution. It was further held that the IO failed to act on the CCTV footage for over a month, and when it was recovered, it was forwarded to the FSL, but was returned unexamined for want of the DVR. After examining the facts of the case, the Hon'ble Supreme Court observed that the Investigating Officer had completely mishandled

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the electronic evidence and had failed to maintain the chain of custody.

In **Prakash Nishad vs. State of Maharashtra: AIR 2023 SC 2938**, the Hon'ble Supreme Court of India held that that the samples collected by the Investigating Agency must be sent to the FSL with promptitude and without any delay to rule out the possibility of contamination and the concomitant prospect of diminishment in value, and the prosecution must establish the chain of custody, which implies that right from the time of taking of the samples to the time their role in the investigation and processes subsequent is complete, each person handling such a piece of evidence must be duly acknowledged in the documentation, so as to ensure that its integrity is uncompromised. It was observed that the alertness with which the samples are sent to the FSL and the maintenance of the chain of custody are vital aspects which are indispensable to the vitality of such evidence. It was further held that a document should be duly maintained, cataloging the custody and it should include the name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, the dates on which the items were collected or transferred, the agency and case number, the victim’s or the suspect’s name and the brief description of the item.

Thus, in the backdrop of the aforesaid precedential law and the factual context narrated hereinabove, we are of the considered view that since the prosecution failed to maintain a complete and unbroken chain of custody of the subject CCTV footage, it was not

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safe for the learned trial court to rely upon the CCTV footage copied from the DVR attached to the CCTV cameras installed at the house of Ramgopal to return a finding of guilt against the appellants.

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There is another important aspect of the matter. Section 65B of the Act of 1872 envisages that before secondary electronic evidence can be relied upon, a certificate in terms of Section 65B(4) is mandatory. Indisputably, the DVR, the primary electronic evidence, was relied upon neither by the prosecution nor by the learned trial court and they both relied upon the footage copied onto the pen drive, i.e., the secondary electronic evidence. The prosecution has submitted the purported certificate in the form of a letter-Ex.P98 written by Umesh (PW-37). However, we are not convinced.

A three-judge bench of the Hon'ble Supreme Court in **Anvar P.V. versus P.K. Basheer** :**AIR 2015 SC 180**, after examining the scheme of the Act of 1872 pertaining to electronic evidence, held as under:

> "**13.** Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer.
>
> It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer

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shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

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(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device."

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Although, the aforesaid judgment has been reckoned not to lay down good law to the extent it required the certificate to accompany the secondary electronic evidence; but, the proposition contained in para 14 has been reaffirmed time and again by the Hon'ble Supreme Court of India.

Thus, before a certificate under Section 65B(4) can be relied upon, the conditions prescribed in para 14 of the judgement in **Anvar P.V.** are required to be satisfied. However, we find that in the instant case, the mandatory conditions were given a complete go-bye. The letter-Ex.P98 did not furnish the particulars of the devices involved in the production of the record. Nor did it deal with the applicable conditions mentioned under Section 65B(2) of the Act. Rather, the person issuing the letter, namely, Umesh Kumar (PW37) admitted during cross-examination that he did not know whether the DVR was tampered with. He further stated that he was unaware whether the pen drive brought by police was empty or preloaded. He also admitted that the typed letter-Ex.P98 was produced before him by the police personnel and he merely signed it, which further undermined the sanctity of the certificate.

Although, in this regard, the prosecution has relied upon a recent judgment of the Hon'ble Supreme Court in **Kumari Shubha alias Shubhashankar** (supra), but, we are afraid that it does not came to its rescue. In that case, it was held that the

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certificate not given in the prescribed format per se will not make it invalid, especially when authenticity of the marked documents was not in dispute. In that case, the secondary electronic evidence was in the shape of call detail records and a certificate issued by a person holding the position of Head of Marketing and sales and coordinator for statutory legal enforcement agencies, and the Assistant Manager were held to be holding the responsible official positions and to be competent to issue the certificate. However, in the instant case, the facts are entirely different, as discussed and analysed hereinabove.

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In the conspectus of aforesaid analysis of evidence available on record and in the backdrop of the settled legal principles, we are of the view that the letter-Ex.P98 did not meet the mandatory requirement of a valid certificate under Section 65 B(4) of the Act of 1872 rendering the CCTV footage contained onto the pen drive-Article 1 inadmissible in evidence. On that premise also, we are of the considered view that the learned trial court erred in placing reliance upon the CCTV footage played in the Court on 12.09.2024 during the deposition of the Investigating Officer, Rajesh Arya (PW65). However, to demonstrate that the findings of the trial court in this regard are based on assumptions not supported by any legally admissible evidence, we would like to refer the same as under:

In the first folder of the footage, a vehicle and a motorcycle were seen, but their registration numbers were not visible. Since the footage was in black and white, colour of the vehicles was also not reflected. In the second folder, a few persons were visible, but

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on account of darkness, their faces were not visible. In the third folder, a lady, a boy and a girl were seen, whom the Investigating Officer identified as mother of Prem and brother/sister. The person in a white banyan was identified by the witness as Ramgopal. The defence objected that neither the face nor the physique of any of the persons was visible in the picture. In the sixth folder, a person was found bringing a wire or rope in his hand whom the witness identified as Ramgopal, but the defence objected that on account of darkness, his face or the physique were not clear. In the eighth folder, the man in the white banyan was seen beating a sleeping girl with a wire who were identified as Ramgopal and Prem, respectively. The defence again objected that their faces were not clearly visible. In the ninth folder, the person in white banyan was seen beating a girl. Thereafter, he handed a mobile phone to the girl, who was seen talking on it. The witness identified the man as Ramgopal and the girl as Prem. He further stated that Ramgopal was asking his daughter Prem to summon her lover Ganpat.

Thus, the defence repeatedly objected, while the pen drive-Article 1 was being played, that the faces and / or physique of the persons seen in the footage were not clearly visible or identifiable on account of darkness or otherwise; but, without addressing these objections, the learned trial court recorded a finding that the person in white banyan was Ramgopal and the girl being beaten was his daughter, the deceased Prem. In this regard, the learned trial court also relied upon the photograph pasted on the arrest memo-Ex.P12 of the appellant Ramgopal to compare it with the image in the CCTV footage to record a finding that both

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were the same person. However, it is trite law that an arrest memo is not a substantive piece of evidence and the prosecution did not prove, by leading any evidence, that the photograph pasted on it was that of the appellant Ramgopal. Out of the two motbir witnesses to the arrest memo, namely, Jagdish and Raju Tiwari, only Jagdish was examined who, as PW2, did not utter a word that the arrest memo bore photograph of the appellant Ramgopal. As a matter of fact, there was no evidence on record to demonstrate who pasted the photo on the arrest memo and when, and whether it was of the appellant Ramgopal.

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Furthermore, although, the Investigating Officer (PW65) claimed to have identified the appellant Ramgopal and the deceased Prem in the CCTV footage but, he categorically admitted during his cross examination that, before the incident, he was not acquainted either with the appellant Ramgopal or with his family members.

Additionally, one of the motbir witnesses to Ex.P66, namely, Pawan Kumar (PW19) also admitted in his cross-examination that he was not acquainted with Ramgopal and that he could not identify him even on the date of deposition.

In the aforesaid factual backdrop, we are not convinced that it was safe for the learned trial court to hold the image in the CCTV footage played in the Court to be that of the appellant Ramgopal, especially without meeting the objection raised by the defence that neither the face nor the physique was clearly visible or identifiable on account of darkness or poor clarity.

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It is also worth noticing here that while Ex.P66, the footage analysis report dated 07.11.2019, (veracity of which we have already found to be doubtful for the reasons mentioned hereinabove) records that the footage of the camera No. 3 dated 21.10.2019, at about 20:25 hours, showed that the appellant Ramgopal had taken a piece of cable after cutting it, but the same pen drive, when played in the Court on 12.09.2024, did not reflect any such footage. However, the prosecution did not explain this important omission. Since it was the prosecution story, based on the CCTV footage, that the deceased were beaten to death by the appellants with the pieces of cable cut from a bundle of cable by the appellant Ramgopal, the absence of such footage onto the pen drive, when played in the Court, assumes great significance and further undermines the credibility of the footage contained onto the pen drive.

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In view of the aforesaid analysis, we do not concur with the findings of the learned trial court based on the CCTV footage played from the pen drive-Article 1. Rather, we hold that the prosecution was not able to establish that the appellant Ramgopal was seen beating his daughter Prem on the night of 21.10.2019.

Now, we would like to deal with the footage obtained from the CCTV cameras installed at the petrol pump.

As per the prosecution, the footage revealed that some of the appellants caught hold of Ganpat Lal at the petrol pump, beat him and took him away in a passenger vehicle with “Rainbow Children Academy” written on its side.

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The footage was copied on 24.10.2019 onto a pen drive which was seized vide memo even dated-Ex.P14. The memo does not show that the pen drive was sealed at the time of its seizure. Further, it does not reveal who had copied the footage onto the pen drive and from which source, i.e., whether from the computer attached to the cameras or the hard disk or the DVR. One of the motbir witnesses to it, namely, Jagdish (PW2), simply stated that a pen drive was seized by the police personnel from the petrol pump in his presence and the memo-Ex.P14 was signed by him. However, during his cross-examination, he stated that the CCTV footage was seen by the Circle Officer in the morning of the 23.10.2019. At one stage of the cross-examination, he stated that CCTV record was seized by the CO on 23rd itself; however, subsequently denying that any such footage was seized on the 23rd, he stated that it was seized on 24.10.2019. He professed ignorance as to who had transferred the data onto the pen drive. Another motbir witness, namely, Bhagchand (PW10) stated that the pen drive was furnished by Mahendra Gurjar, one of the appellants. He further stated in his cross-examination that the pen drive was developed by the police personnel. Richpal Singh (PW61), the first Investigating Officer, stated that he seized the pen drive on 24.10.2019. However, he admitted that it was neither sealed nor, bore the signature of either the petrol pump owner or of any employee. The second Investigating Officer (PW65) admitted during his cross-examination that the subject pen drive was received by him from the earlier Investigating Officer. Further, indisputably, it was not deposited in the malkhana.

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In view thereof, it is apparent that the prosecution evidence is completely silent as to who had copied the CCTV footage onto the pen drive and from which source. Moreover, the pen drive was neither sealed nor deposited in the malkhana.

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Furthermore, the prosecution relied upon a certificate dated 14.01.2020-Ex.P75 and a letter of even date-Ex.P76; both issued by Shri Shrawan Singh, the owner of the petrol pump as the certificates under Section 65B(4) of the Act of 1872. While the certificate-Ex.P75, does not mention who had prepared the pen drive, the letter-Ex.P76 mentioned that its author got the data retrieved onto the pen drive, but was silent as to through whom. However, as is apparent from Ex.P14-the seizure memo of the pen drive and the statements of motbir witnesses, it bore signature neither of the petrol pump owner, i.e., Shri Shrawan Singh nor of any of the staff members and on that premise, the validity and sanctity of the letter-Ex.P76 become doubtful. Further, Shrawan Singh had turned hostile as PW26 having denied issuing either the certificate under Section 65B or the letter in respect thereof. He, however, during his cross-examination by the learned Additional Public Prosecutor, admitted his signatures on Ex.P75 and Ex.P76, but stated categorically, in the same breath, that the signatures were obtained by the police personnel on blank papers.

In addition, both the certificate and the letter mentioned that the subject footage was copied onto a video CD and a pen drive but, conspicuously, no video CD was seized and produced in evidence by the prosecution to lend credibility to the certificate/letter.

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It is worth noticing here that though the incident is alleged to have taken place on 21.10.2019, the pen drive of the CCTV footage was seized on 24.10.2019 and the subject DVR attached to the CCTV cameras installed at the petrol pump was seized as late as on 06.02.2020 vide memo-Ex.P68 and no explanation was furnished for this inordinate delay in its seizure. Although, the DVR was deposited in the malkhana on the date of its seizure as is apparent from the malkhana register (Ex.P265A); however, it also reflects that it was taken out on 14.04.2020, but the evidence is silent, by whom. The malkhana In-charge, Nannu Ram (PW67), admitted during his cross-examination that there was no entry in the register who had taken out the DVR and for what purpose. He also admitted that it was also not mentioned whether the DVR was redeposited in a sealed condition.

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Moreover, we find that the footage analysis report-Ex.P67 was prepared in the CO office on 07.11.2019 by playing the pen drive in the office computer. Although, this report discloses the description of the pen drive; however, conspicuously, no description was given either in the seizure memo-Ex.P14 or in certificate purportedly issued under Section 65B(4)-Ex.P75 or in the letter-Ex.P76, which raises grave suspicion about its validity. Further, Ex.P67 does not show who had brought the pen drive to the office and from where.

We also notice that although, some of the appellants have allegedly been identified in the footage analysis report, but the Investigating Officer (PW65) admitted that at the time of its preparation in his office, no independent person was available to

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identify the appellants. He further admitted that no marks of identification of the appellants named in the report were mentioned nor was it mentioned that their faces were clearly visible. In view thereof, in our considered opinion, the footage analysis report-Ex.P67, which otherwise is not a substantive piece of evidence, carries no probative value qua the complicity of the appellants allegedly identified therein.

Furthermore, the aforesaid analysis of evidence reveals that the CCTV footage at the petrol pump was seen on 22.10.2019 or 23.10.2019 and in any case, before copying the same onto the pen drive on 24.10.2019 vide memo-Ex.P14. However, no explanation for this delay in the seizure of the pen drive was furnished by the prosecution. Further, the pen drive was neither sealed nor deposited in the malkhana and the seizure memo did not contain a description of the pen drive. The prosecution could not lead any evidence to show who had copied the CCTV footage onto the pen drive and from which source. The footage analysis report-Ex.P67 was prepared on 07.11.2019 in the CO office by playing the pen drive in the office computer, but it was not revealed who had brought it to the CO office and from where. Moreover, it was played in the Court on 12.09.2024 with no evidence to show where it was lying interregnum. The subject DVR was seized on 06.02.2020, i.e., with a delay of about three and a half months from the date of the incident for which no explanation was furnished. As per the entry in the malkhana register-Ex.P265A, it was taken out from the malkhana on 14.04.2020, but there is no corresponding entry as to by whom and for what

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purpose. The malkhana In-charge, Nannu Ram (PW67), stated that he was unaware who had taken it, for what purpose and when it was redeposited in the malkhana. Thus, the prosecution miserably failed to show a chain of custody with regard to CCTV footage at the petrol pump rendering its authenticity and integrity doubtful.

Furthermore, the aforesaid pen drive-Article 2 was played in the Court on 12.09.2024 during the deposition of Investigating Officer. As per it, the deceased Ganpat and the appellants Beerbal Dhaka, Sohanlal, Nandlal, Babulal Faldoliya, Ramgopal and Rajesh were identified by the Investigating Officer. He, however, during his cross-examination as PW65, admitted that before the incident, he was acquainted neither with Ramgopal nor with the other accused-appellants. In view thereof, it is highly doubtful how he could have identified either the deceased or the appellants in the footage onto the pen drive. Moreover, the defence raised an objection that the faces of the person sitting in the vehicle and of those present nearby, were not clearly visible and, therefore, were not identifiable. It was also admitted by the Investigating Officer that the faces of the four persons namely Ganpat, Beerbal Dhaka, Sohanlal Jat and Nandlal Meena were not clearly visible, but claimed that they were identifiable from their gait and appearance, and on zooming in the video. However, in the same breath, he admitted that there was no material on record to demonstrate that he identified these persons by zooming in the video footage. He also admitted that the face of the appellant Babulal Faldoliya was not visible in the CCTV footage but, he was

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identified from his gait and appearance alone. He further admitted that none of the persons sitting in the vehicle was visible or identifiable. One of the motbir witnesses to Ex.P67, namely, Pawan Kumar (PW19) also admitted in his cross-examination that he could not identify any of the appellants named therein.

It is worth noticing here that if the Investigating Officer was not acquainted with the appellants visible in the footage, it was almost impossible for him to have identified them by their gait and appearance which, even assuming does not require some special skill, requires, at least, an evaluation based on several distinct characteristics, such as build, symmetry, posture, step-length etc.

Furthermore, a perusal of the impugned judgement reflects that the learned trial court has recorded a finding of guilt against the appellants allegedly identified in the CCTV footage by comparing the images with their photographs pasted on the arrest memos ignoring and overlooking that the prosecution did not lead any evidence to show when and by whom the photographs were pasted on the arrest memo. As already observed, an arrest memo is not a substantive piece of evidence.

There is another important aspect of the matter. The complainant, the younger brother of the deceased, namely, Baldev Godara (PW1), admitted during his cross-examination that in his Section 161 Cr.P.C. statement-Ex.D2, he had stated that Mahendra Gurjar and Rajesh had deleted the CCTV footage of the petrol pump at the instance of the appellant Ramgopal. Bhagchand (PW10), brother-in-law of the deceased Ganpat Lal, also stated that Mahendra Gurjar informed them that he, along with

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Ramgopal and Rajesh, deleted the footage. During his cross-examination, he claimed to have stated in his Section 161 Cr.P.C. statement-Ex.D4 that the subject CCTV footage from the petrol pump was deleted, but he did not know why this was not so mentioned therein. However, he admitted that it was rightly stated in Ex.D4 that the subject footage was deleted. Moreover, the appellant Rajesh Kumar has been found guilty of the offence under Section 201 IPC, i.e., of deleting the CCTV footage, on the morning of 22.10.2019, from the DVR installed at the petrol pump. On that premise, it is doubtful how the CCTV footage was copied onto the pen drive, which was seized vide Ex.P14 on 24.10.2019.

In **Chandra Bhan Sudam Sanap Vs. State of Maharashtra; 2025 INSC 116**, the Hon'ble Supreme Court of India was pleased to allow the appeal preferred by the accused-appellant facing death penalty on accounts, inter alia, that infirmities were found in the CCTV footage relied upon by the prosecution and for want of a proper and valid Section 65-B of the Act of 1872.

It was precisely held as under:-

> **"41.** We find that the infirmities referred to by the defence namely, about the life span of the CCTV footage in DVR-II being 12 days; the absence of identification of both the appellant and deceased in the same footage by the witnesses; the absence of explanation as to how the Police knew that the person PW-18 and 19 were speaking to was the same person in the footage and other infirmities raised have not been adequately answered by the prosecution in its evidence. Learned Additional Solicitor General Mr. Raja Thakare painstakingly took us through the available evidence and objectively placed the matter before us.

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> However, from the material available on record, these lingering doubts in our mind have not been adequately addressed."

In the conspectus of the aforesaid analysis, we are unable to persuade ourselves to agree with the findings recorded by the learned trial court as to the complicity of the appellants based on the CCTV footage obtained either from the house of the appellant Ramgopal or from the petrol pump. Therefore, we hold that the prosecution failed to establish the evidence of `last seen'.

After meticulously scanning the evidence available on record, we notice that the prosecution appears to be labouring under a confusion and has come with self-contradictory stories as to the manner in which the incident took place. On the one hand, it has been the prosecution case that on the fateful night of 21.10.2019, until the CCTV cameras installed at his house were switched off by the appellant Ramgopal at about 10.00 PM, he was seen beating his daughter Prem. Thereafter, Prem and Ganpat Lal went to the petrol pump together Ganpat Lal's motorcycle from where they were kidnapped and taken to Ramgopal's house in a passenger vehicle, where they were beaten to death. To this extent, the prosecution story appears to be plain and simple. However, there is an incomprehensible and irreconcilable twist in the story. The appellant Mehendra Singh Choudhary has been convicted by the learned trial Court on the allegation that he brought Prem in a Scorpio car from her maternal uncle's home, and as per the CCTV footage of the Toll Plaza, the Scorpio car was found to be travelling from the Jaipur side towards Sikar in the intervening night of 21-22.10.2019 at about 00.22 hours. However, neither the name of

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the maternal uncle nor his address was disclosed by the prosecution. Be that as it may, we fail to reconcile both the stories. If Prem was present at Sikar from 8.00 PM till she was beaten to death any time after 11.30 PM, how could she have been brought to Sikar from a place situated towards Jaipur in the same night after 00.22 hours.

Be that as it may, we, now, proceed to examine another link in the chain of circumstantial evidence.

(2) Recovery of Incriminating Evidence:

Once the important link in the chain of circumstances relied upon by the prosecution, i.e., last seen based on the CCTV footage, collapses, we are left only with recovery of incriminating evidence on the disclosure statement of the appellants or otherwise.

Appellant Ramgopal:

The following incriminating evidence was found against the appellant Ramgopal on his disclosure statement or otherwise:-

(1) Discovery of the scene of crime, (2) recovery of a piece of cable, (3) discovery of the place where the dead bodies were disposed of, and recovery of blood stained soil and leaves from there, (4) recovery of a Bolero car allegedly used in the disposal of the dead bodies and (5) lodging of a false report-Ex.P110 by him.

Insofar as the scene of crime is concerned, its site plan is Ex.P82 which reflects that on the night of 21.10.2019, the appellant Ramgopal brought his daughter Prem and her lover Ganpat Lal from Palsana in a vehicle and beat them to death in

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the room marked `X'. The bloodstains from the room were recovered vide seizure memo-Ex.P32.

In this regard, it may be relevant to mention here that the prosecution has come out with a story that Prem was forced by her father to summon Ganpat Lal over mobile phone; both of them reached the petrol pump at Palsana Bypass on Ganpat Lal's motorcycle from where they were kidnapped, brought to the house of the appellant Ramgopal, were beaten to death in the subject room and their bodies were disposed of at another place. Dharampal (PW69), the then Assistant Sub-Inspector at Police Station Ranoli, stated in his examination-in-chief that upon receipt of information that a girl had been kidnapped, he went to the petrol pump, where the employees informed him that in the intervening night of 21-22.10.2019, 3-4 persons had come in a passenger vehicle following a girl and a boy and had taken them away in that vehicle and the entire episode was shown to him in the CCTV recording. In his cross-examination, he emphasised that he had seen in the CCTV footage a boy and girl coming to the petrol pump on a black motorcycle, the girl wearing a salwar suit and the boy a pant and shirt. The Investigating Officer (PW65) also stated during his cross-examination that he had found during the investigation that the deceased Prem had come to the petrol pump with the deceased Ganpat Lal on a motorcycle and the motorcycle was parked beside the petrol pump. The complicity of the appellant Sandeep Gurjar in the crime has been found on the allegation that he followed Prem and Ganpat on the motorcycle of the appellant Ramgopal and caught hold of them. However, neither was any charge of kidnapping of Prem framed, nor did the

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prosecution lead any such evidence to establish that Prem had come to the petrol pump on a motorcycle along with deceased Ganpat Lal from where they were kidnapped by some of the appellants in a passenger vehicle and were taken to her home. Rather, we find unexplained and glaring gaps in this story. Firstly, as per the CCTV footage of the house of the appellant, he was found to be severely beating his daughter Prem between 8.30 PM to 10.00 PM.

Although, the Investigating Officer (PW65) stated in his deposition on 12.09.2024 when the pen drive Article-1 was played in Court, that Ramgopal forced his daughter Prem to summon her lover Ganpat over the mobile phone but, indisputably, the footage contained no audio. Further, as already observed, there was no evidence on record to identify the man as Ramgopal and the girl as Prem. Moreover, the prosecution did not lead any evidence to demonstrate that there was any mobile conversation between Prem and Ganpat Lal on the night of 21.10.2019. We have also held that there is no evidence available on record to show that Prem and Ganpat Lal had left for the petrol pump together on a motorcycle from where they were allegedly kidnapped. As a matter of fact, there was no evidence on record to show that they were seen together on the fateful night.

In addition, as per the CCTV footage of the petrol pump, Ganpat Lal was seen running in a black T-shirt at about 11.18 PM. However, as per Shri Dharampal (PW69), he saw the deceased Ganpat Lal at the petrol pump in a pant and shirt. Be that as it may, as per the allegation found to be proved against the appellant Mahendra Kumar Choudhary, he brought Prem on the

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fateful night from her maternal uncle's home to her paternal home. However, neither the name of her maternal uncle nor his address was disclosed by the prosecution. Moreover, as per the testimony of Murari Lal Sharma (PW13), the Shift In-charge, Reliance Toll Plaza, the Scorpio car allegedly used by Mahendra Kumar Choudhary in bringing Prem, passed through the Toll Plaza in the intervening night of 21-22.10.2019 at about 00.22 hours travelling from Jaipur to Sikar and returned towards Jaipur the same night at about 03.10 AM. If the prosecution case is believed Prem was severally beaten by her father Ramgopal at their house until 10.00 PM in the night of 21.10.2019. Thereafter, both the deceased came to petrol pump on a motorcycle driven by Ganpat Lal and in the CCTV footage of the petrol pump, Ganpat Lal was seen running at about 11.18 PM and he was kidnapped from there by some of the appellants in a passenger vehicle. Meaning thereby, some time after 10.00 PM, Prem and Ganpat Lal met and came together on motorcycle to the petrol pump, from where they were kidnapped and were taken to house of Ramgopal in a passenger vehicle where they were beaten to death. If the incident happened in the manner claimed by the prosecution, how could the appellant Mahendra Kumar Choudhary have brought Prem from Jaipur to Sikar that too, if the testimony of Murari Lal Sharma is to be believed, after 00.22 hours as the subject vehicle was claimed to have passed at that time from the Toll Plaza travelling from Jaipur towards Sikar. Moreover, as per the prosecution case itself, before Prem came to the petrol pump along with Ganpat Lal, she had already been severely beaten by her father with a cable, which should inevitably have entailed

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profuse bleeding but, conspicuously, no bloodstains were found at the petrol pump, Ganpat Lal's motorcycle and in the passenger vehicle in which they were allegedly carried to the house of the appellant Ramgopal. Further, Prem was not visible at all in the CCTV footage of the petrol pump. All this raises grave doubt as to the veracity of the prosecution case.

Furthermore, so far as the scene of crime is concerned, the Investigating Officer (PW65) admitted that it was under the possession and control of the parents and other family members of Ramgopal. He further admitted that he did not conduct any investigation through the revenue authorities or otherwise as to who owned and possessed the scene of crime. On that premise, it could not be held that it was in the exclusive control and possession of the appellant Ramgopal. Moreover, the blood seized from the scene of the crime vide memo Ex.P32 was found to be human blood as per the FSL report-Ex.P259, but the blood grouping remained inconclusive. Their Lordships, in **Raja Naykar vs. State of Chhattisgarh: (2024) 3 SCC 481,** held that in absence of blood grouping, mere presence of human blood on the sample is of no assistance to the prosecution case.

Another piece of incriminating evidence found against the appellant Ramgopal was the recovery of the dead bodies on his disclosure statement and recovery of blood smeared soil and tree leaves from the place of recovery of the dead bodies. As per the seizure memo-Ex.P78, the bodies were recovered on 23.10.2019, at about 9.00 pm. Although, the time in the Ex.P78 has been interpolated, which the prosecution could not explain; however, the other evidence on record also creates a doubt as to the time

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of its recovery. Ramgopal was arrested vide memo Ex.P12 on 23.10.2019 at 8.00 PM and he made disclosure statement-Ex.P143 on the same day at about 8.15 PM pursuant whereof the bodies were recovered at 9.00 PM. However, the complainant Baldev Godara (PW1) stated during his cross-examination that at about 5-6 PM, he came to know from Ranoli Police Station that the dead bodies of his brother Ganpat Lal and of Prem had been recovered by the police at the instance of Ramgopal. The Investigating Officer (PW65) also admitted during his cross-examination that the witnesses, namely, Baldev, Bhagchand, Jagdish and some others had stated that the dead bodies were recovered at about 5-6 PM on 23.10.2019. Manoj Kumar (PW29), one of the motbir witnesses to Ex.P78-the seizure memo of the dead bodies, had stated that the seizure was photographed and videographed without the source of light being disclosed although the place was unlit and deserted, and it was 9.00 PM in the winter season. His statement was corroborated by another motbir witness, namely, Jhabarmal (PW35). Thus, it is doubtful whether the dead bodies were recovered on 23.10.2019 at 9.00 PM on the disclosure statement of the appellant Ramgopal.

Further, insofar as the recovery of dead bodies on the disclosure statement of Ramgopal is concerned, the information given by him under Section 27 of the Act of 1872 was reduced in writing vide Ex.P143. The relevant portion whereof reads as under:

> ''मैंने व मेरे ने साथियों मिलकर दिनांक 21.10.19 की रात्री को मेरे घर पर मेरी लडकी प्रेम व उसके प्रेमी गणपत लाल की हत्या कर उनकी

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लाशों को मैंने व मेरे साथ वालों ने जीणमाता से आगे हर्ष की तरफ जाने वाली रोड के नीचे डाल दिया था मैं चलकर दोनों की लाश बरामद करा सकता हूं।''

"My companions and I together murdered my daughter Prem and her lover Ganpat Lal at my house on the night of 21.10.19 and my companions and I had thrown their bodies below the road going towards Harsh beyond Jeenmata. I can go along and get the bodies of both recovered." (English translation)

However, during his Court deposition, the Investigating Officer Richpal Singh (PW61) said about Ex.P143 as under:

''दौराने अनुसंधान मुलजिम रामगोपाल को दफा 27 साक्ष्य अधिनियम की इतला दी गई थी जो प्रदर्श पी–143 है।''

"During the investigation, accused Ramgopal was informed under Section 27 of the Evidence Act, which is Exhibit P-143." (English translation)

Thus, from the aforesaid, it is apparent that in his court deposition, the Investigating Officer did not reproduce the exact words as used by the appellant Ramgopal in his disclosure statement; rather, stated that the appellant was informed under Section 27.

Dealing with the issue as to how Section 27 information is to be proved, the Hon'ble Apex Court, in **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh : (2023) 16 SCC 510**, refused to accept the evidence of discovery on the premise that the Investigating Officer, in his oral evidence, did not state the

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exact words uttered by the accused at the police station. It was specifically held as under:

> "59. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.
>
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73. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama (Exh.5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon."

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Further, in **Babu Sahebagouda Rudragoudar & Ors.** (supra), the Hon'ble Supreme Court referring to the judgement in **Ramanand @ Nandlal Bharti** (supra), held as under:

"The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act."

Thus, it was held in the aforesaid judgements that it was obligatory upon the Investigating Officer to depose to the exact words uttered by the accused in his disclosure statement, in the absence whereof no reliance could be placed on the discovery based on that disclosure statement. In the instant case, we have noticed that the Investigating Officer, in his Court deposition, did not state the exact words uttered by the appellant Ramgopal in his disclosure statement-Ex.P143 and, therefore, we are of the view that the learned trial court erred in placing reliance upon the discovery of the dead bodies based on the information furnished by Ramgopal under Section 27 of the Act of 1872.

Moreover, the blood smeared soil and the blood smeared tree leaves from the place where the dead bodies were found were seized on 25.10.2019 vide memo-Ex.P85 and were sealed in a white cloth bag marked `E'. However, the prosecution furnished no

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explanation as to why these articles were not recovered on the day the dead bodies were seized, rather were seized with the delay of two days. Moreover, as per the FSL report-Ex.P259, only blood smeared soil was found in the packet-E and not the blood smeared dry leaves. No explanation was furnished for the absence of the blood smeared leaves from the packet-E which creates doubt as to whether the sample was kept intact from the date of its collection until it reached the FSL. Furthermore, as per the FSL report, though the human blood was found in the blood smeared soil, but the blood grouping remained inconclusive which does not advance the prosecution case.

The next piece of incriminating evidence relied upon by the prosecution against the appellant Ramgopal was the recovery, on his disclosure statement, of a piece of cable allegedly used by him in beating the deceased but, we do not find that the evidence on record was sufficient to establish that it was the weapon of offence used in the murder of Ganpat Lal and Prem. As per the prosecution case, this piece of cable represented a part of a bundle of cable lying at the house of the appellant Ramgopal from which the appellant cut a number of pieces with a fodder cutter machine which were also used by some of other appellants in the commission of the offence. However, we find a huge gap in the prosecution story in this regard. As per the prosecution, the appellant was seen in the CCTV footage of his home cutting the piece of cable with a fodder cutter. Although, we have not relied upon the CCTV footage contained onto the pen drive-Article 1 but, even assuming it to be genuine and authentic, we do not find that

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any of the folders on the pen drive-Article 1 played in the Court on 12.09.2024, contained any footage of the appellant Ramgopal cutting the pieces of cable with the fodder cutter. Further, as admitted by the Investigating Officer (PW65), the fodder cutting machine was not shown in any of the various site plans of the subject house such as Ex.P2 or Ex.P24. Furthermore, indisputably, the bundle of cable from which several pieces were allegedly cut, was not seized by the investigating agency, in the absence whereof we are unable to record a finding that the piece of cable recovered at the instance of the appellant constituted part of the bundle of cable. Additionally, its seizure memo-Ex.P15 does not reflect it was blood stained, nor was it sent to FSL examination. On that premise, we are not convinced that the appellant could have been connected with the alleged crime with the aid of this piece of incriminating evidence.

The next piece of incriminating evidence relied upon by the prosecution against him was the recovery of a Bolero car allegedly used in disposing of the dead bodies. As per the seizure memo-Ex.P31, it was recovered from the Khatushyamji Police Station. Although, the prosecution came out with a story that the appellant himself had parked this vehicle at the Police Station Khatushyamji, but no evidence was led to substantiate it. Even otherwise, we find substantial force in the submission advanced by his learned Senior Counsel Shri Bajwa that it would be contrary to natural human conduct for the appellant himself to park the very vehicle at the Police Station which, allegedly was used in disposing of the dead bodies. Although from the seat cover of the Bolero car,

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human blood was detected but, its grouping remained inconclusive.

The learned trial court has also relied upon the report-Ex.P110 lodged by the appellant on 23.10.2019 at Police Station Khatushyamji with regard to kidnapping of his daughter Prem which gave rise to FIR No.278/2019-Ex.P111, wherein the police, after investigation, submitted a negative final report which was stated to have been accepted by the jurisdictional court. However, we do not find on record any order accepting the FR. Although, it is trite law that the lodging of a false report by the accused about the same incident shows an attempt to mislead the investigation and is relevant conduct under Section 8 of the Act of 1872, but it is also a well settled legal principle that neither the FIR nor the negative Final Report is a substantive piece of evidence in itself. The prosecution is under an obligation to prove the falsity of the FIR at trial through witnesses and other legally admissible evidence. However, in the instant case, apart from exhibiting these documents, no further evidence was led to substantiate the same. Even otherwise, it can be taken only as an additional link in the chain of circumstances and not as a piece of the circumstantial evidence in itself. On that premise, even assuming that the FIR lodged by the appellant was found to be false, this fact alone does not advance the case of the prosecution against him.

In the conspectus of aforesaid analysis, we are of the considered view that the prosecution was not able to establish, beyond reasonable doubt, the complicity of the appellant Ramgopal for the offences for which he was charged.

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Appellants Mahadev, Parsaram Choudhary and Babulal @ Harnek:

The appellants, namely, Mahadev, Parsaram Choudhary and Babulal @ Harnek have been convicted solely on the strength of the recovery of a piece of cable wire from each of them on their disclosure statements. The reasoning assigned by this Court in disbelieving the prosecution case connecting the appellant Ramgopal with the crime on the strength of the recovery of a piece of cable, applies on all fours to the case of the aforesaid appellants as well. In view thereof, we do not approve of the findings of conviction recorded by the learned trial court against them.

However, we find no merit in the submission advanced by the learned Senior Counsel Shri Bajwa that the thickness of different pieces of the cables recovered differed. In one of the seizure memos, the thickness was shown as 5 cms. whereas, in some other, it was stated to be a finger thick. Though, no evidence was shown to us to demonstrate thickness of a finger, it is a matter of common knowledge that the average thickness of an adult male's finger is about 5-6 cms.

Appellant Sandeep Gurjar:

His conviction is recorded by the learned trial court on the basis of recovery, on his disclosure statement, of a motorcycle allegedly used by him in following the deceased Prem and Ganpat and in catching hold of them.

As already held, the prosecution failed to lead any evidence to show that Ganpat Lal and Prem were seen together on the fateful night. On that premise, we find no occasion for the

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appellant Sandeep Gurjar to follow them on a motorcycle. Further, surprisingly, the prosecution is completely silent as to the place from where the appellant started following Ganpat Lal and Prem and where they were caught by him. In the conspectus of the aforesaid analysis, we are not able to persuade ourselves to sustain the finding of his guilt recorded by the learned trial court vide the impugned judgement.

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Appellant Beerbal Dhaka:

His complicity in the crime has been found by the learned trial court on the basis of the recovery of a passenger vehicle vide memo-Ex.P7 allegedly used in kidnapping of the deceased Ganpat Lal from the petrol pump. As already held, we have disbelieved the CCTV footage of the petrol pump relied upon by the prosecution to show that Ganpat Lal was kidnapped by some of the appellants in the subject vehicle. In addition, we find that no incriminating material was recovered from the subject vehicle to establish that it was used in the kidnapping of the deceased Ganpat Lal. Further, indisputably, its registration number was not visible in the CCTV footage and it was connected with the crime only because “Rainbow Children Academy” was written on its side as seen in the CCTV footage. However, the Investigating Officer (PW65) did not deny a suggestion, put to him, during his cross-examination that the school might have had about 30 such vehicles. In view thereof, we do not find it prudent to sustain the finding of his guilt based on such sketchy evidence.

Appellant Sohanlal:

He has been found to be involved in the crime on the strength of recovery of a piece of cable and the discovery of the

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place where he allegedly burnt the mobile phone of the deceased Ganpat Lal.

So far as the recovery of the cable is concerned, we have already held it not to be an incriminating piece of evidence to connect the appellant with the crime. Moreover, conspicuously, thickness of the seized cable is not mentioned in the seizure memo-Ex.P1.

So far as the discovery of the place where the mobile phone of Ganpat Lal was burnt is concerned, its site plan-Ex.P94 clearly records that no mobile related traces were found. We failed to understand how, if the information under Section 27 of the Act of 1872 did not lead to discovery of a new fact, it could have been relied upon against the appellant. On that premise, we are not able to concur with the finding of his guilt recorded by the learned trial court.

Appellant Nandlal:

He has been convicted on the basis of the recovery of a piece of cable and seizure of a purse and PAN card belonging to the deceased, on his disclosure statement.

So far as recovery of cable is concerned, we disbelieve the same for the reasons assigned hereinabove qua the other appellants.

So far as recovery of purse and PAN card is concerned, the same were recovered, on his disclosure statement, about nine months after the date of incident. Further, we find from the site plan-Ex.P136 that it was an open place and, as admitted by the Investigating Officer, was frequently visited by the villagers. Furthermore, no evidence was brought to our notice to show that

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the purse and the PAN card were identified as belonging to Ganpat Lal. Even otherwise, we do not find it safe to sustain the finding of his conviction on this count alone.

Moreover, we find that in his information under Section 27 of the Act of 1872, the appellant had stated as under:

> ''रामगोपाल मील की लड़की प्रेम व उसके प्रेमी गणपत की हत्या के बाद रामगोपाल ने मुझे मृतक गणपत का एक पर्स दिया था, जिसको मैने खारड़ा में फैंक दिया था, वह स्थान अब मैं आपके साथ चलकर बताकर पर्स बरामद करवा सकता हूं।''
>
> "After the murder of Prem, the daughter of Ramgopal Meel, and her lover Ganpat, Ramgopal gave me a purse belonging to the deceased Ganpat which I threw in Kharda. I can now go with you, point out the place and get the purse recovered." (English translation)

The Investigating Officer, in his Court deposition as PW65, stated as under with regard to the disclosure statement:

> "आरोपी नंदलाल उर्फ नंदकार की धारा 27 साक्ष्य अधिनियम की इतला जो मृतक गणपत के पर्स की बरामदगी से संबंधित थी को मुर्तिब किया था जो प्रदर्श पी–157 है।"
>
> "The information under Section 27 of the Evidence Act by the accused Nandlal @ Nandkar relating to the recovery of the purse of the deceased Ganpat was reduced to writing which is Exhibit P-157."

Thus, the exact words uttered by the appellant were not stated by the Investigating Officer in his Court deposition in violation of the mandate of law laid down by the Hon'ble Supreme Court in **Ramanand @ Nandlal Bharti** (supra) which renders the

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discovery of the purse of the deceased pursuant thereto, of no consequence.

Appellant Mahendra Kumar Choudhary:

His complicity in the crime was found by the learned trial court on the strength of the recovery of a Scorpio car and a fan belt. As per the prosecution, the Scorpio car was used by him in bringing the deceased Prem from her maternal uncle's home to her paternal home and the fan belt was used in beating the deceased. Murari Lal Sharma (PW13), the Shift In-charge, Reliance Toll Plaza deposed, based on CCTV footage-Ex.P40 and Ex.P41, that the subject Scorpio car passed through the Toll Plaza in the intervening night of 21-22.10.2019 at about 00.22 hours travelling from Jaipur towards Sikar and returned towards Jaipur on the same night at about 03.10 AM. However, during his cross-examination, he stated that only System Manager could say whether the data of the CCTV footage-Ex.P40 and Ex.P41 could be manipulated or not. He further stated that he was unaware if the wrong data was fed by the Operator into the footage.

In view thereof, his testimony, based on Ex.P40 and 41, is rendered of no consequence. Even assuming it to be reliable, it was not the prosecution case that Prem was at her maternal Uncle's home at Jaipur, had returned to Sikar after midnight of 21.10.2019; rather, as per the prosecution story, she was beaten by her father at their home between 8.30 PM to 10 PM on the night of 21.10.2019 which belies the case that the subject Scorpio Car was used for bringing her from her maternal Uncle's home. Similarly, the fan belt recovered from the car was neither found to be blood stained nor subjected to FSL examination to substantiate

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the plea that it was used in beating the deceased. On that premise, we do not approve the findings of his guilt recorded by the learned trial court.

Appellant Rajesh Kumar:

Although, the charge against him was of attempting to delete the CCTV footage from the cabin of the petrol pump but, he has been convicted under Section 201 IPC. Even otherwise, the findings of the learned trial court in this regard are based on the CCTV footage contained onto the pen drive-Article 2. Since we have already disbelieved the CCTV footage contained onto the pen drive, his conviction based thereon cannot be sustained in the eyes of law.

Furthermore, as per the impugned judgment, he was identified in the CCTV footage by the Investigating Officer (PW65) and after comparing his image in the CCTV footage with the photograph appended to his arrest memo-Ex.P19, the learned trial court held the person in the footage to be the appellant. However, an arrest memo is not a substantive piece of evidence and none of the prosecution witnesses proved that the photograph appended to it was that of the appellant. Rather, Subhash Chand (PW32), one of the motbir witnesses to the arrest memo, categorically admitted in his cross-examination that the photograph was not brought by the appellant rather, had been developed later on, though he professed ignorance as to where. He also admitted that the photograph was pasted later and it did not exist at the time of the arrest. Moreover, a photograph is not primary evidence, rather secondary evidence and, if taken with the digital camera, is secondary electronic evidence. Since neither the negative nor a

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Section 65B(4) certificate was produced along with the subject photograph, we find that it was not proved in evidence. In view thereof, the learned trial court erred in relying upon the photograph affixed to the arrest memo-Ex.P19.

Appellant Madanlal:

The learned trial court has recorded his conviction on the strength of the recovery, on his disclosure statement, of a piece of cable and of a motorcycle belonging to the deceased Ganpat Lal. With regard to recovery of cable, the reasonings assigned by this Court qua other appellants apply on all fours to his case as well and, therefore, cannot be believed to connect him with the alleged crime.

So far as the recovery of motorcycle is concerned, the prosecution could not prove where the deceased had parked it. Further, it was recovered on 02.08.2020, i.e., more than nine months after the incident and that too from an open place. Moreover, the prosecution did not lead any evidence to show how it reached the place of recovery. Even otherwise, only on this count alone, we are unable to sustain the finding of his guilt recorded by the learned trial court.

There is one more important aspect of the matter. The appellant has stated in his disclosure statement as under:

> ''रामगोपाल मील की लड़की के प्रेमी गणपत की हत्या के बाद मृतक गणपत की मोटरसाईकिल बजाज डिस्कवर को मैने दिनांक 22.10.2019 की रात्रि में जीणमाताजी से रैवासा की तरफ सड़क से कुछ दूरी पर स्थित पहाड़ी पर एक खड्डे में छुपा दिये थे, वह मोटरसाईकिल अब मैं आपके साथ चलकर बरामद करवा सकता हूं।''

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"After the murder of Ganpat, the lover of Prem-the daughter of Ramgopal Meel, I had hidden the deceased Ganpat's Bajaj Discover motorcycle on the night of 22.10.2019 in a pit on a hillock located at some distance from the road from Jeenmataji towards Raiwasa. I can now go with you and get that motorcycle recovered." (English Translation)

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However, the Investigating Officer (PW65), in his Court deposition, stated, with regard to Ex.P150 as under:

''दिनांक 01.08.2020 को आरोपी मदनलाल चांदीवाल की धारा 27 साक्ष्य अधिनियम की इतला जो मृतक की मोटरसाईकिल की बरामदगी से संबधित थी को मुर्तिब किया था जो प्रदर्श पी–150 है।''

"On 01.08.2020, the information under Section 27 of the Evidence Act by accused Madanlal Chandiwal regarding the recovery of the deceased's motorcycle was reduced to writing, which is Ex. 150." (English translation)

Thus, we find that the disclosure statement was not proved by the Investigating Officer in the manner mandated by the Hon'ble Supreme Court of India in **Ramanand @ Nandlal Bharti** (supra) and, therefore, the recovery of the motorcycle of the deceased based on such a disclosure statement could not have been used as an incriminating piece of evidence against the appellant Madanlal.

Insofar as the recovery of an incriminating piece of evidence from the appellants is concerned, since it is a case that rests solely upon circumstantial evidence, the prosecution was under an obligation to prove a complete and unbroken chain of circumstances leading only to the hypothesis of the guilt of the accused. Further, as already observed by us, the prosecution could not prove the last seen evidence. In that factual context, even

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assuming that the confessional statements of some of the appellants led to the recovery of some incriminating evidence, this circumstance standing alone is not sufficient to sustain the findings of conviction.

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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 R**aja Naykar vs. State of Chhattisgarh** reported in **(2024) 3 SCC 481** at paragraph 29 thereof while referring to the judgment 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

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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.

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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 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

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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."

Thus, in the backdrop of the aforesaid precedential law, we are not able to sustain the impugned judgement of conviction based on circumstances evidence.

We also notice that the learned trial court has held it to be case of honour killing. In this regard, suggestions made by the defence to Dharampal (PW69) during his cross-examination were relied upon to conclude that the defence had indirectly admitted that Ganpat and Prem came to the petrol pump together on a motorcycle. However, after scanning the entire testimony of the PW69 including his cross-examination, we are unable to persuade ourselves to agree with the findings so recorded by the learned trial court. In his examination-in-chief, he had stated that the employees at the petrol pump informed him that 3-4 persons had taken away a boy and a girl in a passenger vehicle which was shown to him in the CCTV recording. However, indisputably, the prosecution did not produce any such footage in evidence. Rather, at the cost of repetition, we may observe here that, as a matter of fact, the prosecution did not lead any evidence to prove that both were seen together at all on the night of 21.10.2019. Further, in his cross-examination, he also admitted that he could not identify any person in the footage as he was not acquainted with them nor were they subjected to test identification parade before him. Moreover, he was questioned about the registration number of the motorcycle, the clothes worn by the boy and the girl or the time they had visited the petrol pump. Merely on account of these

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suggestions, the learned trial court could not have drawn such inference that the defence had admitted that they had come to the petrol pump together on a motorcycle.

Even otherwise, as already discussed, there was no evidence on record to show that the deceased Ganpat Lal and the deceased Prem were in love with each other apart from the oral testimony of the Investigating Officer (PW65). When the pen drive-Article 1 was played in the Court on 12.09.2024, he stated that the girl talking on mobile phone was Prem and the man standing beside her was her father Ramgopal and was asking her to call her lover Ganpat over the mobile phone. However, he admitted in his cross-examination that he was not acquainted with Ramgopal or his family members. Further, the footage, which otherwise could not be proved in accordance with law, did not contain any audio. Moreover, no call detail record was produced to prove that the deceased Prem had talked to Ganpat over the mobile at that time. Thus, it was only an assumption made by the Investigating Officer unsupported by any legally admissible evidence. In the light of the aforesaid, in our considered opinion, the learned trial court gravely erred in reckoning it to be a case of honour killing.

Whether FIR was hit by Section 162 Cr.P.C.

Shri V.R. Bajwa, learned Senior Counsel, has asserted that the FIR-Ex.P11 was hit by Section 162 Cr.P.C. inasmuch as the complainant had earlier lodged a report at Police Station Khatushyamji which was not brought on record by the investigating agency leading to an inference that it had suppressed the true genesis of the case.

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In this regard, the record reveals that Ex.P11 was based on the written report-Ex.P1 submitted by Baldev Godara on 23.10.2019 at 12:10 PM at Police Station Ranoli. Jagdish (PW2), a brother-in-law of the deceased Ganpat Lal, stated in his cross-examination that, on 22.10.2019, he had orally informed the SHO Police Station Khatushyamji about the incident, but he did not lodge any report; however, the SHO immediately proceeded to the petrol pump. Both; the first Investigating Officer (PW61) as also the second Investigating Officer (PW65) admitted in their cross-examination that the complainant had informed about the incident to the Police Station Khatushyamji a day prior to submission of Ex.P1. PW65 also accepted that suggestion that a preliminary inquiry was conducted by the Police Station Khatushyamji; however, the enquiry report prepared by the Police Station Khatushyamji was not made part of the record by him.

Their Lordships, in **Allarakha Habib Memon & Ors.** (supra), held if the actual complaint filed with the police seems to have been withheld, there are genuine reasons to hold that the FIR is a post investigation document. In that case, reliance was placed on the precedent of the Hon'ble Supreme Court in the case of **State of Andhra Pradesh vs. Punati Ramulu : 1994 Suppl 1 SCC 590** wherein it was held that once it is found that the Investigating Officer has deliberately failed to record the FIR on receipt of the information of a cognizable offence of serious nature and had prepared the FIR after reaching the spot after due deliberation, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would,

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therefore, be unsafe to rely upon such a tainted investigation as one would not know where the Police Officer would have stopped to fabricate evidence and create false clues. Their Lordships also relied on the judgement in the case of **Babu Sahebagouda Rudragoudar vs. State of Karnataka : (2024) 8 SCC 149** wherein, in the backdrop that close relatives of the deceased had gone to the Police Station but, no FIR was lodged then and there, it was held that if the daily diary or the roznamcha entry of the Police Station corresponding to visit of the so-called relatives of the deceased was not brought on record, it created a grave doubt on the genuineness of the FIR. It was also held that the complainant admitted in the cross-examination that Poujadar came to his house and that he narrated the incident to the officer who scribed the same and thereafter, the complainant appended his signatures on the writing. However, the ASI testified on oath that the complainant had come to the Police Station and the written report submitted by him was taken as the complaint of the incident. He did not state anything about any complaint having been recorded at the house of the complainant prior to lodging the report. In that backdrop, the non-production of the daily diary maintained at the Police Station was reckoned of great significance and the FIR was treated as a post investigation document not inspiring confidence.

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In the case in hand, as is apparent from the testimony of PW2, PW61 and PW65, before submitting the written report-Ex.P1 at the Police Station Ranoli on 23.10.2019, the complainant had already lodged a report on the previous day at Police Station

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Khatushyamji wherein investigation was conducted and a report was also prepared. However, neither was the investigation report made part of the record of the instant case nor was the statement of any of the police personnel from the Police Station Khatushyamji recorded. Thus, in the backdrop of the law laid down by the Hon'ble Supreme Court of India in **Allarakha Habib Memon & Ors.** (supra), we have no hesitation in holding that the FIR-Ex.P11 was hit by Section 162 Cr.PC which raises a doubt that the prosecution has suppressed the true genesis of the case.

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We find no force in the submission advanced by the learned Public Prosecutor, assisted by the learned counsel for the complainant, that defective investigation should not come to the rescue of the appellants. We have no qualm with the aforesaid proposition; but, in the instant case, as already observed, the prosecution could establish neither the circumstance of last seen based on the CCTV footage nor the recovery of incriminating evidence at the instance of the appellants in accordance with law and, therefore, we do not concur with the finding of their guilt recorded by the learned trial court.

Similarly, we find no merit in the contention raised by the learned counsel for the State and the complainant that failure on the part of the appellants to offer any explanation for the incriminating circumstances put to them in their Section 313 Cr.P.C. statement, furnished an important link in the chain of circumstantial evidence against them. It is a well-settled legal principle that absence of an explanation by the accused when confronted with the incriminating evidence against him in his

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Section 313 Cr.P.C. statement, may be treated as an additional link in the chain of circumstantial evidence, it cannot be made the basis for recording his conviction.

Dealing with an identical issue, their Lordships, in **Shivaji Chintappa Patil vs. State of Maharashtra:(2021) 5 SCC 626**, held as under:

> "**25.** Another circumstance relied upon by the prosecution is, that the appellant failed to give any explanation in his statement under Section 313 Cr.P.C. By now it is well-settled principle of law, that false explanation or non-explanation can only be used as an additional circumstance, when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused. However, it cannot be used as a link to complete the chain. Reference in this respect could be made to the judgment of this Court in Sharad Birdhichand Sarda vs. State of Maharashtra:(1984) 4 SCC 116.
>
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> **32.** Insofar as the reliance placed by the learned counsel for the State on the judgment of State of Rajasthan vs. Kashi Ram: (2006) 12 SCC 254 is concerned, it would reveal, that this Court had used the factor of non-explanation under Section 313 Cr.P.C. only as an additional link to fortify the finding, that the prosecution had established chain of events unquestionably leading to the guilt of the accused and not as a link to complete the chain. As such, the said judgment would not be applicable to the facts of the present case."

Very recently, in **Santosh Gurung versus State of Sikkim: MANU/SC/1114/2026**, it was held that the accused’s silence or

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failure to provide a reasonable explanation can act merely as an additional link that would complete the chain. This, however, would not shift the burden of proof onto an accused in a criminal trial. In that case, earlier judgment of the Hon'ble Supreme Court in **Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan: MANU/SC/0468/2013 : 2013 INSC 313** was also relied upon, wherein it was observed that an answer given by an accused to a question put to him under Section 313 CrPC cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. It was also held that the statement of the accused is not a substantive piece of evidence and, therefore, can be used only for appreciating the evidence led by the prosecution; though, it cannot be a substitute for the prosecution evidence and if the prosecution's case is not found sufficient to sustain the conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction. The Hon'ble Apex Court further held that since the statement under Section 313 Cr.P.C. is not recorded after administering oath to the accused, it cannot be treated as evidence within the meaning of Section 3 of the Evidence Act and an adverse inference can be taken against the accused only if the incriminating material stands fully established and the accused is unable to furnish any explanation for it. However, his right to remain silent, as he cannot be compelled to become witness against himself, was recognized. In the backdrop of aforesaid findings, their Lordships concluded that the response of the accused recorded in his statement under Section 313 CrPC could not be treated as a circumstance against him, especially when other circumstantial evidence was not found to be

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satisfactorily pointing to the guilt of the accused alone and none other.

In the backdrop of the aforesaid precedential law, we reject the contention advanced by the respondents based on the statements of the appellants under Section 313 CrPC inasmuch as the prosecution miserably failed to lead evidence establishing a complete and unbroken chain of events to prove their guilt.

In the conspectus of the aforesaid analysis, we are of the view that the prosecution could not set up a complete and unbroken chain of circumstantial evidence consistent only with the hypothesis of the guilt of the appellants and, therefore, we do not concur with the findings recorded by the learned trial court as to their conviction.

Resultantly, the death reference is answered in the negative. The appeals preferred by the appellants are allowed. The judgement of conviction and the order of sentence dated 30.11.2024 passed by the learned Additional Sessions Judge No.1, Sikar are quashed and set aside and the appellants are acquitted of the charges framed against them. The sentence of appellant-Rajesh Kumar was suspended during the pendency of the appeal, therefore, his bail bonds are discharged. He need not surrender and shall be at liberty. The appellants Ramgopal, Sandeep Gurjar, Nandlal, Mahendra Kumar Choudhary, Madanlal Chandiwal, Babulal @ Harnek, Beerbal Dhaka, Sohanlal, Mahadev, Parsaram are in jail. They shall be released forthwith, if not required to be detained in any other case.

In view of the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellants are directed to

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furnish a personal bond in the sum of ₹25,000/- each, and a surety in the like amount before the Registrar (Judicial) of this Court which shall be effective for a period of six months with the stipulation that in the event of a Special Leave Petition being filed against the judgment or on grant of leave, the appellants aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

Before we part with this judgement, we would like to make some observations with regard to the casual, perfunctory and lackadaisical manner in which the investigation was conducted in the instant case. In the Katyayan Smriti, Mehrishi Katyayan beautifully wrote about 1900-2000 years ago, as under:

''साक्ष्यं धर्मस्य चक्षुश्च, साक्ष्यं न्यायस्य साधनम्।
असाक्ष्ये नास्ति निर्णयो, न हि सत्यं विनश्यति''।।

अर्थात्-

साक्ष्य को धर्म की आँख कहा गया है और यही न्याय प्राप्त करने का मुख्य साधन है। यदि किसी मामले में साक्ष्य न हो, तो सही निर्णय संभव नहीं होता। सत्य का स्वभाव यह है कि वह नष्ट नहीं होता।

"Evidence has been called the eye of righteousness, and it is the primary means of obtaining justice. If there is no evidence in a case, a just decision is not possible. The nature of truth is that it is never lost. " (English Translation)

न साक्ष्यहीनमर्थं तु ग्राहयेत् सभ्यसत्तमः।
न चापि केवलं वाक्यं प्रमाणं धर्मसाधकम्।।
यत्र लेख्यं च साक्ष्यं च युक्तियुक्तं समन्वितम्।
तत्र सत्यं विजानाति न्यायो भवति निश्चयः।।

अर्थात्-

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RAJASTHAN HIGH COURT सत्यमेव जयते

> विद्वान न्यायाधीश को बिना साक्ष्य के किसी बात को स्वीकार नहीं करना चाहिए। कथन मात्र को प्रमाण नहीं माना जा सकता। जहाँ लिखित प्रमाण, साक्ष्य और तर्क–तीनों का समन्वय हो, वहीं सत्य स्पष्ट होता है और न्याय निश्चित रूप से स्थापित होता है।
>
> "A learned judge should not accept any matter without evidence. A mere statement cannot be considered proof. Only where written proof, evidence, and reasoning—all three are in harmony—is the truth revealed, and justice definitely established." (English Translation)

Rajasthan High Court सत्यमेव जयते Web Copy - Not Official

Thus, the dispensation of justice by the Courts in criminal matters rests, in large measures, upon the quality of material placed before them by the prosecution, for it is through such material and the deposition of the witnesses that the Courts perceive the truth.

While dealing with the cases involving electronic evidence in the nature of either the CCTV footage or the call detail records, we have noticed that many a time a casual approach is adopted by the Investigating Officers which entails prejudice to the prosecution. From our experience at the Bench, we can say with a sense of responsibility that most of the Investigating Officers/Supervising Officers are unaware of the procedure required to be followed in the collection, seizure and preservation of electronic evidence and the mode of its proof. Therefore, we deem it just and proper to issue the following directions:-

1. The Director General of Police shall, within two months, frame and circulate a standard operating procedure for the collection; seizure, preservation and proof of electronic evidence; particularly CCTV footage and call detail records, in conformity with the statutory provisions contained in the Bhartiya Nagarik Suraksha Sanhita, 2023 and Bhartiya Sakshya Adhiniyam, 2023.

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The SOP shall, inter alia, provide for:-

A. Prompt identification of the CCTV sources; public or private and issuance of a written requisition for preservation of footage at the earliest;

B. The seizure of the original storage devices wherever feasible, or else preparation of a forensic copy with its hash value computed and recorded in the seizure memo at the spot;

C. Recording of any difference between the time displayed on the device and the actual time, so that the timestamps in the footage can be correctly relied upon;

D. Obtaining call detail records, subscriber details, Customer Application Forms (CAFs) and cell-tower data through Nodal Officer(s) of the service provider together with the requisite certificate;

E. Obtaining the requisite certificate under Section 63 of the Act of BSA, 2023 contemporaneously from the person in the lawful control of the device or system;

F. Proper sealing, labeling and malkhana entry, and maintenance of a chain of custody register recording every movement of electronic record including its dispatch to and receipt back from the FSL.

2. The Director General of Police shall ensure periodic training programs throughout the State for the Investigating Officers, SHOs' and Supervising Officers on the aforesaid aspects;

3. The Supervising Officer shall verify compliance with the SOP/statutory provisions before the charge-sheet is filed in any case resting on the electronic evidence;

4. The Director Prosecution, Rajasthan shall arrange similar training for the Public Prosecutors on the proof of the electronic evidence.

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A compliance report by the Officer(s) concerned shall be submitted to this Court within three months.

The Registrar (Judicial) is directed to remit a copy of this judgment to the Principal Secretary (Home), the Director General of Police, the Director of Prosecution and the Director State Forensic Science Laboratory, Rajasthan for information and compliance.

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

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