2025 INSC 793

R E P O R T A B L E

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1568 OF 2013

CHETAN **…APPELLANT (S)**

VERSUS

THE STATE OF KARNATAKA **…RESPONDENT(S)**

J U D G M E N T

NONGMEIKAPAM KOTISWAR SINGH, J.

1. The present appeal has been preferred against the judgment and order dated 06.12.2010 passed by the Division Bench of the High Court of Karnataka, Circuit Bench at Dharwad in the Criminal Appeal No. 666 of 2007, whereby the High Court upheld the conviction and sentence imposed upon the present appellant under Sections 302 and 304 of the IPC and for offences under Sections 3 and 5 punishable under Sections 25 and 27 of Arms Act,1959 by

judgment dated 28/29.03.2007 passed by the F.T.C.-II & Addl. Sessions Judge, Belgaum in Sessions Trial No 267 of 2006.

2. The conviction is based on circumstantial evidence relying on the last seen theory supported by the recovery of articles including the weapon of crime and forensic evidence and the act of abscondence by the appellant.

3. As the appellant is seeking reversal of the concurrent findings by the two courts below, the Sessions Court and the High Court, this Court has to tread very cautiously, as observed by this Court on numerous occasions including in ***Mekala Sivaiah v. State of Andhra Pradesh, (2022) 8 SCC 253,*** wherein it has been held that unless the findings are perverse and rendered in ignorance of material evidence, this Court should be slow in interfering with concurring findings. It was thus observed by this Court in ***Mekala Sivaiah*** (supra) in the following words:

> *"15. It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then*

this Court is not only empowered but is well expected to interfere to promote the cause of justice.

16. It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the findings of fact concurrently arrived at by the trial court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact."

4. Keeping the aforesaid cautionary approach in mind, this Court would proceed to examine the appeal at hand by considering whether there is manifest error or illegality in the impugned judgment and whether any grave and serious miscarriage of justice on account of misreading or ignoring material evidence has occurred in the present case. This would invariably require a proper examination of the facts and context of the case, for which we must revisit the background facts of the case and the evidence adduced, considered by the Trial Court as well as the High Court.

5. FACTUAL MATRIX OF THE CASE:

5.1 The Prosecution case in brief is that the appellant and the deceased Vikram Sinde were friends. About eight months prior to the incident which occurred on 10.07.2006, the appellant had borrowed a sum of Rs. 4000/- (Rupees Four Thousand only) from one Ravindra

Chavan (PW19), in order to lend the same in turn to the deceased, which however, was not returned by the deceased to the appellant even after a lapse of about 7-8 months, despite repeated demands to return the same. In that connection, there was an argument between the appellant and the deceased in which the deceased had apparently insulted the appellant, because of which the appellant bore a grudge against the deceased.

5.2 It is further the case of the Prosecution that the appellant on 10.07.2006 at about 20.30 hours after taking a 12 Bore D.B.B.L Gun with cartridges belonging to his grandfather on the pretext of going for hunting, took the deceased along with him on his Hero Honda motorcycle to the sugarcane grove located in Shahapur village, which belonged to the complainant, namely, Arun Kumar Minache (PW1). It has been alleged that at about 22.00 hours on the same night, the appellant shot the deceased dead with the said D.B.B.L gun and thus, committed the offence under Section 302 of the IPC.

5.3 It was further alleged that after committing the said offence, he took the Nokia mobile phone and gold chain belonging to the deceased and misappropriated the same, thus committing the offence under Section 404 of the IPC.

According to the Prosecution, since the appellant carried and used the D.B.B.L gun belonging to his grandfather without a valid license, he committed the offence under Section 3 read with Section 25 of the Arms Act. The appellant was also charged with committing an offence punishable under Section 5 read with Section 27 of the Arms Act.

5.4 As per the Prosecution, as the deceased did not return after he left home at around 7.45 PM of 10.07.2006, the father of the deceased telephoned the house of the appellant but was informed that he was not at home. He then went to the house of the appellant early morning next day on 11.07.2006 and enquired from him about the whereabouts of his son, to which the appellant gave false information that he had parted ways with the deceased at about 8.00 PM the previous evening. The father of the deceased also received a call from one Chandrakant Shinde informing him that the deceased had gone to Pune and would return within two days. Thereafter, the father of the deceased started searching for his missing son and filed a missing report.

5.5 It is the case of the Prosecution that on 13.07.2006 the dead body of the deceased was found in the sugarcane field belonging to Arun Kumar Minache (PW -1), who informed the police about the

discovery of the body. However, since the dead body was decomposed, his identity could not be ascertained. Upon recovery of the dead body, a police case was registered at Kagawad Police Station, and necessary messages were flashed to other police stations to seek information about the identity of the deceased. Thereafter, an investigation was launched and an inquest was held. The post-mortem examination of the dead body was also conducted on 13.07.2006. Since the identity of the dead body could not be ascertained, the discovery of the dead body was published in the newspaper which was noticed by the father on 14.07.2006 and then he went to Kagawad Police Station and identified the dead body through photographs, handkerchief, motorcycle key found in the pant pocket, and sweater on the dead body.

5.6 In the course of the investigation, it was revealed that the appellant and the deceased were last seen together near Mahishyal bus stand and thereafter seen on a motorcycle going towards Shahapur, as noticed by one Ashok Shinde, the prosecution witness (PW-4), Ashok Jamadar (PW-5) and Jamir Mulla (PW-3).

5.7 On the basis of the said information, the police arrested the appellant on 22.07.2006 at Miraj after making search for him in several locations and was brought to Kagawad Police Station. During

the investigation, the appellant confessed to the crime and volunteered to produce the gun with which he committed the crime and also volunteered to show the place where he shot the deceased and the place where he sold the mobile phone belonging to the deceased. The appellant also produced the gold chain, which purportedly belonged to the deceased which was seized by the Inspector. Thereafter, the appellant led the police to the house of his grandfather, Ramchandrarao Chavan (PW-20), and produced one 12 Bore D.B.B.L gun, two empty cartridges, one live cartridge, one torch, Hero Honda motorcycle and one empty handbag which were all seized. The appellant then led the police to the sugarcane field from where the left chappal of the deceased was recovered. He then led the Investigation Officer and the panchas near Bellanki Saravu (back water falls) and showed the spot where he had shot the deceased dead. Thereafter, the appellant led the police to Srigiri Complex at Dilukh Nagar, Hyderabad, where he pointed out an electronic shop of S. Samba Shivakumar (PW-25) to whom he had sold the mobile phone. According to the Prosecution, the shop-owner identified the appellant and admitted the transaction and handed over the mobile phone along with a xerox copy of the driving license of

the appellant, which was kept as proof of address given by the appellant to the shop keeper, which were seized by the police.

5.8 During the trial the Prosecution sought to prove the case against the appellant by examining as many as 31 witnesses and exhibited a number of documents and articles as mentioned above. The appellant took the plea of total denial. The appellant also did not lead any evidence in his defence.

5.9 The Trial Court, Fast Track Court II and Additional Sessions Judge, Belgaum, in Sessions Case No.267/2006 after hearing the Prosecution and defence and on consideration of the materials produced before it, convicted the appellant under Sections 302 and 404 of the IPC and Sections 3 and 5 punishable under Section 25 and 27 of the Arms Act.

Accordingly, upon being convicted under Section 302 of the IPC, the Court sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- and in default of payment, to undergo rigorous imprisonment for six months.

The appellant was also sentenced to undergo rigorous imprisonment for one year to pay a fine of Rs.1000/- and in default

of payment of fine to undergo rigorous imprisonment for three months for the offence under Section 404 IPC.

Furthermore, the appellant was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-(Rupees five hundred) and in default of payment of fine, to undergo rigorous imprisonment for three months for contravention of Section 3 punishable under Section 25 of the Arms Act.

The appellant was also sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1000/- (Rupees one thousand) and in default of payment of fine to undergo rigorous imprisonment for three months for contravention of Section 5 punishable under Section 27 of the Arms Act.

All these sentences were directed to run concurrently.

5.10 Being aggrieved by the conviction by the Additional Sessions Judge, Belgaum, as above, the appellant preferred an appeal before the Karnataka High Court Circle Bench at Dharwad by filing Criminal Appeal No. 666/2007. The said appeal was dismissed by the impugned order dated 06.12.2010, against which the appellant has preferred this appeal before us.

Since the conviction by the Trial Court was affirmed by the High Court, it may be appropriate first to examine the basis on which the Trial Court convicted the appellant and how it was upheld by the High Court upheld it.

6. CONSIDERATION BY THE TRIAL COURT:

6.1 As can be seen from the narration of the incident by the Prosecution, the case is based on circumstantial evidence, as no eyewitness had seen the shooting of the deceased by the appellant with a gun, which led to his death.

As we embark upon the exercise to scrutinize the correctness of the conviction based on circumstantial evidence, we may recollect the five golden principles of law governing trials based on circumstantial evidence, which this Court had dealt with from time to time, and succinctly explained in the celebrated case of ***Sharad Birdhichand Sarda v. State of Maharashtra*** (***1984) 4 SCC 116*** as follows:-

> ***"152.*** *Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC*

71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

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

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

> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*
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> *It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*
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> > *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

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

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

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

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

6.2 As can be seen from the records, the Trial Court formulated five points for consideration which are reproduced as follows: -

"1. Whether the prosecution has proved that on 10.07.2006 at about 2200 hours the deceased had died homicidal death due to gunshot injury?

2. Whether the prosecution has proved that it is the accused who has caused homicidal death of the deceased by firing shot through D.B.B.L gun marked as MO.9.?

3. Whether the prosecution has proved that on the said date, the accused after causing the murder of deceased Vikram Shinde, dishonestly mis-appropriated or converted to his own use gold chain and mobile which were in possession of Vikram Shine at the time of death and thereby committed any offence punishable u/s 404 of IPC?

4. Whether the prosecution has proved that on the same day at about 2030 hours the accused carried 12 bore BBL gun belonged to his grandfather Ramachandra Chavan, from his house to the land of complainant

Arun Kumar and he was in possession of the said gun and cartridges without possessing required licence and thereby contravened provisions of Sec.3 of Arms Act punishable u/s 25 of the Arms Act?

5. Whether the prosecution has proved that on the said date at about 2200 hours in the land of Arun Kumar complainant situated within Shahapur village limits the accused used 12 Bore DBBL gun (MO.9) to cause death of the deceased Vikram Shine and thereby contravened the provisions of sec.5 punishable u/s 27 of the Arms Act?"

6.3 The Trial Court consolidated all these issues together and considered the same in the light of the evidence adduced and held that the Prosecution had proved their case.

6.4 While it may not be necessary to deal in detail at this stage of the analysis of the evidence by the Trial Court, nevertheless, it would be desirable to briefly refer to the findings of the Trial Court for better appreciation of the case.

6.5 Since the case revolves around circumstantial evidence, the Trial Court identified the following circumstances/aspects for consideration:

(1) Motive.

(2) Homicidal death of the deceased by gunshot injury.

(3) The deceased was last seen in the company of the accused in between 8 and 9.30 p.m. on 10.07.2006.

(4) False information given by the accused to the father of deceased and his uncle.

(5) Abscondence of the accused from 11.07.06 till his arrest on 22.07.06.,

(6) Extrajudicial confession on 12.07.06 before PW.18 by going over to the room of his friend Yuvaraj Bennalkar situated at Dharwad.

(7) Recovery of gold chain belonged to the deceased from the possession of the accused after his arrest on 22.07.06 and recovery of Nokia mobile belonging to the deceased from PW.25 at the instance of the accused.

(8) Recovery of the DBBL gun, 2 spent cartridge cases, one live cartridge, Eveready battery and star gutka empty handbag from the house of PW-20, Ramachandra Chavan, the grandfather of the accused at the instance of the accused.

(9) Discovery of the place of murder and recovery of left foot chappal of the deceased from sugarcane field situated near the place where the dead body was found at the instance of the accused.

(10) Discovery of fact i.e. where mobile sim card was thrown at the instance of the accused.

6.6 As regards the motive that impelled the appellant to commit the crime, the Prosecution case is that since the deceased failed to return Rs.4000/- which was lent by the appellant and was also insulted by the deceased, the appellant bore a grudge against the deceased and, as revenge, killed the deceased.

As regards this issue of motive, the Trial Court, on consideration of the evidence on record, concluded that the monetary

transaction, which was the basis for constituting the motive for committing the crime, was not fully established.

The Trial Court, however, was of the view that the Prosecution case cannot be thrown out merely because the motive could not be established.

6.7 The Trial Court concluded based on the evidence that the death of the deceased was not accidental or suicidal but homicidal.

6.8 To link the appellant with the said homicidal death, the Trial Court relied on the last-seen theory, for which the Trial Court referred to the evidence of a number of witnesses, including the brother of the deceased, Digvijay Shinde (PW-12), who had seen the appellant and the deceased near Mahishyal bus stand in the evening of the incident, which was also noticed by another witness, Anil (PW-11), a friend of PW-12.

The Trial Court also relied on the evidence of another witness, namely Jamir Mulla (PW-3), who deposed that when he was standing by the side of the road, he saw the deceased riding on the pillion of a motorcycle.

The Trial Court also considered the evidence of Ashok Shinde (PW-4) who was an autorickshaw driver who testified to have seen

the deceased and appellant together at about 5.45 PM on the fateful day when he was standing near Karamveer Vidyalaya High School ground.

The evidence of another witness, namely Ashok Jamadar (PW-5) was also relied upon, who, while he was returning to Mahishyal and standing near the Kagawad Circle, saw the deceased and the appellant on a motorcycle going towards Shiraguppi at around 9.15 PM on 10.07.2006. The said witness, PW-5, after coming to know about the death of Vikram Shinde, went to Kagawad Police Station and identified the body. Though PW-5 was declared hostile by the Prosecution as he resiled from his previous statement on other aspects of the incident, the Trial Court held that the versions of PW-12, PW-11, and PW-5 regarding the deceased and the appellant being last seen together cannot be disbelieved.

6.9 The Trial Court, thereafter, considered the other circumstance that the appellant had given false information to his uncle and his friend Devaraj Sutar (PW-14), which, according to the Trial Court proved his guilty mind.

6.10 The Trial Court held that another incriminating circumstance was the abscondence of the appellant from 11.07.2006 till he was arrested on 22.07.2006 at Miraj.

6.11 The Trial Court, thereafter, took into consideration the extrajudicial confession allegedly made by the appellant on 12.07.2006 in the room of one Yuvaraj Bennalkar in Dharwad where the witness namely Sandip Sandalage (PW-18) was staying. The appellant apparently made the extrajudicial confession to the said witness, PW-18, that he took the deceased on 10.07.2006 on the pretext of going for hunting and killed him by shooting him with the gun as the deceased did not repay the loan of Rs. 4000/- and insulted him when he demanded the money.

6.12 The Trial Court also considered the other incriminating circumstances, i.e., recovery of gold chain belonging to the deceased from the possession of the appellant, recovery of Nokia mobile phone belonging to the accused, recovery of D.B.B.L gun, 2 spent and 1 live cartridges case, Everready battery and Star Gutka empty handbag from the residence of his grandfather where the appellant was staying, left foot chappal of the deceased from the sugarcane field and discovery of the place of murder at the instance of the appellant.

The Trial Court, accordingly, held based on said evidence adduced that the aforesaid circumstances/facts have been proved.

6.13 However, the Trial Court held that the Prosecution was not able to prove the motive, and the extrajudicial confession said to have been made by the appellant. Nevertheless, in the light of the other circumstances that, according to the Trial Court were proved, despite noticing certain irregularities and lapses in the course of the investigation, which according to the Trial Court were not material nor could be fatal to the prosecution case and by holding that irregularities in the investigation would not entitle the accused to be acquitted, held that the charges under Sections 302 and 404 of the IPC, Section 3 and 5 of the Arms Act punishable under Section 25 and 27 Arms Act have been proved and proceeded to convict that the appellant as above.

7. CONSIDERATION BY THE HIGH COURT

7.1 The High Court noticed that of the 31 witnesses examined by the Prosecution, several witnesses namely PW-1, PW-3, PW-5 to PW-9, PW-16, PW-18 to PW-20, PW-25 and PW-26 had turned hostile to the case of the Prosecution. Nevertheless, based on the testimony of the other remaining witnesses and other evidence, the

High Court held that the Prosecution had been able to prove the charges against the appellant.

As regards the motive for the commission of the crime, though the same was held not proved by the Trial Court, the High Court based on the evidence of PW-12 and PW-4 held that the Prosecution had been able to prove the motive for the commission of the crime.

7.2 The High Court held that the circumstance of the last seen together of the appellant with the deceased has been proved by the evidence of PW-4, PW-11 and PW-12.

7.3 The High Court considered the evidence of PW-14, (Devraj Sutar) who was a friend and classmate of the appellant who stated that the appellant had contacted him on the phone on the day of the incident and told him that if his uncle contacted him, to inform his uncle that he (PW-14) is in Pune, though PW-14 was in Ahmednagar. Thus, the appellant sought to mislead his relatives about his whereabouts.

7.4 As regards the seizure of the gun, the High Court held that the appellant had led the Police to the house of the grandfather and the same was seized from his house. As per the evidence of the ballistic expert PW-30, it was proved that the said gun was functional and

had shown discharge, which could not be explained either by the appellant or his grandfather-Ramachandrarao, PW-20, which would go to prove that the gun seized had been used for shooting the deceased. The gunshot injuries, pellets and wads found in the skull of the deceased would show that the deceased had died due to gunshot injuries.

7.5 The High Court on consideration of the expert witness N.G. Prabhakar (PW-30), the Assistant Director of Forensic Science Laboratory, Bangalore, who examined the D.B.B.L gun, cartridges, pellets and wads found in the skull of the dead body, held that it was proved that the death of the deceased was caused by the gunshot fired from the said D.B.B.L gun which was recovered at the instance of the appellant.

7.6 The High Court also held that the Prosecution has been able to prove from the evidence of PW-31, Investigation Officer (IO) of the recovery of the gold chain from the possession of the appellant immediately on his arrest, and seizure of the mobile phone at the instance of the appellant in Hyderabad, which the same witness corroborated. These, according to the High Court would show that the appellant had secured possession of the articles namely the gold

chain, mobile phone immediately after the death of the deceased, which clearly incriminates the appellant.

7.7 The High Court, based on the presented evidence, determined that the appellant and the deceased were last seen together. As the appellant did not explain the whereabouts of the deceased on the night of the incident, and in consideration of the recovery of the gun and cartridges as well as the recovery of the gold chain and Nokia mobile phone, the act of abscondence, evasive behaviour, post-mortem report, ballistic report, and the chain of circumstances, the High Court concluded that the incident in which the appellant killed the deceased was proven beyond reasonable doubt.

Accordingly, the High Court dismissed the appeal.

8 SUBMISSION OF THE APPELLANT BEFORE US:

8.1 It was strenuously argued before us by Mr. D.N. Goburdhun, learned Senior Counsel for the appellant that the Prosecution had not been able to prove that the appellant and appellant alone was responsible for the death of the deceased as there was no eyewitness to the incident.

Ld. Sr. Counsel points out that no witness had spoken anything about the appellant holding the gun when he was allegedly seen together with the deceased in the evening/night of the incident.

8.2 Even the "last seen" incident on which the Prosecution has heavily relied upon cannot be said to have been proved. According to Ld. Sr. Counsel, the evidence of the witnesses who had seen them together is not credible. One of the witnesses, Digvijay Shinde (PW-12) was the younger brother of the deceased. The other witness PW-11 (Anil Babarao Bagat) was a friend of PW-12, hence, they were interested witnesses. Consequently, their evidence cannot be relied upon.

As far as PW-4 (Ashok Shinde), the auto rickshaw driver is concerned, he is certainly a chance witness and as such, reliance cannot be placed on his evidence.

This leaves two other witnesses namely, Jamir Mulla (PW-3) and Ashok Jamadar (PW-5).

PW-3 stated that he saw the deceased riding on the pillion of a motorcycle, but he did not see who was riding the motorcycle. Thus, this evidence cannot be invoked to support the last seen theory as the deceased was not seen with the appellant.

As far as the other witness, namely PW-5 (Ashok Jamadar) is concerned, he can also be said to be a chance witness, as he saw the deceased and appellant together while he was standing at Kagawad Circle.

Accordingly, learned senior counsel appearing for the appellant has submitted that the fact of the appellant and the deceased being last seen together cannot be said to have been established with cogent evidence. Thus, if this circumstance is held to be not proved in accordance with law, nothing survives in the case, as no one had seen the appellant shooting the deceased as alleged by the Prosecution nor they were seen together in the field where the dead body of the deceased was found.

8.3 It was submitted that the recovery of the mobile phone at the instance of the appellant was not proved as S. Samba Shivakumar, PW-25, the mobile shopkeeper, had categorically denied purchasing any mobile from the appellant.

8.4 It was also submitted that the D.B.B.L gun was not seized at the instance of the appellant and in fact, it was the grandfather of the appellant who had produced the gun when the Police came to his residence. According to the learned Senior Counsel one of the

seizure witnesses, Villas Macchendra Davari (PW-7), had categorically denied that anything was recovered in his presence, though he admitted that the signature on the seizure memo was put as directed by the police.

8.5 The learned senior counsel has submitted that the ballistic report itself is doubtful. Though it is the case of the Prosecution that one live cartridge was recovered from the house of the grandfather of the appellant, it was not given to the ballistic expert for his opinion, and as regards the two cartridges that were used for testing of the gun, it is not clear how these were purchased and given to the ballistic expert. Thus, this important link in the prosecution's case cannot be said to have been established.

8.6 Learned senior counsel also submits that since the Prosecution's case is entirely based on the last seen theory, in absence of any motive for committing the offence, which in the present case has not been established, the foundation of the last seen theory becomes shaky.

Learned senior counsel submits that even the Trial Court held that the monetary transaction between the appellant and the deceased had not been proved strictly. Thus, the very basis of the case of the

Prosecution that the appellant had killed the deceased to take revenge after the deceased failed to repay the loan taken from the appellant is absent. Since the motive had not been established, the Prosecution's case based on circumstantial evidence cannot stand.

8.7 It was also pleaded that it could not be proved conclusively that the dead body recovered from the field was that of the deceased as the dead body was in a highly decomposed state.

8.8 Learned senior counsel for the appellant has also submitted that there are so many inconsistencies and contradictions in the evidence of the prosecution witnesses as had noted by the Trial Court and the High Court. Yet, both the Courts chose to ignore these inconsistencies and the contradictions and relied only on those parts of the evidence that were favourable to the Prosecution to convict the appellant.

8.9 Accordingly, learned senior counsel for the appellant has submitted that since there are glaring gaps in these circumstances, and there is no proper linkage, and these circumstances are also not proved beyond reasonable doubt, the prosecution's case based on circumstantial evidence must fail.

It has been submitted that it cannot be said that the Prosecution has been able to prove that all circumstances are of such conclusive nature and tendency which exclude every possible hypothesis except that the appellant had caused the death of the deceased, and it cannot be said that the chain of evidence established in the present case is so complete that it has not left any reasonable ground for the conclusion consistent with the innocence of the appellant, and that in all probability the act was committed by the appellant.

9. SUBMISSION OF THE STATE BEFORE US:

9.1 On the other hand, Ms. Eesha Bakshi, learned counsel appearing for the State/Prosecution has contended that all the circumstances leading to the guilt of the appellant have been proved which would only lead to the inference that the appellant and appellant alone was responsible for murdering the deceased.

9.2 Learned State Counsel submits that the defence did not seriously dispute the identity of the dead body and since PW-2, who was the father of the deceased and PW-12, the brother of the deceased had identified the body based on the photograph, and the dress worn by the deceased, there cannot be any doubt about the identity of the

dead body. The aforesaid evidence has been strengthened by the fact that the motorcycle key was found in the pocket of the deceased.

9.3 It was also submitted that the motive for the commission of the offence had been duly proved as it has been established that the deceased had borrowed a sum of Rs.4000/- (Rupees Four Thousand only) from the appellant regarding which a quarrel occurred between them which was witnessed by PW-4, Ashok R Shinde.

9.4 It was also submitted that there were as many as five eye-witnesses who had seen the appellant with the deceased the evening before his dead body was found three days later. The deceased was seen along with the appellant around 9 pm of 10.07.2006 and he was found missing as evidenced by the evidence of his father (PW-2), who filed a missing report on 12.07.2006. The dead body was recovered on 13.07.2006 and there is no evidence to show the presence of the deceased anywhere else during this intervening period, and as such, there cannot be any doubt that as the appellant was last seen with the deceased, the onus was on the appellant to explain the whereabouts of the deceased after they were seen last together which he failed to explain before the Court. Therefore, the irresistible inference that can be drawn is that the appellant was responsible for the death of the deceased.

9.5 Learned State Counsel further submit that it has come clearly on record that the appellant had remained absconding during the aforesaid period from 11.07.2006 to 22.07.2006 when the Police ultimately arrested him on 22.07.2006 in Miraj. That abscondence and his attempt to mislead others is clearly proved by the evidence of his own friend and classmate Devraj Sutar (PW-14).

According to the learned State Counsel all the evidence clearly shows that the appellant was trying to mislead his relatives and others about his whereabouts and trying to hide which is clearly indicative of the guilty mind of the appellant.

9.6 It has also been submitted that the Prosecution, by relying on the opinion of the ballistic expert, has proved that the gun produced before the Trial Court was used for committing the crime. It has also been established that pellets and wads that were recovered from the skull cavity of the deceased were part of 12 bore cartridge and these could be fired from the gun, as per the ballistic expert, PW-30. Thus, there cannot be any doubt that it was the appellant who had shot the deceased dead with the D.B.B.L gun.

10. ANALYSIS AND FINDING BY THIS COURT

10.1 We have given our anxious consideration to the issues raised before us and carefully examined the evidence on record.

10.2 As discussed above, the case revolves around the death of Vikram Shinde, whose dead body was found in an agricultural field. The appellant is sought to be implicated in his death on the ground that he was seen last together with the deceased before the dead body was found three days later, and also because the deceased had suffered gunshot injury on his head, which led to his death, and a double barrel gun was recovered at the instance of the appellant from the house of his grandfather, with whom the appellant was staying. The forensic evidence based on ballistic examination showed that the gun was in working condition and was used, and the pellets and wads found in the brain and cavity of the skull of the deceased could be fired from the said gun.

Since, there was no direct evidence on the death of Vikram Shinde, the Prosecution case is entirely based on circumstantial evidence.

10.3 As the allegation is of commission of the offence of murder, the first and foremost exercise to be undertaken is to ascertain whether it was a case of suicide or accidental death or homicide.

There does not appear to be not much of a controversy that it was a case of homicide.

The fact that the deceased died an unnatural death due to gunshot injuries cannot be doubted in the light of the post-mortem and forensic evidence. The Medical Officer, PW-28, who conducted the post-mortem had given his final opinion that the cause of death was ballistic injuries to vital organs. Though the post-mortem report itself was assailed by the appellant, in view of the other attending evidence of the panch witnesses there cannot be any shadow of doubt about the unnatural death due to gunshot injury. Thus, it was a clear case of homicide.

Given the nature of the gunshot injury received by the deceased on his head and in the absence of recovery of any gun in the hand of the deceased or near his body and since the gun shot was fired within a range of 3 ft from the muzzle of the weapon and the exit of the gunshot wound was in the face, a suicidal gunshot injury can be safely ruled out.

That it was also not a case of accidental death can be clearly inferred because of the absence of any evidence indicating so.

10.4 As we proceed further, it may be noted that, in the present case, though the appellant had made a feeble attempt to show that the dead body that was recovered from the agricultural field was not that of Vikram Shinde, who was missing, because of the evidence of Ajitrao Shinde, PW-2, the father of the deceased, and PW 12, Digvijay Shinde, brother of the deceased, who had identified the dead body based on the identification of the deceased's sweater, pants and recovery of the motorcycle key from the pants of the deceased, there can be no doubt about the identity of the dead body.

10.5 We will now deal with the most crucial circumstance of last seen together, upon which much emphasis has been laid by both the contesting parties in support of their rival contentions.

10.5.1 The last seen theory is based on the evidence of five witnesses, namely, Jamir P. Mulla (PW-3), Ashok R. Shinde (PW-4), Ashok R. Jamadar (PW-5), Anil Babarao Bagat (PW-11) and Digvijay Shinde (PW-12).

10.5.2 PW-3, Jamir P. Mulla, claims to know both the appellant and the deceased. He stated that on 10.07.2006 at about 8.30 pm when

he was standing by the side of the road at Ambika Nagar, he saw the deceased Vikram Shinde riding on the pillion of a motorcycle and on seeing him he wished him. The motorcycle went towards Narawad side. However, he stated that he did not know who was riding the motorcycle. He also stated that he did not observe anything being carried on the motorcycle.

In view of the specific evidence that he did not see who was riding the motorcycle his evidence cannot independently be used to support the last seen theory against the appellant unless propped by other evidence. Though the said witness was declared hostile by the Prosecution, in the cross-examination, this witness reiterates that he had seen the deceased Vikram Shinde going on a motorcycle, and he could later identify the dead body as that of Vikram Shinde from the clothes he was wearing when he saw him last. This evidence is thus consistent with the evidence of other witnesses who had seen the deceased Vikram Shinde going with the appellant on a motorcycle.

10.5.3 The other witness relied upon by the Prosecution is Ashok R. Shinde (PW-4), who was an auto rickshaw driver who knew both the deceased and the appellant. PW-4 stated that on 10.07.2006 at about 5.45-6.00 pm, when he was standing near Karamveer Vidyalaya High School ground parking, both the appellant and

deceased came near his auto rickshaw, and he heard them discussing certain money transaction, and the appellant was heard demanding return of certain amount from the deceased to which the deceased denied having any knowledge. He also heard the deceased abusing the appellant as *haramkhor* though the appellant did not react to it. He also stated that he heard them talking about hunting. He stated that as they were talking, passengers came and, thereafter did not give any further attention to their discussion.

This evidence would show that the appellant and the deceased, who were friends, were together shortly before they were seen together again later riding a motorcycle by Ashok R. Jamadar (PW-5). This evidence will also be relevant to arguments between the two parties over some money matters and their plans for hunting.

10.5.4 Ashok R. Jamadar (PW-5) is the other witness through whom the Prosecution seeks to establish the last seen theory. PW-5 knew both the families of the appellant and the deceased. He deposed that on 10.07.2006, at about 9:15 pm, while he was standing at Kagawad Circle to proceed to Mahishyal, he saw the appellant and the deceased going together on a motorcycle towards the Shiraguppi side. On seeing them, he waved his hand. He also stated that the deceased was carrying a bag and had spoken to him, but he did not

talk to the appellant. Thereafter, he came to Mahishyal. Later, on 14.07.2006, he learnt about the murder of Vikram Shinde when people were talking about him and thereafter, he went to the Kagwada police station along with others regarding the case.

Although he was declared a hostile witness as he resiled from his previous statement made during the investigation, he reiterated during his cross-examination that the appellant was riding the motorcycle and the deceased was with him on the motorcycle proceeding towards Shiraguppi. Despite the witness being thoroughly cross-examined on behalf of the appellant, nothing could be elicited from him to cast any doubt on his testimony as far as this vital evidence of them being seen together last, before the discovery of the dead body, is concerned.

In our opinion, if the said witness did not fully support the Prosecution case and resiled from his previous statement given during investigation, nothing prevented him resiling from the statement that he saw the appellant and the deceased together. It may be noted that even though PW-5 was declared hostile, he reiterated in his cross examination that he saw the deceased and the appellant together. Thus, his evidence is trustworthy as regards this aspect.

10.5.5 The evidence of the aforesaid witness PW-5 has also been sought to be impeached on the ground that he is a chance witness and thus his evidence be ignored.

We do not think that it can be ignored.

It is for the reason that he knew both the appellant and the deceased, and nothing was shown that he was inimical to the appellant and more friendly to the deceased. He was not a stranger suddenly emerging out of nowhere in the scene. PW-5 had explained in his cross-examination as to the reason why he was present at the Kagawad Circle when he saw them together. He stated that he had gone to Kagawad to visit one of his relatives. While returning home, he was passing through the said circle to catch a bus to Mahishyal. Hence, we see no reason to disbelieve his testimony.

10.5.6 Moreover, even if he is considered to be a chance witness who happens to witness the appellant and the deceased together going on a motorcycle by chance, yet the testimony cannot be ignored in the light of the decision of this Court in ***Rajesh Yadav and Another v. State of Uttar Pradesh (2022) 12 SCC 200*** wherein it was held as follows:-

> *"29. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and*

therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in State of A.P. v. K. Srinivasulu Reddy [State of A.P. v. K. Srinivasulu Reddy, (2003) 12 SCC 660 : 2005 SCC (Cri) 817] : (SCC pp. 665-66, paras 12-13)

> *"12. Criticism was levelled against the evidence of PWs 4 and 9 who are independent witnesses by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained as to how they happened to be at the spot of occurrence and the trial court and the High Court have accepted the same.*
>
> *13. Coming to the plea of the accused that PWs 4 and 9 were "chance witnesses" who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial by describing the independent witnesses as "chance witnesses" it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence."*

10.5.7 PW-11 and PW-12 also saw the appellant and the deceased together near the bus stand in the evening of 10.7.2006.

PW-12 is the brother of the deceased. According to him, his deceased brother went out of the house after 7.45 PM in the evening on a scooter. When PW-12 also went out to meet his friend, Anil Bagat, PW-11 near the bus stand that evening, he saw both the deceased and the appellant coming together on the scooter at the bus stand, and his brother asked him (PW-12) to take the scooter home by telling him that he would come home later. His brother, however, did not return.

PW-11, a friend of PW-12, corroborates the aforesaid evidence of PW-12. PW-11 stated that he was acquainted with the appellant as he was from the village of the appellant. PW-11 stated that he also knew the deceased. According to him when he was near Mahishyal Bus Stand at about 8.00 PM on 10.07.2006, Digvijay, the brother of the deceased, came there, and while they were talking, the appellant and the deceased came there on a scooter. Vikram Shinde (the deceased) then instructed his brother, Digvijay (PW-12), to take the scooter home, informing him that he would return later. He also heard the appellant saying that he would be going for hunting.

Based on the above evidence, both the Trial Court and the High Court came to the conclusion that the deceased was last seen together on 10.07.2006, before the dead body was discovered in the morning of 13.07.2006.

10.5.8 PW-11 states that he had acquaintance with the appellant as he was from the same village. Hence, we see no reason to doubt his credibility as he is unlikely to falsely testify against his own co-villager and he corroborates the evidence of PW-12, the brother of the deceased.

As far as PW-5 is concerned, though the defence had made strenuous attempts to discredit him as he was earlier working for PW-2, the father of the deceased, nothing could be elicited to discredit his testimony as regards this fact of being last seen together.

We are of the view that while the evidence of PW-5, PW-11 and PW-12 supports the last seen theory, the evidence of PW-3 and PW-4 strengthens this circumstance.

10.5.9 We have also noted that specific questions were asked from these witnesses that if they had seen the appellant and the deceased going together on the night of 10.07.2006, why this information was

not given to the father of the deceased, PW-2 earlier before the dead body was discovered on 13.07.2006.

It may be noted that even though the deceased may have been missing since 10/11.07.2006, till the dead body was recovered and identified, members of the public may not be concerned about the missing of the deceased, unless the family members specifically asked them of the deceased. It is only after the dead body was identified on 14.07.2006 and brought to public notice that witnesses were likely to come forward to give information of any such relevant material and earlier sighting of the deceased with the appellant. Therefore, non-informing the family members of the deceased at an earlier point of time by the prosecution witnesses who saw the appellant going in a motorcycle or seeing the appellant and deceased going together on a motorcycle on the night of 10.07.2006 cannot be a ground for disbelieving their testimony.

Under these circumstances, it cannot be said that the Trial Court and High Court have committed a serious illegality in concluding that the deceased and the appellant were last seen together or that the said finding was by ignoring material evidence or contrary to the evidence on record.

10.6 The next and most crucial consideration will be how the appellant could be linked to the death of the deceased.

10.6.1 In our opinion, the link is established based on the following circumstances and established facts.

(i) The dead body of the deceased was recovered in a decomposed state on 13.7.2006, three days after the deceased was last seen together with the appellant on 10.07.2006.

(ii) As per the Medical Officer who conducted the postmortem on 13.07.2006, the death occurred 3/4 days before the postmortem examination which is consistent with the time the deceased was seen last together with the appellant.

(ii) The dead body was discovered with gunshot wounds on the head.

(iii) A double barrel gun with 2 spent and 1 live cartridges were recovered at the instance of the appellant.

(iv) As per the opinion of the ballistic expert,

(a) The gun showed signs of discharge.

(b) The gun was in working condition.

(c) Pellets and wads were recovered from the brain/skull of the dead body, and these could have been fired through the gun examined.

(d) The double-barrel gun could be dismantled.

10.6.2 The aforesaid facts are supported by the following circumstances and acts of the appellant, which strengthens the linkage.

(i) The appellant remained hidden from 11.07.2006 till 22.07.2006. He was arrested on 22.07.2006 after extensive search on numerous locations after the identification of the identity of the dead body on 14.07.2006.

(ii) The appellant had misled his friends, his family members and that of the deceased.

(iii) Personal effects of the deceased like gold chain was recovered from the appellant.

The aforesaid circumstances and acts are discussed in more detail as follows :

10.6.3 As regards the discovery of the dead body, PW1, Arun Kumar Minache stated that on 13.7.2006, his workers had gone to the land to measure sugar cane crops. At 9:30 AM, one of his workers came to his house and informed him that a dead male body was lying in the sugarcane field. Thereafter, PW-1 went to the sugar field and found the dead body in a decomposed state. The matter was reported to the police on the same day.

It may be noted that while the deceased was found missing since the night of 10.07.2006, and was subsequently found dead on

13.07.2006, the appellant was found missing from 11.07.2006 till the police arrested him on 22.07.2006.

10.6.4 Though, the dead body was discovered after three days of the deceased went missing on 13.07.2006, as per opinion of the forensic expert, the time of death of the deceased was between 3 to 4 days prior to post-mortem examination on 13.07.2006, thus indicating that the deceased died soon after he went missing.

10.6.5 At this stage, it may be apposite to address a weighty argument advanced by Mr. Goburdhun, learned senior counsel for the appellant who contended that the last seen theory in the present case is not applicable for the simple reason that there is a long passage of time between the appellant and the deceased last seen together and the time when the dead body of the deceased was discovered.

The deceased was last seen along with the appellant in the night of 10.07.2006 and the dead body of the deceased was discovered on 13.07.2006 after a gap of three days.

Learned Senior Counsel submits that the time gap should be so small that the possibility of any other person being with the deceased in the company of any other person should be ruled out. Hence, because of this long gap of time, the last seen theory sought

to be invoked by the Prosecution loses its steam, giving rise to reasonable doubt as to whether the appellant was the real culprit or not.

10.6.6 In this regard, the learned Senior Counsel has relied on the decision of this Court in ***State of Goa v. Sanjay Thakran and Anr. (2007) 3 SCC 755*** wherein this Court held that :-

> ***"31.*** *Before we analyse the evidence of PW 11 Dinesh Adhikari, who was working as a domestic help in the bar and restaurant Iguana Miraj, PW 14 Calvert Gonsalves, who was said to be in the company of A-1 and D-1 on the evening of 27-2-1999 outside the lounge of the restaurant and PW 6 Amit Banerjee, who was working as Receptionist of Hotel Seema, we would refer to certain decisions of this Court on the point of "last seen together". It is a settled rule of criminal jurisprudence that suspicion, however grave, cannot be substituted for proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence. This Court has applied the abovementioned general principle with reference to the principle of last seen together in Bodhraj v. State of J&K [(2002) 8 SCC 45 : 2003 SCC (Cri) 201] as under: (SCC p. 63, para 31)*
>
> > *"31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."*

> ***32.*** *In Ramreddy Rajesh Khanna Reddy [(2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512 : JT (2006) 4 SC 16] this Court further opined that even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration."*

10.6.7 However, it may be noted that this Court also observed in the aforesaid decision of ***Sanjay Thakran*** (*supra*) that it cannot be said in all cases that the evidence of last seen together is to be rejected merely because the time gap is for a considerable long period, as stated in para 34 of the aforesaid decision which is reproduced herein as below:

> *"34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. <u>But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard</u> and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the*

> *crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.*
>
> *(emphasis added)*

10.6.8 In the present case, as stated above, PW-28, Dr. S.V. Havinal, the Medical Officer who conducted the post-mortem examination on the dead body during his cross-examination stated that it is not correct to say that the person might have died 5 days before the post-mortem examination. He stated that he might have died 3 to 4 days before the post-mortem examination. Thus, the Prosecution case that the deceased was shot dead on the night of 10.07.2006 before his dead body was discovered on 13.07.2006 does not appear to militate against the last seen theory in view of the medical evidence that death occurred about 3/4 days prior. Thus, it cannot be said that the time gap is for a considerable long period.

10.6.9 The obvious inference the defence wanted to draw was that if death had occurred 5 days earlier, it would be earlier to 10.07.2006, which would have demolished the Prosecution case. Similarly, if the death had occurred about 2 days before the postmortem was conducted, it would be after a few days of the missing of the deceased on 10.07.2006 which would have cast a genuine doubt on the Prosecution case because of time gap.

10.6.10 The forensic and ballistic opinion along with the subsequent recovery of the gun, pellets and wads and other object like gold chain from the appellant literally obliterates the doubtful element which can be attributed to the gap in time and space of the last seen together aspect of the circumstantial evidence. Had this scientific evidence and subsequent recoveries not been available, certainly, the time lapse between the fact of last seen together and the time of death could have proved fatal to the Prosecution case in the present case.

Thus, this submission of the appellant that there was a long time lapse, does not hold water.

10.6.11 It may be also noted that the place where the dead body of the deceased was discovered in a sugarcane field does not appear

to be visited by public except for the workers who work in the field. In fact, the dead body was discovered belatedly only by the workers of the owner of the sugarcane field, PW-1, Arun Kumar Maruti Minache.

10.6.12 PW-1 deposed that on 13.07.2006 his workers namely Bismilla, Popat and Praveen had gone to the land for measuring sugarcane crop and at about 9.30 AM of the same day, Bismilla came to his house and informed him that the dead body of a male was lying near Bellanki Saravu i.e., on the southern side of the land.

Thus, by the very nature of the location and as evident from the testimony of the owner of the land, it is quite apparent that the place where the dead body was found was not frequently visited because of which the dead body was discovered only on 13.07.2006 even though the death occurred about 3 to 4 days ago as per the evidence of PW-28, the Medical Officer who conducted the post-mortem examination. Hence, the possibility of the deceased being with another person other than the appellant before he was shot is quite remote.

10.7 It is to be noted that it is not merely the discovery of the dead body on 13.07.2006 after the deceased was last seen together with the appellant on 10.07.2006 that the Prosecution case is based. This last

seen theory is reinforced by the fact that the cause of death of the deceased was gunshot injury and the weapon of crime was recovered at the instance of the appellant and there is forensic evidence in the form of pellets, and the wads found in the skull cavity of the deceased which could be fired from the said gun recovered which links the appellant with the crime.

In our opinion, given the subsequent recovery of the gun and empty pellets and forensic and ballistic evidence of a link between the pellets recovered from the body of the deceased and the gun recovered, the time lapse which could have thrown doubt on the last seen theory pales into insignificance, rather it is rendered inconsequential.

Thus, the prosecution's case is not mere conjecture, but rather based on established circumstances and facts.

10.7.1 PW-28, the Medical Officer conducted the post-mortem examination at the burial ground of Shiraguppi on 13.07.2006 at 2:40 PM as the body was in early decomposition state, and the following external injuries were found:

1) Circular shaped wound with diameter 1.5 cm, 3 cm, above the mastoid process in parietal bone.

2) Irregular shape wound in left infraorbital region, measuring about 2 x 3 cm. There was no shoot deposit around the circular shaped wound.

Pellets were found sprayed inside the cranium. Two wads were also found inside the skull cavity. There were multiple fractures of the skull and brain haemorrhages due to pellet injuries. These multiple pellets and wads, which are part of the cartridge found in the skull cavity, were later sent for forensic examination.

As per the postmortem examination, the entry wound was in the skull and the exit wound was in the left infraorbital region.

It may be noted that left infraorbital region is the area of the face located below the left eye socket.

This is indicative of the fact that the bullet entered from behind the head.

According to PW-28, the Medical Officer, the cause of death was due to injury to a vital organ leading to neurogenic shock, which is the primary cause, and secondary cause was hypovolemic shock due to intracranial haemorrhage.

PW 28, after receipt of the ballistic report from the Forensic Science Laboratory, Bangalore, gave his final opinion that the cause

of death is ballistic injuries to the vital organ leading to neurogenic and hypovolemic shock.

10.7.2 We will now examine the evidence of the ballistic expert N. G. Prabhakar, PW-30, who examined the double barrel gun which was recovered at the instance of the appellant and other materials, i.e. two spent 12 bore cartridges, two plastic wads, lead pellets sent to him for examination. Two live 12 bore cartridges which were purchased by the police for testing of the gun were also sent.

10.7.3 These articles were received by the FSL, Bangalore on 19.09.2006 and were examined on the same day and upon examination, PW-30 furnished the following opinion which is reproduced verbatim:

> "1) The D.B.B.L gun in Article No. 1 bears signs of discharge.
> 2) The D.B.B.L gun in Article No. 1 was in working condition at the time of examination.
> 3) The cartridges in Article no. 3 were live and the same can be fired through the D.B.B.L Gun in Article No. 1.
> 4) The effective range of the D.B.B.L gun in Article No. 1 is about 40 yards.
> 5) The cartridges case marked as 2(a) and 2 (b) in Article No. 2 have been fired through the right and left barrel of the D.B.B.L Gun in Article No. 1.

6) The wads and lead pellets in Article Nos. 4 & 5 are the components of 12-bore cartridges and the same could have been fired through the D.B.B.L Gun in Article No. 1."

It may be noted that Article No.1 was the D.B.B.L gun recovered at the instance of the appellant, Article No.2 consisted of spent cartridges also recovered at the instance of the appellant. Article No.3 consisted of two live cartridges which were purchased by the police for testing of the gun.

The said ballistic expert was subjected to intense cross examination. However, his evidence could not be shaken in respect of any of the opinions given by him.

10.7.4 In our considered view, the aforesaid forensic evidence based on ballistic tests is not only crucial and critical in understanding the case, but also seals the fate of the appellant, which establishes the fact that the gun recovered at the instance of the appellant was used in causing the bullet injury to the deceased which led to his death.

It is not the case of the defence that such a gun is readily and easily available and can be used by anybody. One needs to have a license to possess such a gun. It is not an ordinary weapon of crime like a knife which is readily available which can be used to injure a

person fatally. In the present case, the weapon of crime is directly traceable to the appellant, who had taken it from his grandfather as it was recovered at the instance of the appellant as per the evidence of the Investigation Officer, PW-31 corroborated by the panch witness, PW-6.

10.7.5 The double barrel gun was recovered at the instance of the appellant, as witnessed by the seizure witnesses, namely, Ismail Mohammad Dange (PW-6) and Villas Macchendra Davari (PW-7). PW-7, however, turned hostile and stated that nothing was recovered at the instance of the appellant in his presence. On the other hand, PW-6 remained consistent, both in his examination in chief as well as in the cross examination that the appellant in his presence produced the gun, one live cartridge, two spent cartridges from his house. Other articles like a handbag, Hero Honda Motorcycle were also produced by the appellant in presence of PW-6. Even though PW-6 was declared hostile as he did not fully support the prosecution case, yet as far as the recovery of the aforesaid articles is concerned, he stood his ground and he remained consistent even in his cross examination. The said witness testified that the appellant led the Police and other witnesses to the spot from where the appellant shot

the gun. Thus, the recovery of the gun and cartridges at the instance of the appellant was proved.

It may also be noticed that ballistic expert, on examination of the two spent cartridges recovered along with the gun at the instance of the appellant, gave his opinion that these were fired from the gun.

10.7.6 The double barrel gun, one live, and two spent cartridges, and handbag was recovered at the instance of the appellant from the house of the grandfather of the appellant where the appellant lived. Hence, these materials or "facts" recovered would come within the scope of Section 27 of the Evidence Act. Since the discovery of these materials was proved, it was incumbent upon the appellant to explain the discovery and attributes of the articles, more particularly, the gun and spent cartridges. Since it was within the special knowledge of the appellant how these spent cartridges were kept in the house and how the gun was used for discharge before it was recovered, the appellant owes an obligation to explain the same. Even if the appellant did not explain the same, at least his grandfather, PW-20 who was the owner of the gun was obligated to explain it as he was living with the appellant, and he was the real owner of the gun. There was no such explanation offered either by the appellant or his grandfather (PW-20), how the spent cartridges were found and how the gun was used

for discharge. The grandfather, PW-20 merely stated that the appellant did not take the gun on 10.07.2006 and used it. It was natural on the part of the grandfather to protect his grandson, but he was supposed to know of about the use of the gun as well as the recovery of the spent cartridges. Thus, the failure to explain the recovery of the gun and its discharge, and recovery of the spent cartridge certainly implicates the appellant, specifically when the ballistic expert gave his opinion that the lead pellets and wads recovered from the brain skull could be used from the aforesaid gun and the gun had shown signs of discharge.

As held by this Court in **Mukesh & Anr. Vs. NCT of Delhi & Ors. (2017) 6 SCC 1,** when recoveries are made under Section 27 of the Evidence Act, the accused should explain how he came into possession of the incriminating articles.

10.7.7 The clear scientific evidence that the pellets and wads found in the skull cavity of the deceased could be fired from the aforesaid gun recovered at the instance of the appellant and the gun bore signs of discharge and was in a working condition clearly links the appellant to the crime.

10.7.8 Even though the appellant had tried to make out a case that nobody had seen the appellant carrying the gun, in our opinion, the said contention is devoid of merit in view of the evidence of the forensic expert who examined the gun who clearly stated that gun can be dismantled. There is the evidence of PW-5, Ashok Ram Jamadar, who had given the testimony of seeing the appellant along with the deceased in the night of 10.07.2006 going in a motorcycle towards Shiraguppi that the deceased was carrying a bag. If the double barrel gun could be dismantled, it certainly can be kept in the bag. Hence, merely because there is no evidence of any witness seeing the gun being carried by the appellant, it cannot be fatal to the prosecution case.

10.7.9 Once it has come to the fore, based on scientific evidence that the gun which was recovered at the instance of the appellant was in working condition, that it had shown sign of discharge, and the pellets and wads found in the skull cavity of the deceased could be fired from the said gun, in the absence of any explanation by the appellant or by the owner of the gun, the grandfather of the appellant, the only logical inference that can be drawn in the circumstances is that it was the appellant who had used the said gun causing the bullet injury on the deceased which led to his death.

10.8 Under these circumstances, since it has been proved that the appellant was seen last together with the deceased going on a motorcycle carrying a bag, and there is also evidence that there was an argument between them of certain monetary transaction and discussion about going for hunting before they left together, in our opinion, there cannot be any doubt that the appellant was responsible for causing the death of the deceased by use of the double-barrel gun.

10.9 There is also a specific finding by the Trial Court and the High Court that the appellant remained in abscondence from 11.07.2006 till he was arrested by the police on 22.07.2006.

10.9.1 It is on record that the appellant and the deceased were friends. They were not strangers. Thus, this act of absconding by the appellant, rather than helping and cooperating with the family of his friend, in spite of persistent enquiries from the father of the deceased is a clear indication of his guilt.

The Investigating Officer, PW-31 stated that after recording the statements of the witnesses who saw the deceased and appellant together last on 10.7.2006, the police searched for the appellant going to various places at Miraj, Sangali, Hiruyuru, Bangalore but the appellant could not be traced. On 22.07.2006 at 6.00 AM, after PW-

31 received an anonymous call to the effect that the appellant has come to Miraj, he was arrested there and brought to the police station.

10.9.2 It is trite that mere absconding by itself does not constitute a guilty mind as even an innocent man may feel panicky and may seek to evade the police when wrongly suspected of being involvement as an instinct of self-preservation. But the act of abscondence is certainly a relevant piece of evidence to be considered along with other evidence and is a conduct under Section 8 of the Evidence Act, 1872, which points to his guilty mind. The needle of suspicion gets strengthened by the act [See: **Matru @ Girish Chandra vs. State of Uttar Pradesh, (1971) 2 SCC 75**].

10.9.3 It is also on record that the appellant did not merely remain in hiding but also misled his relatives and of the family of the deceased and his friends about his whereabouts.

It is in evidence that when PW-2, the father of the deceased telephoned the house of the appellant on the night of 10.07.2006, he was informed that the appellant was not at home. PW-2 again visited the appellant's house in the morning of 11.07.2006 to enquire about the deceased. The appellant informed PW-2 that he had left the deceased near the water tank situated near the bus stand the previous

evening and he did not know where the deceased had gone. Further, when PW-2 again went to the house of the appellant next day on 12.07.2006 to inquire about the whereabouts of his missing son, the appellant was not found in the house. PW-2 however, met his uncle, namely, Dhananjay Chavan who informed PW-2 that the appellant had gone to Pune in search of job and said Dhananjay Chavan gave the mobile number of one Devraj Sutar (PW-14), a friend of the appellant who was stated to be staying in Pune. When the father of the deceased contacted the said Devraj Sutar (PW-14) on his mobile phone, and inquired about the appellant, the said Devraj Sutar (PW-14) informed the father of the deceased that the appellant had not come to meet him. Later when the father of the deceased rang up Devraj Sutar (PW-14) again, he informed PW-2 that he (PW-14) was not in Pune but in Ahmednagar. PW-2, the father of the deceased then confronted Devraj Sutar as to why he was lying, Devraj Sutar told him that the appellant had asked him to do so. It was thereafter that the father of the deceased filed a missing report.

We have also gone through the missing report filed by PW-2. The narration of the incidents in the missing report about the acts of the appellant in misleading and avoidance substantially corroborates

what PW-2 had deposed about the appellant before the Trial Court, thus lending credibility to his testimony before the Court.

10.9.4 When we critically examine the evidence of Devraj Sutar (PW-14), we find that he corroborates the testimony of PW-2, the father of the deceased.

PW-14 testified that he was a classmate and friend of the appellant and knew him.

PW-14 stated that on 11.07.2006 he received a call from the appellant at around 9:00 pm and the appellant asked him to tell his uncle if he contacts him on the phone to inform him that he (PW-14) is in Pune, though PW-14 was in Ahmednagar. PW-14 also stated that the appellant appeared to be frightened and asked him to tell a lie and thereafter disconnected the phone. PW-14 further testified that on the next day on 12.07.2006 he received a phone call from the uncle of the appellant who enquired about the appellant, to which PW-14 told him that the appellant had not come. On the second call received from the uncle of the appellant, PW-14 narrated the actual facts by stating that he was actually in Ahmednagar and not in Pune and the appellant had not come to him. He stated that thereafter, he was contacted over phone by the police who asked him to come to

Miraj Police Station where he went and gave his statement. He also stated that after 3-4 days of the recording of his statement, the police again asked him to report to the Kagawad Police Station where he was informed that one Vikram Shinde has been murdered.

10.9.5 In our opinion, the evidence of PW-14 is not only highly relevant but critical to support the case of the prosecution that the appellant had been in hiding and was misleading others about his whereabouts and he remained in abscondence from 11.07.2006 till 22.07.2006.

His testimony also appears to be truthful.

It is to be noted that PW-14 had specifically deposed that he was a friend of the appellant, and he did not know the deceased. PW-14 stated that he was a classmate of the appellant, and he had undertaken diploma course along with the appellant.

He did not have any idea of the missing of Vikram Shinde and the subsequent discovery of the dead body of Vikram Shinde. PW-14 came to know of the murder of Vikram Shinde only when he was called at the Kagawad Police Station after about a week of his recording of statement at Miraj Police Station. Hence, there is no reason to doubt the credibility of his evidence. Rather, he, being a

friend of the appellant, it would not have been surprising if he had turned hostile as in the case of some of the prosecution witnesses like Sandip Sandalage (PW-18). According to the Prosecution, the appellant had allegedly made an extra-judicial confession in the presence of Sandip Sandalage (PW-18) who was a friend of the appellant, but PW-18 turned hostile and resiled from his previous statement. Hence, we have not taken into account his evidence in our consideration. However, Devraj Sutar (PW-14), despite being a friend of the appellant did not turn hostile but supported the prosecution case. Thus, there cannot be any doubt about the credibility of the evidence of PW-14, Devraj Sutar.

10.10 As regards the recovery of gold chain, from the possession of the appellant, the same is proved as per evidence of the Investigating Officer, PW-31, and seizure witness, Ismail Mohammad Dange, PW-6. PW-6 stated that on 22.07.2006 when he was called to the Police Station, the appellant had produced a gold chain and at that time, a goldsmith (PW-13) was present who tested and measured it. The said PW-13 also corroborates the testimony of PW-6 though the other panch witness, PW-7, Vilas Macchendra Davari, does not support the same.

In respect of seizure of mobile phone, the shopkeeper, Shiv Kumar, PW-25 had denied having purchased it from the appellant, though there was no explanation of the recovery of a paper containing the driving licence particulars and photograph of the appellant with the signature of the shop owner and seal of the shop. Nevertheless, we give the benefit of doubt in regard of proof of recovery of mobile phone from the appellant, yet the fact remains that the said witness PW-25 admitted that the signature on the said document was his and the seal pertains to his shop, which indicates certain relationship of the appellant with the said shopkeeper, PW-25.

Be that as it may, in our opinion, this may not have much bearing on the case in view of the recovery of the gun, cartridges, motorcycle, bag and gold chain at the instance of the appellant, which clearly points the finger of culpability towards the appellant.

10.11 This takes us to the other contentious issue of motive which prompted the appellant to commit the crime. According to the Prosecution, the appellant murdered the deceased by using firearms as he was upset by the non-repayment of the loan taken from him by the deceased.

10.11.1 The Prosecution case is that the appellant had taken a certain amount from Ravindra S. Chavan, PW-19 to lend it to the deceased. However, Ravindra Chavan denied having given any money to the appellant. In view of the above evidence, the Trial Court held that the monetary transaction cannot be said to be proved. On the other hand, the High Court based on the other evidence held the same to be proved.

In this regard, we may scrutinize the evidence of other witness, namely, Ashok R Shinde (PW-4), the auto-rickshaw driver who allegedly heard arguments between the appellant and the deceased regarding certain monetary matter. Even if the exact amount of the monetary transaction cannot be ascertained as held by the Trial Court, it is on record that there was an argument between them relating to money and insulting words being used by the deceased to the appellant which was heard by PW-4. This interaction would show that there was an element of grudge by the appellant against the deceased because of certain monetary dispute which constituted the motive behind the crime.

10.11.2 Even if it is held that there was no such monetary transaction between the appellant and the deceased, the same may not materially affect the Prosecution case. As is well known, the

motive is something that is very difficult to prove as it remains hidden in the deep recess of the mind of the person concerned and in the absence of any open declaration by the person concerned himself, the motive has to be inferred from the activities and conduct of the person. From the evidence of Ashok R Shinde (PW-4), it can be stated that there was a certain argument between the appellant and the deceased, and the deceased was heard using insulting words to the appellant. It is to be noted that the PW-4 is known to both the appellant and the deceased, and he was having good terms with the family members of both the deceased and appellant and as such it will be highly improbable that this witness would give false statement favouring the appellant and against the deceased. Nothing was suggested during his cross examination of him being inimical to the appellant.

10.11.3 The law is now well-settled that while proof of motive certainly strengthens the prosecution case based on circumstantial evidence, failure to prove the same cannot be fatal. In this regard, one may refer to ***G. Parshwanath vs. State of Karnataka*** **2010 (8) SCC 593** in which it was held as follows:

> *"45. The argument that in absence of motive on the part of the appellant to kill the deceased benefit of reasonable doubt should be given, cannot be accepted. First of all every suspicion is not a doubt. Only reasonable doubt gives benefit*

> *to the accused and not the doubt of a vacillating judge. Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 IPC. Effect of absence of motive would depend on the facts of each case. Therefore, this Court proposes to examine the question of motive which prompted the appellant to commit the crime in question."*

10.12 The present case is clearly one that is founded on circumstantial evidence. By its very nature, circumstantial evidence as opposed to direct evidence, is the inference one draws from the existence of a fact based on certain established fact/circumstance. This process invariably involves intuitive reasoning, proper understanding of human behaviour and psychology. This reasoning has to be rational, probative and which accords with the natural human behaviour. At the same time, there will always be certain subjective elements, which however, cannot be in the nature of surmise or conjecture. The inference may not lead to absolute certainty as we are dealing with human behaviour and reconstructing

a past incident in hindsight. Naturally, when evaluating the proven circumstances for drawing certain inferences therefrom, a logical, rational and pragmatic approach must be adopted without being too technical, pedantic, or seeking absolute proof, for this principle of circumstantial evidence is not based on statutory provision.

Thus, based on lived human experiences and human behaviour, if any supposition of fact is clearly inferable from an established fact, the inferred position of fact should be adopted as correct. Law does not require that a fact requires to be proved on absolute terms bereft of all doubts. What law contemplates is that for a fact to be considered proven, it must eliminate any reasonable doubt. Reasonable doubt does not mean any trivial, fanciful or imaginary doubt, but doubt based on reason and common sense growing out of the evidence in the case. A fact is considered proved if the court, after reviewing the evidence, either believes it exists or deems its existence probable enough that a prudent person would act on the assumption that it exists.

10.12.1 It is also settled that where the evidence is circumstantial in nature, the circumstances from which the inference of guilt is to be drawn, should be fully established. In other words, each of the circumstances from which certain inferences are sought to be drawn,

is required to be proved in accordance with law, and there cannot be any element of surmise and conjecture, and each of these circumstances so proved must form a complete chain without any break to clearly point to the guilt of the accused person. The court has to examine the cumulative effect of the existence of these circumstances, which would point to the guilt of the accused, though any single circumstance may not in itself be sufficient to prove the offence. Thus, if the combined effect of all these circumstances, each of which has been independently proved, establishes the guilt of the accused, then the conviction based on such circumstances can be sustained. These circumstances so proved must be consistent only with the hypothesis with the guilt of the accused and should exclude every hypothesis except the one sought to be proved.

Thus, if upon evaluation of a set of proved circumstances consistent with understandable and socially recognised human behaviour, as a cumulative consequence, a clear and definitive pattern emerges which irresistibly points to the culpability of the accused person, we see no reason why we should not accept such an inferred conclusion to be correct to fasten criminal liability on the accused. On the other hand, if such an inference is sought to be assailed on the ground of any doubt, the doubt must be a reasonable

one consistent with human behaviour under the circumstances of the case and not fanciful, abstract speculation or imagination.

10.12.2 Keeping the aforesaid principles in mind, if we consider all these circumstances, all of which, in our opinion, have been proved in the present case, the cumulative effect of these would clearly demonstrate that no other person other than the appellant could have caused the fatal injury to the deceased by use of fire arms.

As the saying goes, while men may lie, circumstances do not.

10.13 As discussed above, it has been proved through cogent and credible evidence that the appellant was last seen together with the deceased on 10.07.2006 and though the dead body of the deceased was discovered on 13.07.2006, death had occurred around the time the deceased went missing and during this intervening period, the whereabouts of the deceased could not be ascertained. On the other hand, the appellant had been hiding and misleading his relatives and friends about his whereabouts for which the Trial Court and the High Court had rightly inferred his guilty mind.

10.13.1 The other incriminating circumstance is the recovery of pellets and wads from the brain and skull of the deceased. The post-mortem report indicates that the deceased died of bullet injury. The

exit wound was below the left eye socket, which would show that the victim was fired at from behind. As per the forensic expert, the size of the injury on the head of the appellant corroborates with the injury that may be caused by firing from the double barrel gun. What is, however, of utmost and critical significance is the recovery of the pellets and wads from the brain inside the skull of the deceased and the opinion of the ballistic expert that these pellets and wads can be fired from the double barrel gun which was recovered at the instance of the appellant which belongs to the appellant's grandfather. The ballistic expert had also given his opinion that there is evidence of discharge of the gun and the gun was in working condition.

10.13.2 Further, as per the ballistic expert, the spent two 12 bore D.B.B.L cartridges recovered at the instance of the appellant were fired from the same gun and that the pellets and wads recovered from the body were parts of the 12 bore cartridge.

10.14 Since the gun and empty pellets were recovered from the house of the appellant/his grandfather, the incriminating evidence clearly indicates the involvement of the appellant. As the appellant had access to the said gun and since it was recovered at his instance, it was upon him to explain the circumstances in which the gun showed signs of discharge and how the empty pellets were recovered

as required under Section 106 of the Indian Evidence Act which provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. As there was ballistic evidence that the pellets and wads recovered from the cavity of the skull of the deceased showed a link, the appellant had an obligation to explain the circumstances. Even if the appellant may claim that he was not the owner of the gun, his grandfather owned a duty to explain the position.

All the prosecution witnesses, including the forensic expert and ballistic expert had been subjected to intense cross examination with the endeavour to shake their credibility, yet, the appellant has chosen not to lead any evidence except for denying any role in the crime.

10.14.1 The appellant's connection to the case deepened as various forensic and ballistic analyses were introduced. The recovery of the weapon and supporting evidence, including the corroborative testimonies of prosecution witnesses, established a compelling narrative. While motive is often challenging to substantiate, the chain of circumstantial evidence in this case continuously narrowed the focus toward the appellant's culpability. The scientific analysis of the gun and its discharged state, alongside the recovered empty pellets,

played a critical role in aligning the timeline of events surrounding the crime.

10.15 It is true that even in cases based on circumstantial evidence, the prosecution cannot depend on the false alibi or unproven defence plea since the onus is always on the prosecution to prove the prosecution case and the onus never shifts to the accused. However, in such circumstances where prosecution has been able to prove on the basis of cogent evidence that the weapon of crime was traced to the accused, as in the present case, it was incumbent upon the appellant to explain the circumstances of the recovery of the weapon with which a linkage has been established with the injury suffered by the deceased through scientific evidence. However, apart from claiming ignorance and denying the various incriminating evidence presented during the trial, the appellant chose not to adduce any evidence to explain these circumstances. Thus, his silence and failure to explain any of the incriminatory circumstances, would strengthen the prosecution case based on circumstantial evidence against him as proved by the Prosecution.

10.15.1 In this regard, we may also refer to the decision in this Court rendered in ***Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681*** it was held that where the circumstantial

evidence is the basis for any case, where no eyewitness account is available, and when the incriminating circumstances are put to the accused, if the accused does offer any explanation or the explanation that is found to be false, it provides an additional link to the chain of circumstances as observed in para 21 of the aforesaid decision which is reproduced herein below: -

> *"21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of T.N. v. Rajendran [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para 6); State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39 : AIR para 40); State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and Gulab Chand v. State of M.P. [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]*

10.16 We may not also lose sight of the significance of the provision of Section 313 of the CrPC in the case. As a trial comes to a conclusive phase and all the evidence are adduced by the prosecution, the veracity and credibility of which are tested with the tool of cross examination and when a certain clear picture emerges based on the incriminating materials on evidence, as a procedural

safeguard, the court draws the attention of the accused to these incriminating evidence to enable the accused to explain these facts and circumstances which point to his guilt. While the accused is not obligated to answer the questions put to him and still can maintain his silence or deny the evidence, yet silence or evasive or wrong answers to the questions put by the court provides a perspective to the court in properly evaluating the incriminating materials which have been brought forth by the prosecution by drawing necessary inference including an adverse one. [See, ***Manu Sao v. State of Bihar*, (2010) 12 SCC 310**].

10.16.1 Examination of an accused under Section 313 CrPC is an important component of the process of judicial scrutiny of the evidence sought to be relied upon by the prosecution against an accused. At the time of indictment and framing of charges against an accused, the untested evidence marshalled by the investigating authority in the course of the investigation is laid bare before the accused, who would have an idea as to the nature of evidence and case being built up against him by the prosecution. This is to enable the accused to prepare and strategize his defence. He will have all the opportunities to discredit any prosecution witness or question any evidence through the tool of cross examination. He will thereafter

have the opportunity to lead his defence evidence if any. It is in this context that the answers given by an accused assume great significance in assessing the evidence by the court.

10.16.2 In the present case, despite the incriminating evidence which has come up against him has been pointed out to him by the Court, he has not explained any of these but merely denied or feigned ignorance to which necessary inference can be drawn against him.

11. CONCLUSION

11.1 For the reasons discussed above, on consideration of the circumstantial evidences and other proven facts, in our considered opinion, a clear pattern emerges out of the circumstances so proved with inferential and logical links which unmistakably points to the guilt of the appellant for committing murder of the deceased Vikram Shinde, punishable under Section 302 of the IPC and also for committing offences under Section 404 of the IPC and Sections 3 and 5 of the Arms Act,1959 punishable under Sections 25 and 27 of the Arms Act.

These proved circumstances considered individually or taken together do not indicate the involvement of anyone else other than the appellant.

In the circumstances so proved, the possibility of any other person being responsible for the death being ruled out, it can be safely said that the Prosecution has been able to prove the charges against the appellant beyond reasonable doubt. There can thus be no doubt that no one else other than the appellant could have committed the crime.

11.2 For the foregoing reasons, we are of the view that no material illegality has been committed by the Trial Court and the High Court in appreciating the evidence against the appellant nor it can be said that any gross injustice has been caused to the appellant by the impugned judgment by misreading or ignoring any material evidence.

11.3 We are, therefore, satisfied that the conviction of the appellant by the Trial Court which the High Court upheld does not warrant any interference from this Court except for setting aside the conviction under Section 404 of the IPC as regards recovery of the Nokia Mobile Phone, of which we give the benefit of doubt to the appellant, but sustain the conviction of the appellant under Sections 302 and 404 of the IPC as regards murder of the deceased and misappropriation of gold chain by the appellant and under Sections 25 and 27 of the Arms Act, 1959 for unlawful possession and use of the gun.

11.4 Resultantly, the appeal is dismissed and the impugned judgment and order of the High Court of Karnataka, Circuit Bench at Dharwad passed on 06.12.2010 in Criminal Appeal No. 666 of 2007 is upheld to the extent indicated above.

Consequently, bail bonds furnished by the appellant stand cancelled and the appellant who had been released on bail is directed to surrender before the Trial Court forthwith to undergo the remaining period of sentence awarded by the Trial Court as affirmed by the High Court.

…….J.
(SURYA KANT)

…….J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
MAY 30, 2025.