



2026 IN

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NOS. 1353-1355 OF 2017**

**PAWAN KUMAR SHARMA**

**.....Appellant(s)**

**VERSUS**

**MANOJ KUMAR & ORS.**

**.....Respondent(s)**

**WITH**

**CRIMINAL APPEAL NO. 1356 OF 2017**

**CRIMINAL APPEAL NO. 1357 OF 2017**

**CRIMINAL APPEAL NO. 1358 OF 2017**

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Date: 2024.05.26  
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Reason:

**J U D G M E N T**

**PRASANNA B. VARALE, J.**

1. The present criminal appeals arise out of the judgment and order dated 30<sup>th</sup> January 2015 passed by the High Court of Judicature for Rajasthan at Jaipur Bench, in D.B. Criminal Appeal Nos. 923/2008, 844/2008, and 606/2010. By the impugned judgment and order, the High Court allowed the appeals of the respondents/accused persons and set aside the order of conviction and sentence passed by the Trial Court against respondents/accused persons namely, Manoj Kumar, Manjeet Kumar @ Billu, Balraj @ Tiloo, and Vijay Singh @ Sunder under Sections 364 r/w 120B, 302 r/w 120 B, 396 and 201 of the Indian Penal Code, 1860 [**hereinafter referred to as “IPC”**].

**BRIEF FACTS**

2. For the sake of brevity and for maintaining continuity, the parties are referred to as per their nomenclature before the Trial Court.

3. The factual matrix of the case is that on 28.04.2007, the complainant, Pawan Kumar Sharma (P.W.1), submitted a written

report before the Police Station Khetri stating that on 26.04.2007, around 5:00 PM, two boys came to his shop and hired a Bolero Jeep, operated as a taxi by his brother Ashok Kumar Sharma [**hereinafter referred to as “deceased”**], to go towards Lambi Road. The deceased was supposed to return on the same night, however both the deceased as well as the vehicle went missing.

4. The report came to be lodged at the instance of P.W. 1 Pawan Kumar Sharma/complainant. On lodgment of report i.e., the First Information Report Case no. 122/2007, the criminal machinery was set into motion and the investigating agency proceeded. In the course of investigation, four accused persons namely, Manoj Kumar, Manjeet Kumar @ Billu, Balraj @ Tiloo, Vijay Singh @ Sunder and Surendra Kumar were arrested. As per prosecution accused Balraj @ Tiloo was arrested on 28.04.2007 and on the basis of his disclosure statement dead body of deceased was discovered in a dry well on the same day.

5. The investigation concluded by filing charge sheet against the accused persons for commission of offences under Sections 364, 302, 396 and 201 read with Section 120B IPC.

6. The learned Trial Court framed charges against the four accused persons whereas one of the accused person namely, Surender Kumar being juvenile was put to separate trial before the Juvenile Justice Board.

7. Criminal Sessions Case No. 131/07 was registered against Balraj @ Tiloo, Manjeet Kumar @ Billu, Vijay Singh @ Sunder, and Manoj Kumar **[hereinafter collectively referred to as 'respondents/ accused persons']**. In order to prove its case, the prosecution presented 18 witnesses and submitted 65 documents. The respondents/accused persons, however, did not examine any witnesses but presented four documents in its support.

8. The Trial Court on its appreciation of evidence holds all four respondents/accused persons guilty and vide its judgment and order dated 26.07.2008 convicted them for committing offences under Sections 364/120B, 302/120B, 396, and 201 of IPC and awarded sentences as follows:

<b>IPC Section found guilty of</b>	<b>Punishment granted</b>	<b>Punishment in default of fine</b>
364/120B	Life Imprisonment + Rs. 500 fine	R.I. for Two months
302/120B	Life Imprisonment + Rs. 500	R.I. for Two

	fine	months
396	Life Imprisonment + Rs. 500 fine	R.I. for Two months
201	R.I. for 3 years + Rs. 300 fine	R.I. for One month

9. Being aggrieved by the judgment and order of the Trial Court all the respondent/ accused persons challenged the judgment and order of the Trial Court by way of three separate appeals, D.B. Criminal Appeal Nos. 923/2008, 844/2008, and 606/2010 before the High Court of Rajasthan at Jaipur.

10. The High Court on its reappraisal and scrutiny of the evidence found that the evidence led by the prosecution failed to complete the chain of circumstances so as to hold them guilty for recording the conviction and awarding the sentence. The High Court also found that the evidence insofar as the identification is concerned against one of the accused Vijay Singh @ Sunder is too weak. Consequently, the High Court set aside the judgment and order of conviction and sentence passed by the Trial Court. Resultantly all the four respondents/ accused persons were acquitted.

11. Aggrieved by the judgment and order passed by the High Court, complainant/Pawan Kumar Sharma and State of Rajasthan have preferred separate appeals before us.

## **CONTENTIONS**

12. Learned counsel for the appellants, namely, Ms. Sansriti Pathak, A.A.G. learned counsel for the State of Rajasthan and Mr. K.L. Janjani, learned counsel for the complainant have vehemently submitted that the prosecution has established its case beyond reasonable doubt. Learned counsel further submitted that evidence in the form of recovery from the respondent accused along with the other evidence completed the chain of circumstantial evidence and with the help of this evidence, the material facts were proved by the prosecution. Learned counsel further submitted that in such a situation, the High Court ought not to have granted benefit of doubt to the accused persons.

13. Learned counsel for the complainant submitted that from the first instance i.e. in the report lodged by the complainant itself, it was stated that two boys came in the shop for hiring the vehicle i.e. bolero and if these two persons are brought before him, he can identify them. It was further submitted by learned counsel that P.W.1 Pawan Kumar Sharma (complainant) and P.W.8 Rajendra Kumar saw the accused persons in the company of the deceased and it was obligatory on the part of the

respondents/ accused persons to explain as to what happened to the person who was lastly seen in their company and respondents/ accused persons failed to discharge this burden.

14. Learned counsel further submitted that the High Court failed to consider the evidence in the form of recovery of the material objects namely, tape recorder, quartz watch worn by the deceased recovered at the instance of the accused Manjeet Kumar @ Billu, towel recovered at the instance of accused Vijay Singh @ Sunder, the papers of bolero jeep of the deceased recovered at the instance of accused Manoj Kumar and dead body of the deceased, bolero jeep of the deceased and one lathi recovered at the instance of accused Balraj @ Tiloo.

15. Learned counsel further submitted that the High Court erred in appreciating the evidence in the form of postmortem report which refers to the cause of death firstly due to bone fractures and secondly strangulation. The postmortem report also states that all injuries were anti-mortem in nature.

16. Learned counsel further submitted that the High Court erroneously discarded the evidence in the form of recovery of dead body from the accused Balraj @ Tiloo on the ground that an offence under Section 302 IPC was added to the arrest memo

before the body was recovered. It is submitted that there is a possible explanation for this addition namely, the investigating officer found the body in dry well and after seeing the body, the investigating officer naturally added Section 302 IPC in the arrest memo. Learned counsel further submitted that the delay in the recovery of dead body could not have been faulted with as the delay caused due to the bona fide reason namely non-availability of the chain pulling machine in the village. It is further submitted that merely because the dead body was not recovered in the presence of independent witness but in the presence of relative of deceased could not have been ground to discard the entire recovery.

17. Learned counsel further submitted that Test Identification Parade is a tool under Section 9 of the Indian Evidence Act, 1872 **[hereinafter referred to as “Evidence Act”]** and such test or tool cannot be applied in the cases of recovery of immovable articles and admissibility of such evidence would be governed by Section 27 of Evidence Act.

18. Per contra, learned counsel for the respondents/ accused persons vehemently supported the judgment of the High Court to submit that the High Court committed no error in just and

proper appreciation of the evidence and resultantly recorded an order of acquittal.

19. It is submitted by the learned counsel for the respondents/accused persons that the appeal thus being meritless are liable to be dismissed.

20. Learned counsel then submitted that the piecemeal recovery of certain articles which failed to establish the alleged guilt of the respondents/accused persons. As such, the High Court committed no error in giving the benefit of doubt to the respondents/accused persons and resultantly acquitting the accused persons.

21. The learned counsel in support of his submissions placed heavy reliance on the judgment of this Court in **Tulesh Kumar Sahu v. State of Chhattisgarh Criminal Appeal No. 753 of 2021**\_wherein this Court had relied upon the decisions in Sunder Lal alia **Sundera v. State of Madhya Pradesh**<sup>1</sup> and **Sanwant Khan vs. State of Rajasthan**<sup>2</sup>. The relevant discussion on the point is in para No. 11.

*“11. ....Be that as it may, in the absence of any direct or circumstantial evidence whatsoever, from the solitary circumstance of the unexplained recovery of the two articles*

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1 AIR 1954 SC 28

2 AIR 1956 SC 54

*from the houses of the two appellants the only inference that can be raised in view of illustration A to S.114 of the Evidence Act is that they are either receivers of stolen property or were the persons who committed the theft, but it does not necessarily indicate that the theft and the murders took place at one and the same time*

*In our judgment no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murdered. Suspicion cannot take the place of proof.*

*(Emphasis supplied)*

*33. In the case of recovery of an article from an accused person when he stands accused of committing offences other than theft also, (in this instance murder), what are the tests:*

*i. The first thing to be established is that the theft and murder forms part of one transaction. The circumstances may indicate that the theft and murder must have been committed at the same time. But it is not safe to draw the inference that the person in possession of the stolen property was the murderer [Sanwant Khan (supra)];*

*ii. The nature of the stolen article;*

*iii. The manner of its acquisition by the owner; A*

*iv. The nature of evidence about its identification;*

*v. The manner in which it was dealt with by the accused;*

*vi. The place and the circumstances of its recovery;*

*vii. The length of the intervening period;*

*viii. Ability or otherwise of the accused to explain its possession [See Baiju v. State of Madhya Pradesh].”*

## **ANALYSIS**

22. We have heard learned counsels for the parties at length and also perused the material placed on record.

23. As referred to above, it is not in dispute that the case of prosecution entirely rests on circumstantial evidence. It is also not in dispute that in series of judgments of this Court principles are laid down by this Court so as to appreciate the substantial evidence. Admittedly, in the present case, the Trial Court though passed the judgment and order of conviction and awarded sentence to the accused, the High Court on reappraisal of the evidence overturned the judgment and order of the Trial Court and acquitted the accused of the offences charged against them.

24. Thus, the question before us is whether the High Court was justified in reversing the order of conviction by granting the benefit of doubt to the respondents/ accused persons.

25. Before we undertook this exercise, it will not be out of place to refer to certain judgments of this Court wherein the test for exercising power under Article 136 of the Constitution of India is discussed.

26. Firstly, we will refer to the judgment of this Court in **State of M.P. v. Paltan Mallah**<sup>3</sup>. It was held that:

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3 (2005) 3 SCC 169

*“8. ... This being an appeal against acquittal, this Court would be slow in interfering with the findings of the High Court, unless there is perverse appreciation of the evidence which resulted in serious miscarriage of justice and if the High Court has taken a plausible view this Court would not be justified in interfering with the acquittal passed in favour of the accused and if two views are possible and the High Court had chosen one view which is just and reasonable, then also this Court would be reluctant to interfere with the judgment of the High Court.”*

This view was again reiterated in **State of Punjab v. Kewal Krishan**<sup>4</sup> wherein it was held as under:

*“14. ....Normally, this Court is reluctant to interfere with an order of acquittal. But when it appears that the High Court has on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, acquitted the respondent and the order of acquittal passed by the High Court has resulted in a grave and substantial miscarriage of justice, extraordinary jurisdiction under Article 136 of the Constitution of India may rightfully be exercised (see : State of U.P. v. Sahai [State of U.P. v. Sahai, (1982) 1 SCC 352 : 1982 SCC (Cri) 223] ).”*

27. On the touchstone of these tests laid by this Court in above referred judgments, we are of the opinion that the High Court committed no error in reversing the judgment of conviction and acquitting all the accused. We may state our reasons supporting the conclusion arrived at by us as follows.

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4 (2023) 13 SCC 695

28. The prosecution case, insofar as accused Balraj @ Tiloo, Manjeet Kumar @ Billu and Manoj Kumar are concerned, rests entirely on circumstantial evidence. In the case of accused Vijay Singh @ Sunder, the prosecution case substantially rests upon the theory of last seen together. The other incriminating circumstances relied upon by the prosecution include the alleged recovery of the dead body at the instance of accused Balraj @ Tiloo, the identification of accused Vijay Singh @ Sunder by PW1 Pawan Kumar Sharma and PW8 Rajendra Kumar, and the recovery of certain articles/objects from the different accused persons.

29. The High Court has, in our considered opinion, rightly doubted the prosecution case insofar as the alleged recovery of the dead body at the instance of accused Balraj @ Tiloo is concerned. The reasons assigned by the High Court are cogent and borne out from the record. Firstly, because at the time of arrest of accused Balraj @ Tiloo police was not aware that the deceased had been killed as PW1 merely filed a missing report, then how come on the arrest memo filed on the very same date it was mentioned that the accused was arrested for offence under

Sections 302, 394 and 201 of IPC. Secondly, the testimony of P.W.5 Basant Singh, an independent witness, materially undermines the prosecution case. PW5 in his testimony stated that police had already visited and examined well from where the dead body was discovered on 28.04.2007 itself, however since the boring machine was not available, the dead body was recovered on 29.04.2007. Further P.W.5 stated that none of the accused people were present on the spot when the recovery was being made. High Court observed that the Trial Court has totally ignored the testimony of PW5, which is a crucial piece of evidence as the said testimony challenges the position of the prosecution. Thirdly, the requirement of independent witnesses, more particularly, as per Section 100(4) of Cr.P.C. is to provide credibility to the investigation. In the present case, admittedly, the dead body was recovered in the presence of one witness i.e. P.W. 2 who happens to be uncle of deceased and another person namely, Ramawtar who has not been produced by the prosecution for his examination before the Court.

30. On the backdrop of these facts, the High Court observed that Ramawtar who was an independent witness and failure to

produce him before the Court is nothing but withholding the material witness and this creates a doubt about the recovery of the dead body alleged at the instance of accused Balraj @ Tiloo. Therefore, the High Court was justified in holding that the prosecution failed to establish beyond reasonable doubt that the recovery of dead body was made pursuant to the disclosure statement of accused Balraj @ Tiloo.

31. It is consistently held by this Court that the suspicion however strong it may be, cannot take place of the legal evidence so as to convict an accused person. Considering this position of law, the High Court was justified in not recording the conviction against the accused persons on a weak piece of evidence i.e. recovery of dead body.

32. Furthermore, the discovery of bolero jeep, vehicle belonging to the deceased at the instance of accused Balraj @ Tiloo has been rightly doubted by the High Court. As per the testimony of PW 14, the recovery was made from the road and not from the accused's possession. In ***Jaikam Khan v. State of U.P***<sup>5</sup> it was observed: –

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5 (2021) 13 SCC 716

*“One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place of incident. It could thus be seen that the recoveries were made from the places, which were accessible to one and all and as such, no reliance could be placed on such recoveries.”*

Thus, relying on the abovementioned position of law it is clear that no reliance can be placed on the recovery of the Bolero Jeep.

33. As far as the evidence against Accused Vijay Singh @ Sunder is concerned, PW1 Pawan Kumar and PW8 Rajendra Kumar have identified him in the Test Identification Parade (Ex P5, P6, P25, P26) and these both the witnesses have stated before the Court that they saw the accused Vijay Singh @ Sunder and Juvenile Surendra had taken deceased with bolero vehicle on hire basis in the presence of PW1 and PW8. High Court considering the testimonies of PW1 and PW8 observed as follows:

*“Hence, the three pieces of evidence stand out against Vijay: firstly, the evidence of the last seen; secondly, his silence about Ashok’s whereabouts; thirdly, his identification by Pawan Kumar (P.W.1) and by Rajendra Kumar (P. W.2).*

*Before a person can be convicted; the prosecution must cover the distance between “may be true” and “must be true.” However, by establishing the three pieces of evidence, mentioned above, the prosecution has failed to cover the said distance. At best, there is a strong suspicion that Vijay may have been involved in the murder of Ashok. But there is no*

*proof that he must have been Involved In his murder. In catena of cases, the Hon'ble Supreme Court has held that last seen is a weak sort of evidence. It is too weak a piece of evidence to convict a person. Even the identification by Pawan Kumar (P.W.1) and Rajendra Kumar (P.W.2) does not unerringly point to the guilt of Vijay. His silence about the whereabouts of Ashok may be a weakness of the defense, but the weakness of the defense does not strengthen the case of the prosecution. Most importantly, it would be utterly unjust to convict Vijay merely on the basis of a strong suspicion.”*

34. An attempt was made by the Learned Counsel for the appellant to submit that it was for the respondents/ accused persons to explain as to what happened to the deceased, as deceased was last seen in their company and thus burden shifted upon respondents/ accused persons under section 106 of the Evidence Act.

35. This Court in **Manoj @ Munna v. State of Chhattisgarh, 2025 INSC 1466** has observed as follows:

*“30. It is a settled principle that Section 106 of the Indian Evidence Act, 1872 clearly provides that when a fact lies especially within the knowledge of a person, the burden of proving that fact rests upon him. Accordingly, when an accused is shown to have been last seen in the company of the deceased, it becomes incumbent upon him to explain how and when they parted ways. The explanation furnished must be reasonable, probable, and satisfactory in the opinion of the Court. If such an explanation is offered, the burden cast by Section 106 of the Evidence Act stands discharged.*

However, if the accused fails to present a credible explanation regarding facts within his special knowledge, this failure constitutes an additional link in the chain of circumstantial evidence established against him. At the same time, it must be emphasized that Section 106 of the Evidence Act does not shift the primary burden of proof, which in a criminal trial always remains on the prosecution.

31. Thus, any adverse inference under Section 106 of the Evidence Act is to be drawn against the accused person when the prosecution has been able to establish the case beyond a reasonable doubt.”

36. Further this Court in **Manoj @ Munna v. State of Chhattisgarh, 2025 INSC 1466** while reiterating principle laid down in **Kanhaiya Lal vs. State of Rajasthan**<sup>6</sup> observed as follows:

“28. In *Kanhaiya Lal vs. State of Rajasthan* this Court held that evidence on last seen together is a weak evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 and 201 of the IPC.”

37. Considering the aforesaid position of law and the observations of High Court, it would be appropriate to hold that the High Court, rightly held that it would be wholly unsafe and unjust to convict accused Vijay Singh @ Sunder merely on the basis of a strong suspicion arising from the evidence of last seen

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6 (2014) 4 SCC 715

together and identification by PW1 and PW8. We find no infirmity in the view taken by the High Court in extending the benefit of doubt to the accused.

38. As far as the recoveries from the accused Manjeet Kumar @ Billu is concerned, though learned counsel for the appellant heavily relied on the recoveries of the articles, we are unable to accept the submission of learned counsel to that effect, in view of the just and proper appreciation of the recoveries by the High Court in following words:

*“Most pertinently, neither the tape recorder, nor the wrist watch has ever been subjected to the T.I. Parade. Even if Rajendra Kumar (P. W .8) had identified the tape recorder and the wrist watch as belonging to Ashok, even then such . identification is absolutely meaningless In the eyes of law. For, according to Rajasthan Police Rules, 1965, an object which is recovered has to be subjected to a test identification parade in order to assess its objective identification by a witness. Since neither the tape recorder, nor the wrist watch was subjected to a test identification parade, it would be too conjectural to presume that the tape recorder came from the Jeep and the wrist watch belonged to Ashok. Therefore, the recovery is insignificant. It does not connect Manjeet to the alleged crime. If he were to be convicted on the basis of this flimsy recovery, he would be convicted on the basis of conjectures and surmises. But under criminal jurisprudence, a moral conviction is impermissible. The conviction has to be a legal one.”*

The view taken by the High Court also finds support from the decision of this Court in ***Thammaraya & Anr. v. The State Of Karnataka***<sup>7</sup> wherein this Court has reiterated the law relating to Test Identification Parade of recovered articles. It observed as follows:

*“27. Therefore, this material omission on part of the Investigating Officer (PW-27) in not conducting a Test Identification Parade (TIP) of the recovered articles, more particularly when the case of prosecution is based solely upon recoveries of these articles, has created holes in the fabric of the prosecution story, which are impossible to mend.*

*28. Every piece of relevant fact needs to be sewn via the golden thread of duly proved circumstances, in order to ultimately formulate the fabric of guilt. Sadly, in the present case, the facta probantia fails to sustain and support the alleged factum probando, rendering the prosecution’s case miserably weak. Hence, the evidence led by the prosecution against the accused person is woefully short of the mandate to prove the case beyond reasonable doubt.”*

39. Further, although the prosecution recovered a towel from the house of accused Vijay Singh alleging the same to be the murder weapon, such recovery is wholly immaterial inasmuch as a towel is a common household object ordinarily found in every residence and, therefore, in absence of any connecting material,

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7 (2025) 3 SCC 590

no inference can be drawn against the respondent/accused. It is further the case of the prosecution that the lathi recovered at the instance of Balraj @ Tiloo was used in the assault upon the deceased, however, the said towel neither bore any bloodstains nor any other incriminating material connecting towel to the deceased. Consequently, the mere recovery of a towel without any incriminating material does not connect the respondent/accused with the alleged crime.

40. A holistic appreciation of the evidence confirms the High Court's observation that the prosecution's evidence is disjointed and not interlinked. Instead of placing the Court on a firm footing, the prosecution has left it "groping in the dark". We find that the High Court meticulously "separated grain from the chaff" and arrived at a plausible conclusion that the chain of circumstances was incomplete.

41. The law regarding circumstantial evidence has been crystallised by this Court in an oftenly quoted judgment of this Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***<sup>8</sup>, as follows-

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8 (1984) 4 SCC 116

*“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.”*

42. Thus, it is a settled position of law that to convict the accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the incriminating

circumstances on which it proposes to rely; the circumstance(s) relied upon must be of a definite tendency unerringly pointing towards the accused's guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent with his guilt and consistent with his innocence.

43. For all the reasons above, while keeping in mind that the view taken by the High Court is a plausible view, we do not find a good reason to interfere with the order of acquittal passed by the High Court. The appeals are accordingly dismissed.

.....**J.**  
**[PANKAJ MITHAL]**

.....**J.**  
**[PRASANNA B. VARALE]**

**NEW DELHI;**  
**MAY 25, 2026.**

