* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 04.05.2026
Pronounced on: 02.07.2026

\+ **CRL.A. 461/2002**

SALEEM @ KALUA .....Appellant

Through: Ms.Isha Khanna, Ms.Ruchika Malik and Mr.Shivam Prashar, Advs.

versus

THE STATE (NCT OF DELHI) .....Respondent

Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. with Insp. Johnson Jacob, P.S. V.K. North.

\+ **CRL.A. 506/2002**

MAYA .....Appellant

Through: Mr.Manjit Singh Chauhan, Adv.

versus

STATE .....Respondent

Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. with Insp. Johnson Jacob, P.S. V.K. North.

\+ **CRL.A. 49/2004**

ROSHANI & ANR .....Appellants

Through: Ms.Khushboo Nahar, Adv.

versus

STATE .....Respondent

Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. with

Insp. Johnson Jacob, P.S. V.K. North.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. These appeals have been preferred by the appellants assailing the Judgment dated 30.03.2002 passed by the learned Additional Sessions Judge, New Delhi (hereinafter referred to as 'Trial Court') in Sessions Case No. 158/97 arising out of FIR No. 390/96 registered at Police Station Vasant Kunj, *vide* which the appellants were convicted for offence under Sections 302/201/34 of the Indian Penal Code (hereinafter referred to as 'IPC').

2. The appellants further challenge the Order on Sentence dated 05.04.2002 passed by the learned Trial Court, whereby they were sentenced to undergo:

a. imprisonment for life and to pay a fine of Rs.10,000/- each for the offence punishable under Section 302/34 of the IPC and, in default of payment of fine, to undergo further simple imprisonment for a period of six months; and,

b. rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- each for the offence punishable under Section 201/34 of the IPC and, in default of payment of fine, to undergo further simple imprisonment for a period of three months.

3. We would like to herein note that the appellant Savitri in Crl.A

49/2004 has since passed away. Therefore, the appeal *qua* her stands abated.

4. As all the appeals arise out of a common order, therefore, they are being disposed of *vide* this common judgment.

CASE OF PROSECUTION

i. The case of prosecution is that appellants Saleem, Maya, Roshni and Savitri murdered the deceased, namely Dr. Ashok Kumar Bansala (hereinafter referred to as 'Deceased'), with *danda* blows and knife and threw his body after tying the same with two pieces of cement "*naalis*" in the Kusumpur Pahari "*jheel*" as Saleem was the *paramour* of Roshni, wife of the deceased.

ii. It is alleged that on 03.08.1996, appellant Roshni had lodged a missing person report about the deceased at the police station, stating that he had left home for his native village about a month and a half before, but had not returned thereafter and was not traceable.

iii. On 13.08.1996, Kumari Neelam (PW-2), daughter of appellant Roshni and the deceased, approached the Police Station accompanied by her paternal aunt *(Bua)* Shakuntala (PW-3) and lodged a complaint that her deceased father has been put to death by her mother Roshni alongwith her *paramour* namely Saleem with the aid of her *Nani* Savitri and *mausi* Maya, who had caused injuries to the deceased with *danda* blows and knife and murdered him.

iv. On the basis of the said information, an FIR No. 390/1996 was registered under Section 302/34 of the IPC against the appellants.

Thereafter, a hunt was mounted to trace the appellants as they were absconding.

v. During the investigation, all four of them were arrested by the Police on 19.08.1996 at AIIMS Chowk, New Delhi.

vi. It is the case of prosecution that pursuant to their disclosure statements and pointing out, a highly decomposed headless body tied with cement *'naalis'* and electric wires was recovered by the divers from the mines *('jheel')* situated at Kusumpur Pahari, and subsequently skull of the deceased was separately recovered from the same place. The appellants pointed out the scene of crime and the cycle used by them to transport the body of the deceased to the place where they had thrown the body. Videography regarding the said recovery of the dead body from the *jheel* was made by the police.

vii. Further, the post mortem was done and the bones were sent for DNA fingerprinting. It was established therefrom that the bones recovered were of the deceased.

viii. In view of aforesaid allegations, charge was framed under Section 302/34 of the IPC and 201/34 of the IPC against all accused persons.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT

5. In support of its case, the prosecution examined 27 witnesses. Thereafter, statement of the appellants was recorded under Section 313 of the Code of Criminal Procedure, 1973. They denied the allegations made against them and claimed innocence and false implication. They stated that Shakuntala had implicated them in the case as she wanted to grab the

property of the deceased and she even influenced the child of the deceased, PW-2 Neelam.

6. In their defence, the appellants examined DW-1 Sri Chand and DW-2 Satish, who deposed that the appellant Maya had been taken by the police from her village on the 12th or 13th of August, 1996 and that she had been living in the village and had not travelled to Delhi since 2/3 months before the date she had been taken by the police.

IMPUGNED ORDERS OF CONVICTION AND ON SENTENCE

7. The learned Trial Court observed that the testimony of the child witness PW-2 Neelam is admissible and need not necessarily be corroborated in all circumstances. While appreciating the testimony of PW-2 Neelam, the learned Trial Court observed that the conduct of PW-2 in not immediately disclosing the incident or raising alarm, was natural in the circumstances, considering that she was a child who had witnessed her own mother and other relatives assaulting her father. It was observed that fear, insecurity, and trauma could reasonably explain her silence and subsequent conduct. The learned Trial Court further rejected the defence theory that PW-2 had been tutored by PW-3/Shakuntala, and observed that it was improbable that a child would falsely depose over a prolonged period in detail against her own mother.

8. The learned Trial Court noted that PW-2 had consistently deposed regarding the illicit relationship between appellant Roshni and appellant Saleem; them administering intoxicating substance to the deceased; and the manner in which the appellants assaulted and disposed of the dead body of the deceased. It further observed that the testimony of PW-2 inspires confidence and remained materially consistent with her

complaint.

9. The learned Trial Court observed that the recoveries stood proved through the testimony of police officials, divers, and other witnesses, and that the dead body and skull were recovered at the instance of the appellants.

10. The learned Trial Court further observed that the discrepancy regarding whether the body had been transported in a car or on a cycle, was not material, since the essential circumstance regarding disposal and recovery of the body stood established.

11. The learned Trial Court further relied upon the testimony of PW-25 Dr. G.V. Rao, and the DNA report Ex. PW 25/A, to conclude that the recovered remains belonged to the deceased. The Court rejected the challenge to the DNA evidence, and observed that the expert had adequately explained the methodology adopted for DNA profiling.

12. In conclusion, it was held that the prosecution had successfully established that all the appellants, in furtherance of their common intention, had committed the murder of the deceased and thereafter caused disappearance of evidence by disposing of the dead body in the mine/*jheel*.

13. In view of the above observations, the learned Trial Court has found the appellants guilty and convicted them under Sections 302/34 of the IPC and 201/34 of the IPC, and imposed the punishment as detailed hereinabove.

SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE APPELLANT SALEEM@KALUA IN CRL.A. 461/2002

14. Ms. Isha Khanna, the learned counsel for the appellant Saleem,

while reading out the testimony of PW-2 Neelam, submits that she is not a trustworthy witness for a number of reasons. She submits that there are multiple contradictions in her statements. In this regard, she highlights the contradictions in her testimony regarding the *jaali* in the brick wall through which she allegedly saw the incident, the presence of the light, the non-opening of the clinic door, the distance of Savitri & Maya's *jhuggi* from the house of the witness, her story of suffering from headache on the night of the incident, the clothes of the deceased and the awareness of the deceased regarding Saleem's visits to the house.

15. She submits that PW-2 has given contradictory versions regarding the size of the holes on the *jaali*, existence of transparent glass thereon, and her position while allegedly witnessing the occurrence. She submits that PW-1, PW-2 and PW-14 have also contradicted each other regarding the number of holes in the *jaali*, its size, and presence of glass, which makes them also untrustworthy and unreliable witnesses. She further submits that neither the height nor visibility angle of the *jaali* was ever established or known. Significantly, the *jaali* did not face the main road. She submits that as per PW-2, the *jaali* was about 2-3 feet but as per the Site Plan (Ex PW1/D), the *jaali* was at the corner of the clinic but the height of the *jaali* from the floor level was not known as it was not measured by anyone. She submits that in such circumstances, it was highly improbable for PW-2 to have witnessed the alleged incident in the manner deposed by her.

16. Ms. Khanna further submits that PW-2 made materially false statements regarding the existence of electricity in the *jhuggi*. While she claimed that an electricity meter was installed and electricity bills were

issued in the name of the deceased, PW-3 and PW-27 categorically deposed that there was no electricity meter and that illegal temporary connections were being drawn from nearby poles. PW-2, later in her deposition, admitted that there was no electricity pole on the road. She submits that, therefore, the prosecution failed to establish that there was sufficient light at the spot and, even assuming that electricity was being drawn through an unauthorized connection, there is no evidence to establish that any bulb was installed and switched on during the relevant night so as to enable PW-2 to witness the alleged incident in the manner claimed by her.

17. It is further submitted by the learned counsel for the appellant Saleem that PW-2 Neelam contradicted herself regarding the alleged jammed clinic door. At one stage she stated that the door could not be opened as it was jammed, whereas later she admitted that the deceased regularly used the same door for the patients till the very night of the incident.

18. She also points out that there are contradictions regarding the alleged administration of intoxicating substance to the deceased. In the complaint, it was alleged that intoxicating tablets were being administered daily through milk, whereas during deposition PW-2 improved her version by alleging administration of intoxicating medicine on the night of the incident as well. She submits that it is also not established which substance was given or administered to the deceased, and there was no effort even made by the IO to recover the intoxicating substances/medicines or pills. She submits that the deceased being a doctor, would have easily caught that he was being administered an

intoxicating substance. His not doing so, itself shows that the story set up by the PW-2 is false.

19. She submits that PW-2 also contradicted herself regarding her alleged headache, her state of wakefulness during the night, and even regarding whether she had taken medicine for the same.

20. She submits that PW-2's version regarding the deceased wearing black pants and white shirt while sleeping during peak summer, stands contradicted by her own admission that the deceased ordinarily slept wearing *baniyan* and *nicker*.

21. She further submits that in the complaint (Ex. PW1/B), PW-2 Neelam states that appellant Saleem used to visit deceased's house for past 5-6 months and there was a quarrel between Roshni and deceased regarding the same, but during her examination on 20.08.1998, she deposed that the appellant Saleem used to visit the house of the deceased in the absence of the deceased, and further, in later examination, deposed that she did not tell her father that the appellant used to visit their house in his absence.

22. While referring the Site Plan (Ex PW1/D), the learned counsel for the appellant submits that as per PW-1, the Site Plan was prepared on 14.08.1996 in the presence of PW-2 Neelam and PW-3 Shakuntala, however PW-3 deposed that after the Police recorded her statement, she went back to Muwana on 13.08.1996 itself. Thus, it establishes that the Site Plan could not have been prepared at the instance of PW-2, as she was not in Delhi during that time. She submits that, therefore, the Site Plan cannot be relied upon.

23. The learned counsel for the appellant submits that the prosecution

failed to establish the precise date and time of the alleged occurrence. None of the prosecution witnesses mentioned any specific date, and merely referred to a "Friday" about one to one-and-a-half months prior to the complaint. It is further submitted that PW-2 contradicted herself regarding the alleged time of the incident being 3:00 AM. At one stage, she stated that she inferred the time from the alleged statement of the appellant, whereas subsequently she claimed to have seen the time in a watch, despite admitting that she did not possess any watch.

24. The learned counsel further submits that even the place and manner of occurrence remained doubtful. In the complaint, the deceased was stated to be sleeping inside the room/*jhuggi*, whereas subsequently PW-2 changed her version and deposed that the deceased was sleeping in the courtyard.

25. She further submits that there are contradictions between the unscaled site plan and scaled site plan regarding the position of the cot, bathroom opening, *jaalis*, and even the point where the deceased allegedly struck his head, and the said contradictions in the two site plans establish that PW-2 could not have witnessed the alleged crime and thus, the alleged crime could not have been committed by the appellant and co-accused(s) in the manner as alleged.

26. The learned counsel for the appellant submits that there are material contradictions in the testimonies of PW-1, PW-2, and PW-3 regarding the arrival of PW-3 in Delhi and taking PW-2 to Muwana. She submits that these inconsistencies render doubtful the prosecution timeline as well as the date on which PW-3 allegedly first received information regarding the incident from PW-2.

27. She further submits that even the delay in lodging the complaint remains unexplained. It is submitted by the learned counsel that it is improbable that after allegedly witnessing the murder of her father and remaining awake throughout the night, PW-2 normally went to school on the very next day. She submits that despite allegedly witnessing such a gruesome incident, PW-2 neither disclosed the incident to anyone nor exhibited any disturbance in her normal routine or behaviour.

28. While referring to the impugned judgment, she submits that the learned Trial Court appears to have been swayed and seems to have been impressed by the deposition of PW-2 for the reason that it was identical to the complaint made by her, and has brushed aside the aforesaid contradictions by terming them as minor contradictions.

29. The learned counsel for the appellant submits that the learned Trial Court was wrongly swayed by the arguments of the prosecution that the witness was so terrified that she had to be provided with police security to depose before the Court. She submits that the security was granted on an application made by Shakuntala alleging threat to the life of PW-2 as well as her own life and not for the reason that the witness was terrified. She further submits that PW-2 admittedly used to come with PW-3 only, despite the fact that letters had been written by appellant Roshni requesting that PW-2 and her brother be taken from PW-3 and sent to Nari Niketan on the allegation that PW-3 had influenced PW-2 to depose against her.

30. The learned counsel for the appellant submits that the learned Trial Court relied upon the testimony of PW-2 to the extent it suited the prosecution, while for other portions relied upon part of the disclosure

statement, which itself was contradictory to the testimony of PW-2. The learned counsel for the appellant submits that the prosecution case is contradictory on material aspects and, therefore, wholly unreliable. She submits that while the PW-2 had maintained that the appellants had taken the body of the deceased in a car, the prosecution and the learned Trial Court subsequently relied upon the disclosure statements of the appellants to conclude that the body was transported on a cycle and disposed of thereafter.

31. It is further submitted that the prosecution story regarding conspiracy, is also inherently improbable inasmuch as the appellant and co-accused(s) could not have anticipated the exact time at which the deceased would wake up to use the bathroom, particularly when the prosecution itself alleges that he had been heavily intoxicated. Further, it is highly unlikely that the appellant and co-accused(s) would have remained standing outside the house for an indefinite period, despite being aware that neighbors were sleeping outside the *jhuggi* and could have noticed their presence, thereby raising suspicion.

32. The learned counsel submits that PW-3 Shakuntala was only a hearsay witness and her testimony suffers from material improvements. She submits that PW-3 was admittedly not an eye witness and her entire testimony was based upon what was allegedly narrated to her by PW-2. She highlights that her testimony suffers from various contradictions regarding the date of her arrival in Delhi; the date of returning to Muwana with PW-2; whether PW-2 was taken in presence or absence of Roshni; and whether any written complaint was submitted to police on 04.08.1996. Several material facts deposed by her before the Court, were

absent from her statement under Section 161 of the Cr.P.C., amounting to material improvements. Thus, PW-3's testimony was wholly insufficient to corroborate the prosecution case.

33. The learned counsel for the appellant submits that the prosecution failed to establish that the appellant and co-accused(s) were arrested on 19.08.1996 in the manner alleged, inasmuch as there are material contradictions in the testimonies of PW-16, PW-17, PW-19, PW-20, PW-21 and PW-27 regarding the timing, manner of arrival and departure of the police officials, as well as the accused persons. She submits that while PW-27 deposed that the accused had reached AIIMS to catch a bus, PW-17 stated that he did not know whether the appellants had come by bus or on foot, whereas PW-20 deposed that the accused had alighted from a bus. She further submits that no incriminating article whatsoever, including any bus ticket, money, purse or wallet, was recovered from the personal search of the accused persons, despite the prosecution alleging that they were travelling from Kusumpur Pahari to Kotla. She submits that these inconsistencies render the prosecution version regarding the alleged apprehension at AIIMS, wholly doubtful and establish that the appellant and co-accused were not arrested in the manner alleged by the prosecution.

34. She submits that the disclosure statements are inadmissible in the present case. To substantiate the submission, she submits that as per the prosecution case, the appellants were apprehended on 19.08.1996 at around 4:30-4:45 p.m., they were arrested around the same time, and within 10-15 minutes thereafter, the appellant as well as others confessed the crime. All this is said to be completed by 5:00-5:15 pm, which seems

impossible to be done in such a short span of time. She further submits that no investigation is made by the police with respect to the person whom the appellant and co-convicts were allegedly going to meet when they were apprehended, which establishes that the accused persons have been falsely implicated.

35. She further submits that, independent witnesses PW-6, PW-9 and PW-12, did not support the prosecution version regarding the recovery at the instance of the accused and, more importantly, the divers categorically stated that police had approached them much earlier in the day for removal of a body from the *jheel*, thereby completely demolishing the prosecution case that the recovery was effected pursuant to disclosure statements of the appellants made after the alleged arrest.

36. Further, she highlights the absence of arrest memo in the present case. She submits that the alleged disclosure statements are inadmissible and incapable of being relied upon.

37. She further submits that the prosecution story that two *naalis*, which were about 40-45 kgs, were tied to the dead body and dumped together, is highly improbable.

38. The learned counsel for the appellant submits that the prosecution failed to establish beyond reasonable doubt that the skull and bones allegedly recovered from the *jheel* were those of the deceased. She submits that there is no evidence on record to show in whose custody the alleged skeletal remains remained from the date of recovery till the postmortem examination. She further submits that the DNA report was not supported by any underlying scientific material or corroborative evidence and, therefore, could not have been treated as conclusive proof

of identity.

39. Ms. Khanna further submits that the medical evidence itself materially contradicted the prosecution case. She submits that as per PW-15, the calculated stature of the deceased, on the basis of the recovered femur bone, was approximately 140.6 cm ± 5 cm, whereas the deceased was stated to be around 5 feet 6 inches in height. She further submits that PW-15 opined that the death had occurred approximately three months prior to the postmortem conducted on 06.09.1996, which was inconsistent with the prosecution timeline regarding the alleged incident. She submits that in view of the absence of a clear chain of custody, lack of corroborative evidence to the DNA report, and the contradictions arising from the medical evidence itself, the identity of the recovered remains remained wholly doubtful.

40. The learned counsel for the appellant submits that the alleged recovery of the skull was highly doubtful and incapable of being relied upon. She submits that PW-10 deposed that he had taken out the head of the body from the *jheel* along with one cement slab (*naali*), however, he failed to mention the specific day and date on which the alleged skull was recovered. She further submits that the prosecution failed to establish how the skull allegedly got detached from the rest of the body. Even assuming that the skull had detached naturally, it would ordinarily have floated on to the surface of the water and could have been recovered on 19.08.1996 itself, rather than being subsequently found tied with a third cement slab in the manner alleged by the prosecution. She submits that the prosecution has thus introduced the theory of a third cement slab, only to explain the subsequent recovery of the skull, which admittedly had not been

recovered along with the remaining body parts on 19.08.1996.

41. She further submits that there are contradictions even regarding the nature of recovery, inasmuch as, the prosecution alleged recovery of a headless body along with cement slabs and electric wires, whereas PW-6, an independent witness, deposed that only large bones along with cement slabs and a bundle of electric wire were recovered.

42. She submits that while PW-2 alleged that on the alleged date of incident, the body of her father was taken in a car, the disclosure statement alleged that the body was taken on a cycle on the next day. She submits that the learned Trial Court introduced its own opinion by observing that the body might initially have been taken in the *dikki* of a car or that the accused may have lied regarding transportation on a cycle. She submits that such reasoning, which was never deposed to by PW-2 herself, could not have been used to overcome contradictions in the prosecution case.

43. The learned counsel for the appellant submits that although there were contradictions regarding the date of arrival of PW-3 at Delhi and taking PW-2 back to Muwana, the learned Trial Court brushed aside the contradictions in the testimonies of PW-1, PW-2 and PW-3 and selectively relied upon one part of the testimony of PW-3 to conclude that she arrived in Delhi on 31.07.1996.

44. The learned counsel for the appellant submits that the learned Trial Court failed to consider the appellant's statement under Section 313 of the Cr.P.C., wherein he stated that he had neither visited the house of the deceased nor had any relation with Roshni and that he had been picked up by the police from his residence. She submits that the appellant

specifically alleged that the police used third-degree methods upon him and obtained disclosure statements, videography and pointing-out memos, under pressure and threat.

45. The learned counsel for the appellant submits that neither motive nor preparation nor commission of the alleged crime was proved and that the prosecution case suffered from material discrepancies in witness testimonies, absence of independent witnesses, inadmissible disclosure statements, inconsistencies regarding recovery, and failure to establish that the recovered body was that of the father of PW-2. She submits that the complete and unbroken chain of evidence excluding every hypothesis of innocence, was not established beyond reasonable doubt and that the learned Trial Court convicted the appellant by discarding material discrepancies and introducing its own reasoning to fill gaps in the prosecution case.

46. The learned counsel places reliance on ***Raja Khan v State of Chhattisgarh,*** 2025 INSC 167**,** to submit that under Section 27 of the Indian Evidence Act, only that portion of the information supplied by an accused which distinctly relates to the fact thereby discovered, is admissible in evidence. She submits that the exact information allegedly furnished by the accused leading to recovery, must be duly proved and mere statements that the accused led the police party to the place of recovery are insufficient.

47. By placing reliance on a judgment of Supreme Court in ***Caetano Piedade Fernandes and Another v Union Territory of Goa, Daman and Diu,*** (1997) 1 SCC 707, she submits that the testimony of a child witness is required to be approached with great caution, and where the testimony

suffers from serious infirmities, contradictions and improbabilities, affecting the veracity of the statements made, it would not be safe at all to rely on such testimony.

48. She further places reliance upon ***Vijay Mandal & Ors. v. State of Chhattisgarh,*** 2025:CGSC:7483-DB, to submit that DNA evidence must be properly documented, collected, packaged and preserved, in accordance with scientific and legal requirements, before it can be treated as admissible and reliable evidence. She submits that in the present case, the prosecution failed to establish the chain of custody and preservation of the alleged bones/body recovered from the *jheel* and, therefore, the DNA evidence loses its evidentiary sanctity and cannot be safely relied upon.

49. She places reliance upon ***Rahul v. State,*** (2023) 1 SCC 83, to submit that where a confession made before the police leads to recovery of any incriminating material, only that limited portion of the statement which distinctly relates to the fact discovered, is admissible under Section 27 of the Indian Evidence Act, and not the entire confessional statement. She further submits that the information leading to discovery of the place of offence or recovery is admissible only to the limited extent contemplated under Section 27 read with Section 8 of the Indian Evidence Act.

SUBMISSIONS OF THE LEARNED COUNSEL ON BEHALF OF APPELLANT MAYA IN CRL. A. 506/2002

50. Mr. Manjit Singh, learned counsel for appellant Maya, while mostly adopting the submissions made by Ms. Isha Khanna in Crl. A. 461/2002 for appellant Saleem, further adds that it is settled law that

though conviction can be based on the testimony of a solitary eyewitness, but only if the testimony of that witness is reliable. He submits that PW-2 Neelam is not reliable for the reason being that if the statement of PW-2 is to believed then according to her the dead body was taken away in the *dikki* of a vehicle/Maruti van, however, as per the disclosure statements of accused persons, the dead body was kept inside the house and after about 24 hours, that is on next night, it was taken away on a bicycle and thrown in the mine. He submits that the prosecution itself did not believe the statement of PW-2 to be true, and instead believed the disclosure statements and recovered the alleged bicycle vide Ex. PW 17/J. If the testimony of the PW-2 was true and believable, then the Maruti Van must have been recovered. Therefore, the same makes the testimony of PW-2 doubtful.

51. He further submits the testimony of PW-2 cannot be relied upon as the learned Trial Court had failed to discharge its duty before recording her testimony. The learned Trial Court did not ask any formal questions from the child witness in order to ascertain that she was free from coercion or tutoring. In this regard, he places reliance on ***Pradeep v. State of Haryana,*** 2023 INSC 599.

52. He submits that when the reliability of the testimony of sole witness is not absolute, then the case must be treated as based on circumstantial evidence, and therefore, the motive to commit murder becomes an important factor. He submits that, in the present case, appellant Maya is the sister of appellant Roshni, who is the wife of the deceased, and there is no motive as to why Maya would assist Roshni in committing murder of her husband. If appellant Roshni, as per prosecution, was having illicit

relations with appellant Saleem, there is no reason why appellant Maya would want to commit the murder of her sister's husband.

53. The learned counsel submits that there is no arrest memo prepared by the IO of the alleged arrest. Therefore, the prosecution has failed to show that the appellant was in police custody while making the alleged disclosure statement. To buttress his contention, he places reliance on ***Rohit Jangde v State of Chattisgarh,*** 2026 INSC 162.

54. He submits that only one public witness, that is PW-6, was included while making alleged recoveries, and even PW-6 did not support the prosecution version.

55. He further submits that the prosecution has failed to prove beyond reasonable doubt that the dead body which had been recovered was that of the deceased, as there are doubts regarding the height of the dead body. He submits that in the missing complaint (Ex PW1/A), the height of the deceased was mentioned as 5 feet 6 inches by his wife Roshni, whereas the Post Mortem Report mentioned the dead body being of a person whose height was of less than 5 feet. DNA report was also doubtful as PW-25 Dr GV Rao deposed that he did not bring the file containing the details regarding the test conducted by him. The relations of the persons whose DNA was to be compared with the DNA of the deceased was already revealed to PW-25 in the form of identification card. Therefore, DNA report is not reliable. Reliance is placed on ***Rahul v. State Of Delhi,*** (2023) 1 SCC 83.

56. He further adds that the time of death is doubtful. As per PW 1/B, time of death is sometimes in the end of June 1996, however the report of Post-Mortem conducted on 06.09.1996 states the time of death is about 3

months ago, which means in the beginning of June.

57. He submits that since the present case is one of murder, the stricter degree of proof is required and the same is not proved beyond a reasonable doubt.

SUBMISSIONS OF THE LEARNED COUNSEL ON BEHALF OF APPELLANT ROSHNI IN CRL. A. 49/2002

58. Ms. Khushboo Nair, learned counsel for the appellant Roshni, submits that the conduct of PW-2 was considerably unnatural, as for about 1.5 months the child lived a routine life after allegedly witnessing a brutal murder of her own father, living without any signs of trauma and distress, going to school regularly, did not alert her neighbour and friends, and only confided in PW-3, her bua, when she visited the house of PW-2. It is submitted that such unnatural conduct of a witness makes her testimony unreliable. To buttress her contention, she places reliance on ***Nimai Ghosh v State of Bihar***, 2025 INSC 816*;* ***Panchhi and Ors. National Commission for Women v State of UP and Ors***., (1998) 7 SCC 177*;* and ***Chaggan Dame v. The State of Gujarat,*** 1995 SCC (Cri) 182.

59. She submits that PW-2 claimed to have witnessed assault on her father by the appellants by way of knife and *danda* blows and mentioned that thereafter her deceased father was dumped in the *dikki* of a white car, however no 'white car' was ever recovered by the prosecution to corroborate the statement of the sole eye-witness PW-2. She submits that the same discredits her as a sterling witness and establishes that she was tutored by PW-3, her *bua*, to falsely implicate the appellants in the present case.

60. She submits that the learned Trial Court erred in explaining the contradictions on behalf of the prosecution and further failed to establish the core of Section 34 of the IPC, since nothing on record is there to prove prior meeting of mind of the accused persons or participation in furtherance of common intention.

61. She submits that the learned Trial Court has erred in passing the judgment by basing the entire case on the disclosure statement of the appellants. She submits that it is well settled that a confession made by a person while in custody of the police is inadmissible in the court of law as per Section 25 and 26 of the Indian Evidence Act.

62. She submits that the whole episode of alleged discovery of the remains of the deceased, was staged by the prosecution.

63. She further submits that due importance to the statement of appellant Roshni and appellant Savitri in their Statements under Section 313 of the Cr.P.C. was not given by the learned Trial Court.

64. The learned counsel for appellant Roshni further submits that the learned Trial Court failed to appreciate the distance between the *jhuggis* of Saleem, Maya and Savitri, and voluntarily filled the gaps in the prosecution story without even adhering to the fact that no pre planning was proved by the prosecution.

65. She submits that a blind eye is turned on the fact that there are no arrest memos on record which is fatal to the case. She further submits that there is a complete violation in regard to guidelines passed in the case of ***DK Basu and Anr. v. State of West Bengal and Anr.,*** (1997) 1 SCC 416. She submits that this is a blatant violation of Section 41B of the Cr.P.C., leading to illegal detention along with illegal procedure and violation of

Article 21 of the Constitution of India.

66. By placing reliance on ***Manoj and Ors. v. State of Madhya Pradesh,*** (2022) 6 SCC 1, she submits that the DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law. She contends that in the present case, no data was placed on record by the prosecution, thereby inferring that the DNA reports are incomplete to establish the case of the prosecution beyond reasonable doubt.

SUBMISSIONS OF THE LEARNED APP FOR THE STATE

67. Mr. Aman Usman, the learned APP, submits that the present case rests upon cogent, consistent and credible chain of evidence, which conclusively establishes the guilt of the accused persons beyond reasonable doubt. He submits that the prosecution has proved the occurrence of events through the testimony of a natural eyewitness, being PW-2 Neelam, duly corroborated by surrounding circumstances, recoveries and scientific evidence. He submits that minor discrepancies are bound to occur when witness depose after a lapse of time and the said discrepancies do not go to the root of the matter and are liable to be ignored.

68. He further submits PW-2 is wholly consistent as a star witness, as opined by learned Trial Court itself, and inspires confidence. He submits that while appreciating the testimony of PW-2 Neelam, Child witness, Court must consider the ordeal faced by a child witness who was compelled to attend Court proceedings repeatedly over a prolonged period and remained constantly under police protection. The learned APP

submits that the competence of child witness PW-2 Neelam was duly assessed by the learned Trial Court and not only this, oath was duly administered to her after the Court was fully satisfied regarding her intelligence, rationality and ability to depose truthfully. Therefore, challenge to her competency is devoid of merit. The presence of PW-2 at the place of occurrence is natural and unquestionable since she resides in the same house. Also her narrative regarding the conduct of accused persons, the sequence of assault, and the subsequent manner in which body was disposed, bears intrinsic truth and inspires confidence. He further submits that merely because she deposed against her own mother, it does not render her unreliable, rather carries even greater evidentiary value as it would require extraordinary courage for a child to depose against her own parents.

69. Regarding the conduct of the child post the incident, the learned APP submits that a child who had witnessed her mother and other family members conspiring against and causing injuries to her father, would naturally be overwhelmed by fear, anxiety and insecurity. In such circumstances, it cannot be expected that she would disclose the incident to neighbors, friends or schoolmates. Having witnessed the brutal acts of the accused persons and being dependent upon them, the child was likely to remain silent out of fear for her own safety and due to the absence of any trusted person to whom she could confide.

70. The learned APP further submits that the defence theory alleging that she was tutored by PW-3 Shakuntala, her *bua*, is unsupported by any evidence and is baseless. He submits that no suggestion was put to PW-3 during her cross-examination that she had tutored PW-2 or intended to

usurp the property of the deceased.

71. He further submits that the delay in lodging the FIR stood sufficiently explained on account of fear, pressure and the initial reluctance and inaction of the police authorities.

72. The learned APP further contends that the testimony of PW-3 corroborates the version of PW-2, and the disclosure made by the PW-2 to her *bua* PW-3 immediately after she went to Muwana, is fully consistent with her deposition before the Court and lends assurance to the prosecution case.

73. He submits that evidence of both independent and official witnesses conclusively establishes that recovery of body was made pursuant to the disclosure statements of accused persons. In this regard, he points out to the testimony of PW-9 Shankar (diver), and submits that it clearly establishes that the dead body was recovered at the instance of accused persons.

74. He further submits that the discrepancies regarding the exact timing of arrest and recovery, are minor, and do not go to the root of the case of the prosecution. It is submitted that the recovery proceedings were duly photographed and videographed, thereby lending further assurance and credibility to the prosecution case and completely negating the allegation of fabrication.

75. The learned APP submits that PW-7 Manjeet has supported the prosecution case by stating that he had written love letters to appellant Roshni on behalf of appellant Saleem and had also read out the letters written by Roshni to Saleem. According to the prosecution, this establishes the relationship between the two and provides the motive for

the offence.

76. He further submits that the medical evidence does not contradict the prosecution case in any manner. The body was highly decomposed when the post mortem was conducted on 06.09.1996, as per which, death time was approximately 3 months prior. The FIR was registered on 13.08.1996, where the PW-2 stated that around 1 and ½ months back the incident took place. Thus, if time is calculated from the statement of the minor, it will be around 2 months 20 days or so, which roughly matches with timeline given in the Post Mortem Report. Although the body was highly decomposed and the precise cause of death could not be conclusively determined, the same does not dilute the effect of the direct ocular testimony and surrounding circumstantial evidence.

77. He submits that the arrest and interrogation of the accused persons stand proved through the testimonies of PW-15/SI Dhara Mishra, PW-17/HC Satish, PW-19/HC Ved Prakash, PW-20/CT Gyan Prakash, and PW-21/Ct Deep Kaur. Pursuant to the disclosure statements of the appellants, the appellants led the police party to Kusumpur Pahari where a headless dead body tied with cement *naalis* and electric wires was recovered by the diver PW-9/Shanker and was witnessed by PW-6/Maya Devi, independent witness. The entire recovery was photographed and videographed by PW-11/Ravi Sharma, thereby ruling out any possibility of fabrication. He further submits that on 21.08.1996, skull of the deceased was also recovered, which fact stands duly proved through the testimonies of PW-10/Abdul Sattar, PW-19/HC Ved Prakash, and PW-26/HC Sushil Kumar.

78. The learned APP further submits that the medical and scientific

evidence fully supports the prosecution case. He submits that the identity of the deceased stood conclusively established through DNA profiling conducted by PW-25/Dr. G.V. Rao, which connected the recovered remains with the deceased.

79. He further submits that the non-recovery of the weapon of offence or clothes is not fatal to the prosecution case in view of the settled proposition that even in the absence of recovery of the weapon of offence, conviction can safely be based upon reliable ocular testimony.

80. He submits that the divers were immediately summoned after the arrest of the appellants and their disclosures, and the dead body was recovered pursuant to the information supplied by the accused persons. Even assuming that any part of the disclosure statements is held to be inadmissible, the conduct of the accused persons in leading the police party to the place of concealment of the body and facilitating the recovery, remains a relevant circumstance under Section 8 of the Indian Evidence Act. This conduct constitutes an important incriminating circumstance and lends substantial support to the prosecution case.

81. He submits that the alleged discrepancy regarding the mode of transportation of the dead body, is not a material contradiction affecting the prosecution case. Whether the body was transported on a bicycle or in a car/van, does not have any bearing on the guilt of the accused. The learned APP relied upon the findings of the learned Trial Court of the impugned judgment for the same.

82. The learned APP submits that the learned Trial Court has made correct observations in holding the appellants guilty and the findings returned by the learned Trial Court are based upon proper appreciation of

the ocular, medical, scientific and circumstantial evidence on record. He submits that the learned Trial Court has rightly relied upon the testimony of PW-2, which stood corroborated by the surrounding circumstances, recovery proceedings, and DNA evidence, and has correctly held that the prosecution had successfully established a complete chain of circumstances pointing towards the guilt of the accused persons beyond reasonable doubt.

83. The learned APP places reliance on ***State v. UP v Deoman Upadhayaya,*** 1960 SCC Online SC 8, to contend that Section 27 of the Indian Evidence Act distinguishes between persons in police custody and those not in custody. It is further contended that for the purposes of Section 27, custody is wider than formal arrest and may exist even where a person has submitted himself to the control of the police. The learned APP submits that the absence of arrest memo is not fatal to the prosecution case. To substantiate this submission, he places reliance upon a judgment of Punjab and Haryana High Court in ***Anuj Kumar Singh v. Union of India,*** 2026:PHHC:057291, and contends that an arrest stands effected the moment an individual is under the coercive control of the police authorities. He submits that the time mentioned in the arrest memo is merely a procedural formality and cannot be treated as determinative of the actual time of arrest. He submits, once the accused persons were under police control and not free to depart, they were deemed to be in custody for the purposes of Section 27 of the Indian Evidence Act.

84. By placing reliance on ***Neelu@Nilesh Koshti v. The State of Madhya Pradesh***, 2026 SCC OnLine SC 278, he submits that Section 27 is a proviso to Sections 25 and 26 of the Indian Evidence Act. He submits

that the 'fact discovered' embraces not merely the object recovered, but also the place from which it is produced, and the knowledge of the accused as to its existence. He submits that the actual discovery of the body from the exact location disclosed by the appellant serves as a guarantee of the truthfulness of the information supplied.

85. He submits that the impugned judgment and order, therefore, deserve no interference from this Court.

ANALYSIS AND REASONING

86. We have considered the submissions made by the learned counsels of all the appellants and the learned APP for the State and perused the record of the learned Trial Court.

87. The case of the prosecution rests primarily on two circumstances:

(i) the testimony of PW-2 Ms. Neelam, daughter of the deceased, alleged to be the sole alleged eyewitness to the incident; and

(ii) the alleged disclosure statements of the appellants and consequent recoveries of the skeletal remains of the deceased from the *jheel* at Kusumpur Pahari.

88. We shall now consider the aforesaid circumstances relied upon by the prosecution for bringing home the guilt of the appellants.

89. Before we consider the testimony of PW-2 Neelam, we must take note of the fact that on the date of the alleged incident, her age would have been around 10 years, and when her testimony was recorded by the learned Trial Court, she was aged around 12 years.

90. The law with respect to the testimony of a child witness is well settled. In ***Pradeep v. State of Haryana*** (supra), the Supreme Court held

that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness and apply its mind to the question whether there is a possibility of the child witness being tutored. The Court also emphasized that at the time of recording of the evidence of the child witness, the Court must follow the mandate of Section 4 of the Oath Act, 1969 and Section 118 of the Indian Evidence Act, 1872.

91. For the sake of convenience, we first reproduce the law as explained by the Supreme Court in the above judgment:

> *"7. We have carefully considered the submissions. The fate of the case depends on the testimony of the minor witness Ajay (PW-1). Under Section 118 of the Evidence Act, 1872 (for short, "the Evidence Act"), a child witness is competent to depose unless the Court considers that he is prevented from understanding the questions put to him, or from giving rational answers by the reason of his tender age. As regards the administration of oath to a child witness, Section 4 of the Oaths Act, 1969 (for short "Oaths Act") is relevant. Section 4 reads thus:*
>
> *"4. Oaths or affirmations to be made by witnesses, interpreters and jurors.—(1) Oaths or affirmations shall be made by the following persons, namely:—*
> *(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;*
> *(b) interpreters of questions put to, and evidence given by, witnesses; and*

(c) jurors:

> *Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.*
> *(2) .. .."*

Under the proviso to sub-Section (1) of Section 4, it is laid down that in case of a child witness under 12 years of age, unless satisfaction as required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of PW-1 Ajay, it is mentioned that his age was 12 years at the time of the recording of evidence. Therefore, the proviso to Section 4 of the Oaths Act will not apply in this case. However, in view of the requirement of Section 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.

8. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child

witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

9. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court."

92. In ***State of Rajasthan v. Chatra,*** (2025) 8 SCC 613, the Supreme Court reiterated and culled out the principles applicable for assessing the testimony of a child witness as under:

"23. The principles that can be adduced from an overview of the aforesaid decisions, are:
23.1. No hard and fast rule can be laid down qua testing the competency of a child witness to testify at trial.
23.2. Whether or not a given child witness will testify is a matter of the trial Judge being satisfied as to the ability and competence of the said witness. To determine the same the Judge is to look to the manner of the witness, intelligence, or lack thereof, as may be apparent; an understanding of the distinction

between truth and falsehood, etc.
23.3. The non-administration of oath to a child witness will not render their testimony doubtful or unusable.
23.4. The trial Judge must be alive to the possibility of the child witness being swayed, influenced and tutored, for in their innocence, such matters are of ease for those who may wish to influence the outcome of the trial, in one direction or another.
23.5. Seeking corroboration, therefore, of the testimony of a child witness, is well-placed practical wisdom.
23.6. There is no bar to cross-examination of a child witness. If the said witness has withstood the cross-examination, the prosecution would be entirely within their rights to seek conviction even solely relying thereon."

93. In the present case, at the outset, we would note that unlike in ***Pradeep vs. State of Haryana*** (supra) where at least some questions had been put to the child witness by the learned Trial Court to determine if she was capable of understanding the questions put to her, the learned Trial Court, in spite of the tender age of PW-2, did not put even a single question to the child witness to decipher whether she was capable of understanding the questions put to her and give rational answers to the same, and as to whether she was capable of understanding the importance of speaking the truth. Therefore, even assuming that the learned Trial Court was satisfied that the witness, not being under 12 years of age, could be administered oath as she understood the meaning thereof, there was no compliance with the requirement of Section 118 of the Indian Evidence Act.

94. In spite of the above, we shall now consider the testimony of the

child witness PW-2 to decipher if we can rely on the same to hold the conviction of the appellants herein. PW-2 Kumari Neelam in her testimony states that the appellant Saleem @ Kalua used to visit her mother-appellant Roshni, on which the deceased used to get angry. He also used to quarrel with the appellant Roshni on this issue. PW-2 states that one month before the date of the incident, the appellant Roshni asked the appellant Kalua to bring some intoxicating medicine, which she gave to the deceased in the milk. The deceased used to sleep after drinking the said milk. This continued for about one month till the day of the incident. PW-2 further states that on the night of the incident, that was a Friday, the deceased woke up during the night time for urinating. As she was having a headache, she could not sleep though appellant Roshni thought that she was sleeping. Appellant Roshni bolted the shop/clinic of the father, where they were sleeping, from outside. She states that when the deceased was going towards the *jhuggi* from the bathroom side, the appellant Roshni pushed him from the behind, due to which the head of the deceased struck against the wall and he fell down on the ground. The appellant Roshni immediately called other appellants. The other appellants were armed with *danda* and appellant Kalua was also having a knife apart from a *danda*. The appellant Kalua put a cloth in the mouth of the deceased and all four accused persons gave *danda* blows on the person of the deceased. The appellant Kalua also inflected the knife blow on the chest and stomach of the deceased. PW-2 states that thereafter, appellant Kalua brought one vehicle and told that it was 3 o'clock in the night. He told the others "*jaldi se gaadi ki dikki mein gero*". PW-2 states that thereafter appellant Kalua took out the shirt of the deceased and appellant Roshni cleared the blood

lying on the floor with the said shirt. She states that the deceased was wearing white vest and black pant on his body. She states that thereafter four accused persons put the deceased in the *dikki* of the vehicle and kept the *dandas* and knife and also the shirt of the deceased in the vehicle. She states that all the four accused sat in the vehicle and went somewhere. She however is not aware where they went. She states that she had seen the entire incident from the *jaali* of the bricks of the room where she was sleeping. She further states that one bulb was glowing in balli and therefore, there was light in which she could see the incident. She states that after some time all the four accused persons came back and started talking inside her *jhuggi*. After some time, accused Savitri (*Nani* of PW-2) and appellant Maya (*Mausi* of PW-2) went to their *jhuggis,* while appellant Kalua and appellant Roshni slept in her *jhuggi.*

95. PW-1 SI Akhlesh Yadav admits that he did not note the position of the light poll (*balli*) and bulb in the rough site plan prepared by him. He further admits that he also did not measure the height of the alleged *jaali* from which PW-2 would have seen the incident. These were the important facts that ought to have been noted down in the site plan, if any credence is to be placed on the testimony of PW-2. Whether PW-2 could indeed have seen the entire incident lying on a cot in her *jhuggi/room/clinic* is most vital to determine whether she can be safely relied upon.

96. Importantly, PW-2 states that when she woke up, she enquired from the appellant Roshni about the whereabouts of the deceased and she stated that he has gone to Badarpur. Where was the occasion to enquire, if she had seen the incident herself?

97. In her cross-examination, she further states that she did not scream

or shout when her mother pushed the deceased, as she feared that the mother would also beat her up. She further states that on the next day, she went to school at 7.30 a.m. and came back from the school at 1 p.m. Importantly, she does not even then inform about the incident to any other person, but when her *bua* (PW-3 Ms.Shakuntla) came to the house of the deceased on 31.07.1996, she decided to go with PW-3. Even to PW-3, she claims to have informed of the incident only on 03.08.1996.

98. On being asked if there was another door to the room where she was sleeping, she admitted the same, however, adds that it was jammed. She, on further cross-examination, admitted that patients used to come to see her father, who was a doctor, from the said door. Therefore, she tries to explain away the suggestion that she could easily have called for help by moving out from the other door towards the street.

99. She also states that she knew that her mother used to give intoxicating medicine in the milk to the deceased. She states that she, however, never told the deceased about the same. Why not?

100. She stuck to the version that the body of the deceased was removed from the *jhuggi* on the vehicle/Maruti Van brought by the appellant Kalua. Even the prosecution does not believe this version of hers and, in fact, deems it proper to rather accept the version of the appellants in their alleged disclosure statements that they removed the body of the deceased on the next day on a bicycle.

101. She also admitted that in the summer season, they used to sleep in the courtyard and neighbours used to sleep on the roadside outside the courtyard of the *jhuggi*. Why were they sleeping in the room on the fateful night and how come no other neighbour woke up when so much

commotion must have taken place with a vehicle coming in the middle of the night and body being dumped in the vehicle to be taken away, has not been explained. No one also saw the appellants, who are claimed to have been waiting outside the *jhuggi* of the deceased armed with *dandas*. This again makes her version doubtful.

102. On the presence of the light, she again stuck to the statement that there was light present in the house. In fact, she further goes to state that the *jhuggi* also had an electricity meter. We highlight this fact, as PW-3 Shakuntla in her statement had admitted that there was no electricity meter in the *jhuggi.*

103. From the above analysis of the deposition of PW-2, she does not come out to be a reliable witness for more than one reason. The very fact that she could see the entire incident unfolding before her eyes from the *jaali* of the brick wall while sleeping in the room, is highly doubtful. The incident as described by her has not happened in one direction, but in multiple directions; a part of it was in the courtyard of the house, while the other on the road outside the house when the car is brought to remove the body of the deceased. She has further tried to improve her statement by even going to the extent of claiming that there was an electricity meter installed in the house. Moreover, her conduct pre and post the incident is also very unnatural. Though she states that she knew that her mother-appellant Roshni used to give intoxicating substance to the deceased by mixing it in his milk and that she had been doing the same since from at least one month before the incident, yet she does not inform the same to her father, the deceased. Even post the incident, she first enquires from the appellant Roshni about the whereabouts of her father, though she

claims to have witnessed the entire incident in the night. She further goes to school the next morning in the normal time but does not inform any friend, teacher or neighbour about the gruesome murder of the deceased. She acts normally till PW-3 (sister of the deceased) comes to the house of the deceased on 31.07.1996. She does not tell PW-3 about the incident even then. She in fact goes with her to her village and informs her only on 03.08.1996. This conduct, even from a child, is completely unnatural especially when a child has seen gruesome murder of her father at the hands of her mother and others unfold in front of her eyes.

104. In ***Nimai Ghosh*** (supra), the Supreme Court laid emphasis on the unnatural conduct of an alleged eye witness, to disbelieve the testimony of such a witness. The Court observed that the act of said witness not to inform about the incident to others was unnatural and even the theory of being under fear, could not be accepted. We quote from the judgment as under:

> *"16. In view of the foregoing, it can safely be observed that, as a general rule, to prove the case of the prosecution, the testimony of eyewitness primarily ought to be considered and be relied upon to prove the guilt of the accused. It is trite to say that the testimony of the eyewitness must be trustworthy, free from any kind of blemish and of sterling character to prove the incident, whereby the case of the prosecution may be proved beyond reasonable doubt. It is also settled that the quality of evidence brought to prove the guilt is a relevant factor and not the quality of the witnesses. The testimony of those witnesses either proves the case as alleged by the prosecution or otherwise. Sometimes, the testimony of the eyewitness is found unbelievable and can be discarded. To adjudge the credibility of the said testimony, relevant factor would be the conduct of the*

witness indicating the natural reaction comparable to a prudent man, makingthe conduct of witness realistic. The said factors shall be based upon parameters which have been discussed in the judgment hereinabove.

17. At the cost of repetition and to prove those parameters it can be observed that if a friend or relative is accompanying the deceased at the time of incident, action taken by the witness is a relevant factor to save him. Moreover, in addition, at the time of incident and immediately after commission of the offence, what steps were taken by the eyewitness to save the life of the deceased. Whether the eyewitness left the place of occurrence and returned the place of incident simpliciter without furnishing information to the police or intimating the relatives/friends/near dear ones becomes relevant. In case, the eyewitness does not convey any information about the incident to anyone which is not expected from a prudent man, his conduct does not appear to be natural of a human being. The time of furnishing information to the police at the earliest by eyewitness is one of the relevant factors to dislodge the plea of belated FIR, therefore, the conduct of an eyewitness should be reflected like a real image in a mirror, thereby making his testimony reliable to prove the guilt of the accused."

105. The silence of PW-2 till 03.08.1996 and her allegedly disclosing the incident to PW-3 only when she was in custody of PW-3 for some days, raises a doubt of her being tutored by PW-3. Though the learned Trial Court has held that the consistent version of PW-2 against her own mother, rules out tutoring, in our opinion, the pre and post incident conduct of PW-2 does not completely rule out such possibility.

106. Once the testimony of PW-2 is held to be not reliable, we are left only with the alleged disclosure statements made by the appellants and the

consequent recovery of the skeleton bones of the deceased from the *jheel* at their behest.

107. Section 27 of the Indian Evidence Act is an exception to Sections 25 and 26 of the Indian Evidence Act, and states that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, "in the custody of a police-officer", so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Therefore, when consequent to a confession or otherwise made by the accused while in custody of the police officer, any fact is discovered, the same may be proved in evidence. The first pre-condition of the same is therefore for the person to be in custody of the police officer.

108. In ***Raja Khan*** (supra), the Supreme Court held as under:

> *"18. Sections 25 and 26 of the Evidence Act stipulate that confession made to a police officer is not admissible. However, Section 27 is an exception to Sections 25 and 26 and serves as a proviso to both these sections [Delhi Administration vs. Bal Krishan & Ors., (1972) 4 SCC 659].*
>
> *19. This Court is of the view that Section 27 lifts the ban, though partially, to the admissibility of confessions. The removal of the ban is not of such an extent so as to absolutely undo the object of Section 26. As such the statement whether confessional or not is allowed to be given in evidence but that portion only which distinctly relates to discovery of the fact is admissible. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the Appellant-accused as to its existence (Udai Bhan Vs. State of Uttar Pradesh, AIR 1962 SC 1116).*
>
> *20. The essential ingredients of Section 27 of the Evidence Act are three- fold:*

i. The information given by the accused must led to the discovery of the fact which is the direct outcome of such information.
ii. Only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused.
iii. The discovery of the facts must relate to the commission of such offence.

21. The question as to whether evidence relating to recovery is sufficient to fasten guilt on the accused was considered by this Court in Bodhraj Alias Bodha & Ors. v. State of Jammu & Kashmir, (2002) 8 SCC 45, wherein it has been held as under:-

> *"18… Section 27 of the Indian Evidence Act, 1872 (in short "Evidence Act") is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by this Court in Delhi Admn v. Balakrishan [(1972) 4 SCC 659] and Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828]. The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion*

in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken in to custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is,

therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in Palukuri Kotayya v. Emperor [AIR (1947) PC 67], is the most quoted authority of supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [See State of Maharashtra v. Dam Gopinath Shirde and Ors, (2000) 6 SCC 269]. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

(emphasis supplied)"

109. In ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh*** (2023) 16 SCC 510, the Supreme Court had reiterated the essential for admissibility of the evidence under Section 27 of the Indian Evidence Act, as under:

> ***"56.*** *If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his bloodstained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If*

from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

57. *The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW 2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the bloodstained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the bloodstained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so*

prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

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59. *The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW 7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh. 5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the*

exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

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73. *Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama (Exh. 5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon."*

110. Recently, in ***Anand Jakkappa Pujari @ Gaddadar v. The State of Karnataka***, 2026 INSC 417, the Supreme Court has held that Section 27 of the Indian Evidence Act is in the nature of an exception to the general rule on non-admissibility of confessions made by the accused. It, therefore, has to be strictly construed. The Court held as under:–

*"**52**. The conditions necessary for the applicability of Section 27 of the Evidence Act are broadly as under:-*

1. *Discovery of fact in consequence of an information received from accused;*
2. *Discovery of such fact to be deposed to;*
3. *The accused must be in police custody when he gave information; and*
4. *So much of information as relates distinctly to the fact thereby discovered is admissible — Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828.*

Xxxxxx

62. Section 27 of the Evidence Act is in the nature of an exception to the general rules contained in the two preceding Sections 25 and 26, respectively. Section 25 makes inadmissible any confession by an accused person to a police officer. Under Section 26, no confession by any person while he is

in the custody of a police officer shall be proved against such person unless it be made in the presence of a Magistrate. Section 27 says that such part of the information given by an accused person while in the custody of a police officer may be proved against him as distinctly relates to the fact which is thereby discovered. It therefore makes admissible a confession made while in police custody if the other conditions laid in it are fulfilled. Being an exception to the general rule it has to be strictly construed. Section 27 of the Evidence Act does not permit the admission in evidence of the whole of the confession, but of such portion only of it as can be said to relate distinctly to the fact discovered.

63. *We are of the view that the courts below committed an error in placing implicit reliance on the discovery part. As explained earlier, the discovery panchanama was not drawn in accordance with law. The panch witness i.e., the PW-4 has not said a word as regards the exact statement made by the appellants in his presence. The discovery of fact relevant under Section 27 of the Evidence Act in the form of various objects, place of occurrence etc., was at the instance of the accused no. 1, namely, Kalappa. Kalappa is not before us. We are informed that Kalappa has not preferred any appeal before this Court. There is nothing to even remotely indicate that there was discovery of any fact at the instance of the appellants admissible under Section 27 of the Evidence Act.*

64. *The information should directly and distinctly relate to the facts discovered. Where, therefore, a fact has already been discovered any information given in that behalf afterwards cannot be said to lead to the discovery of the fact. There cannot be a rediscovery. Where the information as to*

the fact said to have been discovered is already in the possession of the police, the information given over again does not actually lead to any discovery so that its discovery over again in consequence of the information given by the accused is rightly inadmissible under Section 27 of the Evidence Act."

111. Applying the above test to the facts of the present case, we first have to consider whether the alleged disclosure statements were made while the appellants were in custody, and whether the skeleton remains of the deceased recovered on the pointing of the appellants.

112. In the present case, the timing of the arrest, disclosures made by the appellants, and the consequent recovery of the skeleton remains, are so unnatural that they cannot be believed. Through the testimonies of PW-16 SI Dara Mishra, PW-17 HC Satish Chander, PW-19 HC Ved Prakash, PW-20 Ct. Gian Prakash, PW-21 Ct. Deep Kaur and PW-27 Inspector Diwan Chand, the prosecution wants us to believe that the accused were arrested from near Safdarjung Hospital between 4.30 and 4.45 p.m, however, there is no Arrest Memo of the accused persons on record. Apart from this, there is also no public witness of the alleged disclosures made by them consequent upon their arrest. Though the learned Trial Court tries to brush aside the same by stating that the public witness do not generally offer themselves to such police proceedings, in the present case, PW-21 Ct. Deep Kaur and even PW-27 Inspector Diwan Chand, admit that no effort was made to join any public witness in the proceedings of arrest or the recording of the alleged disclosures made by the appellants.

113. The entire episode of seeing the appellants approaching, their apprehension, arrest, and disclosures, takes only about 15 minutes.

114. Further, while it is the case of the prosecution that, on the disclosure of the accused that the body of the deceased was thrown by them in the *jheel*, PW-17 HC Satish Chander went to call the divers, PW-9 Shankar states that it was the Inspector Diwan Chand who came to call him and that too, around noon time, that is, even before the alleged arrest of the appellants. This is reiterated by PW-12 Manohar Lal, the elder brother of PW-9 Shankar. This discrepancy of the timing cannot be brushed aside in the present case as, if the police already knew that the skeleton remains of the deceased can be found in the *jheel*, the entire story of the alleged disclosures and the recovery being made at the pointing of the appellants would become inadmissible in evidence and it is held to be so in the facts of the present case.

115. The prosecution has further relied upon the statement of PW-6 Maya Devi as an alleged independent witness to the discovery of the skeleton remains of the deceased at the behest of the appellants. She, however, does not support the same, and though she can be stated to be witness to the removal of the skeleton remains of the deceased from the *jheel*, she does not support the case of the prosecution that it was at the pointing of the accused. The case of the prosecution on this aspect, therefore, also fails.

116. Though the learned counsels for the appellants have vehemently argued that the DNA Report, in absence of the supporting material, cannot be relied upon, and that the postmortem report of the skeleton remains, given the discrepancies in the height, does not conclusively establish that

the same belongs to the deceased, we need not dwell any further on the same inasmuch as, according to us, the prosecution has failed to bring home the guilt of the appellants in the alleged crime beyond the reasonable doubt.

117. The claim of the prosecution that the appellant Saleem@ Kalua had the name of the appellant Roshani written on his chest through cigarette burns, and that he used to write love letters to appellant Roshni through PW-7 Manjeet, though raise a doubt about the involvement of Roshini and Kalua in the disappearance of the deceased, are not sufficient to hold them guilty of having committed the murder of the deceased and the same does not prove the case of the prosecution beyond reasonable doubt.

118. It has been repeatedly held that if the case of the prosecution is to be based on circumstantial evidence, each of such circumstance must be duly proved and should lead to only one conclusion, that is, of the guilt of the accused. In this regard, we place reliance on the well celebrated judgment of the Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra,*** (1984) 4 SCC 116, wherein the Supreme Court culled out the five essential principles which must be satisfied for circumstantial evidence to conclusively establish the guilt of the accused, as under:

> *“"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.....*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency,*

> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

119. In the present case, by the above circumstance, even if we are to believe that the appellant Saleem @ Kalua had an illicit relationship with the appellant Roshani, the same cannot lead to the conclusion that they have committed the murder of the deceased.

120. Even otherwise, this evidence is insufficient as far as the other appellants are concerned, especially given the facts that there were discrepancies in the statement of PW-2 on the distance between the *jhuggi* of the deceased and the appellants Maya and Savitri. Further, their presence at the spot though the incident even as per PW-2's testimony could not have been pre-planned as to the timing, is highly doubtful. According to PW-2, the incident took place when the deceased got up from his sleep to go for urination. Therefore, the other appellants could not have predicted the time of the offence. No one else noticing them, though they are alleged to be waiting in preparedness armed with *dandas* on the street, also casts a doubt on the case of the prosecution.

121. The learned Trial Court has also not given any cogent reason for disbelieving the testimonies of DW-1 Sri Chand and DW-2 Satish, who had deposed that the appellant Maya had been picked up from her village on 12/13.08.1996, and she had not visited Delhi for a substantial period

before that day. Even PW-2 Neelam had admitted that appellant Maya used to visit Delhi only to purchase medicines and was otherwise residing in her own village.

122. Given the above circumstances, we are unable to uphold the conviction of the appellants on the charges framed against them. We accordingly set aside their conviction and hold that the prosecution was unable to prove the charge against them beyond reasonable doubt.

123. The Impugned Judgment dated 30.03.2002 and the order on sentence dated 05.04.2002 passed by the learned Trial Court, are hereby set aside.

124. The appeals are allowed in the above terms.

125. The personal bonds and the sureties of the appellants are also discharged.

126. A copy of this judgment be communicated to the learned Trial Court and the concerned Jail Superintendent, for necessary information and compliance.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

JULY 2, 2026/Arya/pb