IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 931 of 2015
With
CRIMINAL MISC.APPLICATION (REGULAR BAIL) NO. 1 of 2023
In
R/CRIMINAL APPEAL NO. 931 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MR. JUSTICE M. R. MENGDEY Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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KAPILKUMAR RAMASHISH CHANDESHWAR MANDAL
Versus
STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MR EKANT G AHUJA(5323) for the Appellant(s) No. 1
MS KRINA CALLA, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 05/09/2023

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

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1. The present appeal filed by the appellant – original accused under Section 374(2) of the Code of Criminal Procedure Code, 1973 (for short, “the Cr.P.C.”) is directed against the judgment and order dated 20.09.2014 passed by Additional Sessions Judge, Vadodara in Sessions Case No.237 of 2012 (below Exh.63), wherein and whereby, the appellant has been convicted and sentenced for the offence punishable under Sections 302, 364, and 201 of the Indian Penal Code, 1860 (for short, “the IPC”).

BRIEF FACTS:

2. The facts of the case of the prosecution in brief are that, the appellant - accused took Afreen Pathan (the younger sister of the complainant), who was seven years old, on 02.06.2012 at about 7 O'clock in Makarpura ST depot, while she went to fetch water at Indiranagar behind the depot and the accused Kapil Kumar Mandal lured her for having ice-cream by accompanying her to sit on his bicycle and took her away to a deserted place on the outskirts of Vadsar - Koteshwar village and brutally raped her, then strangled her to death, intending to destroy evidence. After leaving her dead body, he ran away and thereafter, called the deceased sister by threatening not inform anyone about the incident, for which, she gave a written complaint against the accused before the Makarpura Police Station for the offence punishable under Sections 364, 365, 368, 376(f), 302, 201 and 507 of the IPC. The trial Court, after examining the oral as well as documentary evidences about 22 in number, has convicted and sentenced the accused.

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3. The appellant did not plead guilty and claimed to be tried. The learned Additional Sessions Judge, has convicted the appellant by the judgment and order dated 20.09.2014 and the appellant has been convicted for the offences as follows:-

A. Under Section 364 of the IPC sentenced him to undergo rigorous imprisonment for the period of Ten (10) years and to pay a fine of Rs.1,000/- (Rupees One Thousand only) and in default of payment of fine to suffer simple imprisonment for a period of 2 (Two) month;

B. Under Section 302 of the IPC sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default of payment of fine to suffer simple imprisonment for 4 (Four) month;

C. Under Section 201 of the IPC sentenced him to undergo rigorous imprisonment for a period of Two (2) years and to pay a fine of Rs.500/- (Rupees Five Hundred only) and in default of payment of fine to suffer simple imprisonment for (one) month.

The learned Additional Sessions Judge has also acquitted the present appellant from the charges for the offence under Sections 365, 368, 376(f) and 507 of the IPC.

SUBMISSION ON BEHALF OF THE APPELLANT-CONVICT:

4. Learned advocate Mr.Ekant G. Ahuja, appearing for the appellant has submitted that the Trial Court has convicted the accused primarily on the statements of child-witnesses. He has

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referred to the evidence of Rubinabanu Kallankhan Pathan (PW-1) at Exh.9, who is the sister of the deceased (complainant) and two other child-witnesses i.e. PW-2, Jagrutiben Vikrambhai Machhi and PW-4, Sejal Vikrambhai Machhi, who are examined below Exh.12 and Exh.14 respectively. Learned advocate Mr.Ahuja, has further submitted that PW-1, who is the complainant and the sister of the deceased, has implicated the accused for a serious offence like a murder without any basis. He has submitted that PW-1, in her cross-examination has admitted that an application was given by her in relation to the deceased, however after two days an FIR was registered by the police, however no such application has been brought on record by the prosecution.

5. Learned advocate Mr.Ahuja, has further submitted that in fact, the complainant (PW-1) has not witnessed the accused taking away her sister on the cycle. It is submitted that her deposition also suffers from the material contradictions, in fact, she has deposed an entire new version before the Trial Court, which is not her case as alleged in the FIR. Thus, it is contended that there are material improvements in her version before the Court, which is not supported by her previous statement. While referring to the complaint dated 03.06.2012 at Exh.10, he has submitted that as per her version, she has deposed that after returning from work, she had her dinner and she went to sleep at around 10:00 p.m. and thereafter, her mother woke her up and informed her that her sister - Afreen was missing after she went to fetch water and on the basis of suspicion, she called the accused at about 11:30 p.m. and inquired about her sister and since the accused denied her

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sister being with him, she and all family members went to sleep. It is submitted by the learned advocate Mr.Ahuja, that the conduct of the complainant is completely unnatural since the normal conduct would be that a family of eight members, will try to find out the child and in such cases will inquire from the relatives or her friends or they may approach the police but nothing is done in this regard. While referring to the evidence of PW-2 (child witness) at Exh.12, it is submitted that her deposition reveals that when she had gone to fetch water with the deceased along with PW-4, Sejal Vikrambhai Machhi, there were other people also, however no independent persons are examined by the prosecution. It is further submitted that from her evidence, it emerges that all three i.e. PW-2, PW-4 and the deceased had gone to their respective homes. It is further submitted by him that this witness has further deposed in her cross-examination that the policeman had met her outside the Court and had read over her statement to her since she cannot read Gujarati. It is submitted that she also admits that when she had gone to record her statement before the police only her name and address were recorded and nothing beyond that. Learned advocate Mr.Ahuja, while referring to the deposition of PW-4 (the next child-witness), has submitted that her evidence would reveal that she had gone to fetch water with the deceased, however the witness does not state about presence of PW-2, Jagrutiben Vikrambhai Machhi, (another child witness) along with her. He has further submitted that this witness has stated that the deceased went to her house and she also accordingly went to her house after fetching water.

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6. It is contended that the depositions of both the child witnesses, establish that the deceased had gone back to her house, after fetching water along with PW-2 and PW-4, however none of the family members either the mother or the complainant had stated that she had returned to home.

7. Learned advocate Mr.Ahuja, has also referred to the deposition of PW-3. mother of the deceased (Kitabunnisa Kallankhan Pathan) and has submitted that the said witness has not stated that she had seen the deceased with the accused.

8. Learned advocate Mr.Ahuja, has submitted that the prosecution has heavily placed reliance on the discovery of the dead body of the deceased, which is premised on the discovery panchnama Exh.29. It is submitted by him that the panchnama is not proved as per the law since both the panchas have turned hostile and the Investigating Officer has also not stated the exact words spoken by the accused in his deposition and as per the law enunciated by the Apex Court in the case of Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh, [AIR 2022 SC 5273] such panchanama cannot be said to have been proved. He has further placed reliance on the judgment of the Supreme Court in the case of Bhupan vs. State of Madhya Pradesh, 2002 (2) S.C.C. 556 and has submitted that the conviction cannot be based merely on the discovery when almost all other evidence produced by the prosecution is disbelieved.

9. Learned advocate Mr.Ahuja, has further submitted that the Trial Court has also heavily placed reliance on the conduct

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of the accused. It is submitted that the appellant was arrested from the State of Bihar on 26.06.2012 and was produced before the Court on 29.06.2012. It is stated that as per the case of the prosecution that the accused had run away to Bihar in order to avoid his arrest, however he has submitted that the accused was found from his home and he has visited his place at Bihar and if the intention of the accused was to run away or to avoid arrest, he would not have gone to his hometown at Bihar. While placing reliance on the judgment of this Court in the case of ***Ramanand (supra***), he has submitted that a person cannot be convicted for the serious offence like murder solely relying on his conduct, which may be relevant under Section 8 of the Evidence Act, without proving the guilt of the accused beyond reasonable doubt.

10. With regard to the testimonies of the child witnesses i.e. PW-2 and PW-4, learned advocate Mr.Ahuja has submitted that the evidence of the child-witnesses must be evaluated carefully as the child may be swayed by what others tell him / her and may be subject to tutoring. It is stated that the evidence of a child witness must find adequate corroboration before it can be relied upon and it is more a rule of practical wisdom than law. In support of his submissions, learned advocate Mr.Ahuja, has placed reliance on the judgment of the Supreme Court in the case of Panchhi and others vs. State of U.P. (1998) 7 S.C.C. 177 and in the case of Alagupandi Alias Alagupandian Vs. State of Tamil Nadu, (2012) 10 S.C.C. 451.

11. It is submitted that the entire case of the prosecution is based on the circumstantial evidence and the prosecution has

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miserably failed to establish the chain of events and as per the settled proposition of law, he has submitted that unless the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established in a serious offence like murder. While referring to the decision of this Court in the case of Jaharlal Das Vs. State of Orrisa, AIR 1991 S.C. 1388, it is submitted by him that even if the offence is shocking one, the gravity of offence cannot by itself over-weigh as far as legal proof is concerned.

12. It is submitted by the learned advocate Mr.Ahuja that the Trial Court has also invoked the theory of last scene together in order to convict the accused. It is submitted that as per the decision of the Supreme Court in the case of Chandrapal vs. State of Chhattisgarh, AIR 2022 S.C. 2542, the accused cannot be convicted only on the basis of last scene together theory unless such theory is corroborated by further evidence, which is cogent and reliable and that only circumstances of last seen will not complete the chain of event to record the conviction. Thus, it is urged that the conviction and sentence recorded by the Trial Court may be set aside.

SUBMISSIONS OF LEARNED APP:

13. In response to the aforesaid submissions, learned Additional Public Prosecutor Ms.Krina Call, has urged that this Court may not upset the conviction and sentence, which has been awarded by the Trial Court looking to the serious offence committed by the appellant murdering a seven year girl. She has submitted that the depositions of PW-2 and PW-4, who

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were the child-witnesses, cannot be discarded and their evidence leaves no room for any doubt for proving the guilt of the accused. Learned Additional Public Prosecutor has further submitted that the most crucial evidence is discovery panchnama at Exh.29, which clearly shows that the body of the deceased, which was not found for about 28 days and the same was discovered at the instance of the accused, when he has been taken to the spot where he had dumped the body of the deceased. She has further submitted that the discovery and recovery from the accused, which was not in the knowledge of the police before disclosure was made by the accused, is admissible piece of evidence and hence, it is submitted that the Trial Court has precisely convicted the accused for the offence. She has further submitted that the body of the deceased was discovered at the instance of the accused and the same was sent for the FSL examination and the FSL has confirmed that the body was of the deceased and the same itself is strong proof of evidence. In support of her submissions, she has placed reliance on the judgment of the Supreme Court in the case of Mehboob Ali and another Vs. State of Rajasthan, (2016) 14 S.C.C. 640 and (2019) 12 S.C. 253.

14. Learned Additional Public Prosecutor Ms.Calla, has further emphasized on the conduct of the accused, who, after committing offence, fled away on the very next day of the incident to his native place. She has submitted that as per the provisions of Section 8 of the Evidence Act, such conduct of fleeing away from the next day of the incident would be suffice to convict the accused for the offence under Section 302 of the

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IPC. Thus, it urged that the conviction against the accused under Sections 302, 364 and 201 of the IPC is just and proper and the present appeal is required to be rejected.

ANALYSIS OF EVIDENCE:

(a) Oral evidence.

15. We have heard the learned advocates appearing for the respective parties at length. The evidence, which has been established on record, is also threadbare examined by us.

16. The Trial Court, after examining the oral as well as documentary evidence, has convicted and sentenced the accused as mentioned hereinabove. It was the case of the prosecution that the accused has committed rape and murder of a seven year girl by enticing her on the pretext of giving ice-cream on the fateful day i.e. on 02.06.2012. The trial court has acquitted the appellant for the offence of rape. The case of the prosecution specifically is premised on the evidence of PW-2 (child witness) at Exh.12, PW-4 (child witness) at Exh.14, and the discovery Panchnama at Exh.29. The Trial Court has also taken notice of the conduct of the accused.

17. PW-1, who is the sister of the deceased Rubinabanu Kallankhan Pathan, has lodged the complaint on 03.06.2012 at Exh.10. The contents of the complaint (Exh.10) reveal that on 02.06.2012 when she returned to her home and she along with family members had taken dinner at around 7 O’clock, and thereafter she and her family members went to sleep and at around 10 O’clock her mother woke her up and informed that

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the deceased is missing after she had gone to fetch water and when they searched her and did not find her and on having doubt on the accused, at around 11:30, she called the accused from her mobile and inquired about the deceased and the accused has emphatically stated that he did not take the deceased and accordingly, all the family members went to sleep and on waking up in the next morning at around 7 O' clock, two girls, as named in the complaint, informed her that in the evening when the deceased and they went for fetching water, at that time, one boy came along with a cycle and informed the deceased to accompany her for eating ice-cream and accordingly, he had taken the deceased on his cycle. It is further narrated by her in the complaint that when she inquired about the accused and went to his home, it was found to be locked and at around 10 O'clock, the accused called on her mobile and informed that the deceased was with her and further he spoke to the complainant that she can do whatever she wants and accordingly, she had informed her father who tried to contact the accused but his mobile phone was found to be switched off. Accordingly, with such details, the complaint was given by PW-1.

18. PW-1 is examined at Exh.9. A careful examination of her deposition would reveal that she, in her examination-in-chief, has deposed that at around 7 O'clock, the accused visited her home and asked the deceased to come along with him for having ice-cream and when she went to fetch water from the way, the accused had taken her away to *jungle* at Vadsar Crossings. She has further narrated that when they were searching the deceased on that day, the friends of the

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deceased, Jagu and Sejal informed her that a guy with red cycle had taken her away. It is stated by her that they did not search for her till 12 O'clock and after 12 O'clock in the night, when she inquired from the accused, he has refused, and on the second day, when she again inquired from the accused, he has admitted and said that he is enjoying the party and he would bring the deceased. Thereafter, when she had gone to the house of the accused it was found to be locked. It is further deposed that accordingly she informed her father about the incident and her father called the accused and asked the accused to handover her daughter and the accused informed him that he is coming with her, however, thereafter immediately, he refused to do so. It is further stated that the deceased has sold away his cycle and went to his native place and his mobile phone was found to be switched off. In her cross-examination, the prosecution has been successful to bring out the major contradictions. A bare reading of the complaint and deposition of PW-1 point out that there are major contradictions in stating the facts. In the complaint, PW-1 has not stated that the deceased had visited her home in the evening, and he had asked the deceased to accompany him for having ice-cream. Thereafter, her version about calling the accused and the facts stated about her father also do not reconcile. Thus, deposition of PW-1 - complainant does not inspire confidence and the same is tainted with major contradictions and improvement.

19. The next crucial witness for the prosecution is PW-2 (child-witness) Jagrutiben, who is examined at Exh.12. Her evidence is short and in her examination-in-chief, she has

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deposed that she along with the victim and PW-4 - Sejalben were playing and thereafter, they went to fetch water and at that time, the accused approached the victim and asked her to accompany him to eat ice-cream, by telling her that she may go and keep water(pot) at home and thereafter, the accused had taken her and she has recognized the accused in the Court. She has further narrated that after she fetched the water, she has gone to her home. It is elicited in her cross-examination that she does not know when the victim was taken away. She has further narrated that all of them went to fetch water where other people were also present and after fetching water, they had returned to their homes. It is elicited in her cross-examination that police met her outside the Court and she does not know how to read Gujarati, and her deposition was read over by the police personnel outside the Court. In her further cross-examination, it is elicited that in her police statement, she has only stated her name and address and nothing further has been stated. From the evidence of the child witness (PW-2), it emerges that she along with the victim and PW-14, after they had fetched water they returned to their homes and she is not aware that when the deceased was taken away. It is further emerging that her deposition was read over by the police personnel before her deposition was recorded by the Court. In her examination-in-chief, she has also deposed that the accused had informed her to go and place the water (pot) at home and thereafter, he had taken her along with him. The said statement does not corroborate with the statement of the complainant as well as her mother (PW-3), who has stated that the deceased had never returned to her home. Her testimony also appears to be tutored, as she

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has admitted that the same was read over to her by the police outside the court and she has also stated that in her police statement, her name and address was only recorded.

20. The next child witness (PW-4) is examined at Exh.14. Her evidence is short and the same is translated and reproduced hereunder :-

> *"at Page No.65 :-*
>
> *1. Afreen is known to me and we always used to play together. Afreen has been murdered. The incident took place around a year ago. Kapil took Afreen. Kapil took Afreen on his bicycle by offering her to go for having ice cream. Afreen was not found thereafter. Afreen is not alive at present. I know Kapil- witness identifies Kapil by pointing hand towards him. Police recorded my statement."*
>
> *cross-examination by the accused*
>
> *1) Afreen and I were returning to our homes after fetching water. Afreen went to her home and I went to mine. I saw Afreen going to her home. Afreen has not met me thereafter.*
>
> *2) It is not true that Kapil did not take Afreen in my presence. It is not true that deposition has been tutored to me, therefore I stated in examination-in-chief the fact that Kapil took Afreen."*

In her deposition, PW-2 has stated that the accused had taken the victim on his cycle for having ice-cream. She has also stated that after fetching water, the vicitm and PW-4, went to their home. She does not refer to the presence of PW-2.

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21. The mother of the deceased is examined at Exh.13 (PW-3) Kitabunnisa Kallankhan Pathan. From her deposition, it is manifest that she has not seen the deceased with the accused and she has heard about the incident from others. Thus, her evidence cannot help the prosecution.

22. Thus, the combined reading of the evidence of the aforesaid witnesses reveal that the evidence of PW-1 complainant is un-trustworthy and the same does not establish the complicity of the accused in the offence. The evidence of PW-1 suffers from improvements and inconsistency. The evidence of PW-2, as stated hereinabove, appears to be tutored. If the evidence of PW-3 is to be believed, she has not stated about presence of PW-2, and she has stated that , after fetching water, the deceased has returned to her home and she saw the victim going to home. Thus, the deposition of PW-2 is also not consistent. If it is believed that she was taken after she kept the water vessel at her home, then such fact runs contrary to the version of the mother of the deceased and the complainant, who has stated that the deceased had never returned home. Hence, her version does not establish the guilt of the accused beyond reasonable doubt. The evaluation of evidentiary value of child witness is discussed by the Apex Court in the decisions rendered in cases of ***Panchhi and others (supra)*** and ***Alagupandi alias Alagupandian (supra),*** *the evidence of child witness:*

> *"23…….Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other*

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competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the Court always Finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. (Ref. Dattu Ramrao Sakhare V/s. State of Maharashtra [(1997) 5 SCC 341] and Panchhi v/s. State of U.P [(1998) 7 SCC 177] : (AIR 1998 SC 2726 : 1998 AIR SCW 2777)".

Thus, the evidence of the child-witness has to be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. It is stated that the evidence of child-witness must find adequate corroboration before it can be relied upon and it is more a rule of practical wisdom than law. Hence, the evidence of both the child witnesses, PW-2 and PW-4, if read in entirety do not affirm the guilt of the accused in the offence beyond reasonable doubt.

DISCOVERY PANCHNAMA OF DEAD BODY:

23. It is the case of the prosecution that after the accused was arrested from his native after 26 days of the incident, when he was brought back, he has pointed out the dead body of the deceased, which was discovered in the *jungle* from a secluded place and only the accused would have knowledge of the body. The forensic evidence establishes that the remains were of the victim. This is the crucial piece of evidence in the form of discovery of panchanama at Exh.29, which the prosecution has placed reliance in bringing home the charge against the accused.

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24. The discovery panchanama at Exh.29 (the first part) is translated and incorporated as under :-

> *"The panchas whose names are written above appeared before the Makarpura Police Station today on the summons of the Makarpura Police Station.*
>
> *And thereafter the police has informed the panchas that Makarpura Police Station in connection with CR No.127/12 for the offence u/s. 365 and 368 of the IPC, has arrested the accused and in the police custody, what does the accused show about his self-indulgence in committing the offence and what he tells for writing the discovery Panchnama, on being informing by the police, we (panchas) are voluntarily writing the discovery Panchnama."*

After recording the first part of the panchanama in the aforesaid manner, it is recorded that the accused was taken in the police vehicle, and he guided them to the place where the remains of the deceased were found in a decomposed manner. There are two panchas, who are signatories to the panchnama and have accompanied the accused along with the Investigating Officer to the place of dead body of the deceased. PW-10, Dharmendra Virendrabhai Jaiswal, and PW-11, Mahendra Govindsinh Parmar, who are panchas of the panchnama, have turned hostile. Thus, the contents of the panchnama was then required to be proved by the Investigating Officer (PW-17).

25. We may incorporate and translate the contents of the deposition of the Investigating Officer (PW-17) with regard to discovery panchnama, the same reads as under :-

> *"2. Thereafter, Panchnama of the scene of offence was drawn in presence of Panchas as shown by the complainant, which is produced vide Exh. 29. I identify my signature therein made in presence of Panchas. During the course of investigation, as the accused showed the place where kidnapping and murder had*

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taken place, Panchnama of human skeleton was drawn at this place in presence of FSL. This Inquest Panchnama is produced vide Mark 4/3 for the case of investigation. I have made signature in the Inquest Panchnama as 'before me', which I identify. The Panchas have made signature therein in my presence. This Panchnama is given Exh.46."

26. In view of the aforesaid contents of the panchnama as well as the deposition of the Investigating Officer, at this stage, we may with profit incorporate the observations of the Apex Court in the recent decision in the case of Boby vs. State of Kerala, JT 2023 (2) SC 75**,** wherein the Apex Court has set aside the conviction premised on the ground of discovery of the dead body and the last seen theory. The Apex Court, after referring to the judgment of three Judges Bench of the Apex Court in the case of Subramanya v. State of Karnataka, 2022 SCC OnLine SC 1400 has observed thus:

> **"25** A three Judges Bench of this Court recently in the case of Subramanya v. State of Karnataka, 2022 SCC OnLine SC 1400 has observed thus:
>
> "*82. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:*
>
> "*27. How much of information received from accused may be proved.*
>
> *Provided 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.*"
>
> *83. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.*

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84. If, it is say of the investigating officer that the accused appellant 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, the site of burial of the dead body, clothes etc., 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 would 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 etc. When the accused while in custody makes such statement before the two independent witnesses (panchwitnesses) 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 (panchwitnesses) 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 blood stained 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."

26 *This Court has elaborately considered as to how the law expects the IO to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. In the present case, leave aside the recovery panchnama being in accordance with the aforesaid requirement, there is no statement of Boby (accused No. 3/appellant herein) recorded under Section 27 of the Evidence Act. We are, therefore, of the considered view that the prosecution has failed to prove the circumstance that the dead body of the deceased was recovered at the instance of Boby (accused No. 3/appellant herein).”*

27. In the case of <u>Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh</u>, AIR 2022 SC 5273, three Judges Bench of the

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Apex Court has asserted the manner of appreciation of evidence of discovery of fact under section 27 of the Evidence Act. It is held thus:

> *"54. 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 blood stained 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 blood stained 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.*
>
> *55. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.*
>
> *56. 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*

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> *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.*

28. The Supreme Court has elaborately considered as to how the law expects the Investigating Officer to draw and prove the discovery panchnama as contemplated under Section 27 of the Evidence Act. It is held that after formalities of the independent witnesses is completed at the police station and the accused desires to make a statement with regard to pointing out the place where he is said to have hidden the weapon of offence, dead body etc., and 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*." Thus, the Investigating Officer has to record the exact statement uttered by the accused in the first part of the panchnama for the purpose of Section 27 of the Evidence Act. The Apex Court has further asserted that "*Once the first part*

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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 blood stained 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.

29. The Apex Court has held that in case the panchas to the discovery panchanama do not support the case of the prosecution and are declared hostile, the contents of the panchanama can be proved and the panchnama can be accepted as a legal evidence through the evidence of the Investigating Officer. It is held that the Investigating officer is under an obligation to prove the contents of the panchanama, and only if he is successfully proves the contents the trial court may accept the evidence of the Investigating Officer. The Supreme Court has affirmatively stated that "*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*." Thus, in

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order to rely upon the evidence of panchanama it is *sine qua non* that the exact words attributed to an accused in the statement made before the Investigating Officers has to be brought on record by deposing such statement before the Court, and not merely saying that the accused was willing to show the article or weapon or dead body from a particular place. In the present case, we have minutely examined the evidence of the Investigating officer, (PW-17), Exh.45. As recorded herein above, the Investigating Officer has very cursorily and in a perfunctory manner only deposed that he has identified his signature on the pachnama, and the panchama was drawn as the accused has shown the place where the kidnapping and murder has taken place. It is evident that the evidence of the Investigating Officer is deficient in all the aforesaid relevant aspects. We are, therefore, of the considered view that the prosecution has failed to prove the circumstance that the remains of the deceased were recovered at the instance of appellant. Hence, the trial court has fell in error in placing reliance on the discovery panchanama (Exh.29) for recording conviction of the accused.

CONDUCT OF THE ACCUSED:

30. Now we may deal with the facet of conduct of the accused, which is relevant under Section 8 of the Evidence Act. It is the case of the prosecution that since the accused had fled away and he was arrested on 26.06.2012 from his home at Bihar and his conduct of running away from the place of incident, after committing the offence on the next day would be sufficient enough to convict the accused for a serious

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offence, which invites a grave punishment of rigorous imprisonment for life.

31. At this stage, we may with profit to refer to the observations of the Supreme Court in the case of ***Ramanand @ Nandlal Bharti (supra)***, more particularly in paragraph No.17, the Supreme Court has observed thus :-

> *"74. In the aforesaid contest, we would like to sound a note of caution. Although the conduct of an accused may be relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances, which the Court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may relevant under Section 8 of the Evidence Act, cannot form the basis of conviction."*

32. We may also refer to the decision of the Supreme Court in the case of Martu alias Girish Chandra Vs. State of Uttar Pradesh, (1971) 2 S.C..C 75, wherein the Apex Court, more particularly in paragraph No.19, has observed thus :-

> "19 ..xxxx.....mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the Courts are disinclined to attach much importance to the act of absconding, treating as it a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused."

33. From the aforesaid observations, it can be culled out that merely because the accused has absconded, the same by itself does not establish his guilty mind, though the act of

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absconding will be a relevant piece of evidence. It is held by the Apex Court that normally the Courts are disclined to attach much importance to the act of absconding, treating it as a very small piece of evidence and it can be hardly be determined as a link completing the chain of circumstantial evidence which must acknowledge of no other hypothesis than that the guilt of an accused. Thus, the conduct of an accused may be a relevant factor under section 8 of the Evidence Act, but it cannot be considered a circumstance alone to convict him for serious offence like murder. The victim went missing on 02.06.2012, the F.I.R was registered on 04.06.2012, the accused left for his home town at Bihar on 03.06.2012, and he was arrested from his house in Bihar on 26.06.2012. No F.I.R has been registered till the accused left for Bihar. The F.I.R has been registered after two days. It is also not in dispute that the accused was residing in renting premises and working in a factory and he is originally resident of the State of Bihar and he left for his hometown on 03.06.2012, and was arrested from his home, and not from other unknown place. It is also worth to note that no arrest of panchanam is drawn, no evidence is produced by the Investigating Officer that the accused is arrested from Bihar. The Station Diary entry is also not produced, where the entry would have been made for making arrest of the accused. Thus, the accused cannot be held guilt of committing offence merely because he had left the next day to his hometown at Bihar and in fact was found from his house and not from any other place. Thus, in absence of other cogent circumstantial evidence, his conduct of leaving to his hometown at Bihar cannot be considered as a link for proving his guilt of committing serious crime like murder.

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THEORY OF LAST SEEN TOGETHER:

34. The another circumstance, which the Trial Court has considered against the accused for convicting is by invoking the theory of last scene together. As per the judgment of the Supreme Court in the case of Dinesh Kumar vs. State Of Haryana, AIR 2023 S.C. 2795, the conviction of accused in a serious offence cannot be solely premised on the last scene together unless the same is corroborated with substantial evidence.

35. In the decision rendered by the Supreme Court in the case of ***Dinesh Kumar (supra***), the Apex Court has reiterated the value of the evidence of the last seen theory in case of circumstantial evidence. It is held thus:

> *"12. The evidence of last seen becomes an extremely important piece of evidence in a case of circumstantial evidence, particularly when there is a close proximity of time between when the accused was last seen with the deceased and the discovery of the body of the deceased, or in this case the time of the death of the deceased. This does not mean that in cases where there is a long gap between the time of last seen and the death of the deceased the last seen evidence loses its value. It would not, but then a very heavy burden is placed upon the prosecution to prove that during this period of last seen and discovery of the body of the deceased or the time of the death of the deceased, no other person but the accused could have had an access to the deceased. The circumstances of last seen together in the present case by itself cannot form the basis of guilt (See: Anjan Kumar Sarma & Others v. State of Assam, (2017) 14 SCC 359).*
>
> *The circumstances of last seen together does not by itself lead to an irrevocable conclusion that it is the accused who had committed the crime. The prosecution must come out with something more to establish this connectivity with the accused and the crime committed. Particularly, in the present case when there is no close proximity between circumstances of last seen together and the approximate time of death, the evidence of last seen becomes weak (See: Malleshappa v. State of Karnataka, (2007) 13 SCC 399).*

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In Nizam & Anr. v. State of Rajasthan, (2016) 1 SCC 550 where the time gap between the last seen together and the discovery of the body of the deceased was long, it was held that during this period the possibility of some other interventions could not be ruled out. Where time gap between the last seen and time of death is long enough, as in the present case, then it would be dangerous to come to the conclusion that the accused is responsible for the murder. In such cases it is unsafe to base conviction on the "last seen theory" and it would be safer to look for corroboration from other circumstance and evidence which have been adduced by the prosecution. The other circumstances here is the so called discovery, and most of these, as we have already discussed, fail to meet the requirement of Section 27 of the Evidence Act.

As per the postmortem which was conducted on 12.05.2000 at 4:15 P.M, the death was 48 hours prior to the post mortem, which means it was before 4:00 P.M. on 10.05.2000. Even assuming that the death has taken place, a day earlier i.e. 09.05.2000, still there is a long gap between the last seen which is at 7:00 pm on 08.05.2000 and the morning of 09.05.2000. In the case of State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 where in the evidence of last seen, the recovery of dead body was only a few hours before "last seen", it was not considered reliable.

The same was again emphasized by this Court in Ajit Singh v. State of Maharashtra, (2011) 14 SCC 401 where it was emphasized that the time between victim last seen alive and the discovery of the body of the deceased has to be of close proximity, so that any other person being the author of the crime cannot be ruled out. In this case, even if we take the time between the last seen and the approximate time of death as per the postmortem, which would go beyond 48 hours preceding the time of postmortem and the time of death can be stretched to the morning of May 9, 2000, which still begs an explanation from the prosecution as to the time gap, as the deceased was last seen with the two accused on 08.05.2000 at 7:00 P.M. The trial court as well as the High Court have lost sight of the vital aspect of the matter. Both the Courts have relied on Section 106 of the Act and have held that since the accused was last seen with the deceased and he has not been able to give any reasonable explanation of his presence with the deceased in his statement under Section 313 of the Cr.P.C., it has to be read against the accused and therefore it has to be counted as an additional link in the chain of circumstantial evidence. In present case in the findings of the trial court and High Court this appears to be the most important aspect which weighed with the trial court as well as the High Court in establishing the guilt of the accused. We are, however, afraid this is a complete misreading of Section 106 of the Act.

Section 101 of the Act places the burden of proof on the prosecution. It reads as under :

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101. Burden of proof Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 106 of the Act creates an exception to Section 101 and reads as under :

106. Burden of proving fact especially within knowledge When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Section 106 of the Act is an exception to the rule which is Section 101 of the Act, and it comes into play only in a limited sense where the evidence is of a nature which is especially within the knowledge of that person and then the burden of proving that fact shifts upon him that person.

The burden of proof is always with the prosecution. It is the prosecution which has to prove its case beyond a reasonable doubt. Section 106 of the Act does not alter that position. It only places burden for disclosure of a fact on the establishment of certain circumstances. We have no reason to doubt the testimony of PW10 (Karanjit Singh), the sole witness of last seen. In his statement under Section 313 of the Code of Criminal Procedure, when the appellant was questioned about being in the company of the deceased on 08.05.2000 along with co-accused Mange Ram, no explanation was given by the appellant about his whereabouts. It is for this reason that it has been held that the accused has not been able to discharge his burden under Section 106 of the Act and therefore this has to be read as an additional link in the chain of evidence against the appellant. To our mind, however, Section 106 of the Act would not even come to play here under the facts and circumstances of the present case.

***13** What has to be kept in mind is that Section 106 of the Act, only comes into play when the other facts have been established by the prosecution. In this case when the evidence of last seen itself is on a weak footing, considering the long gap of time between last seen by PW10 and the time of death of the deceased, Section 106 of the Act would not be applicable under the peculiar facts and the circumstances of the case.”*

36. The Supreme Court in the case of ***Boby (supra***) has reiterated the evidentiary value of last seen together theory by observing thus:

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> "**6** Insofar as last seen theory is concerned, it will be relevant to refer to the following observations of this Court in the case of State of U.P. v. Satish, (2005) 3 SCC 114:
>
> > *"22. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."*
>
> ***17*** *It could thus clearly be seen that the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. If the gap between the time of last seen and the deceased found dead is long, then the possibility of other person coming in between cannot be ruled out."*

Thus, as per the afore-noted observations of the Supreme Court, the circumstances of last seen together does not by itself lead to an irrevocable conclusion that it is the accused who had committed the crime. The prosecution must come out with something more to establish this connectivity with the accused and the crime committed, particularly, in the case when there is no close proximity between circumstances of last seen together and the approximate time of death, the evidence of last seen becomes weak. It is held that the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small

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that possibility of any person other than the accused, being the author of the crime becomes impossible. If the gap between the time of last seen and the deceased found dead is long, then the possibility of other person coming in between cannot be ruled out. In the present case, the victim went missing on 02.06.2012, the F.I.R. was registered on 04.06.2012, the accused left for his hometown at Bihar on 03.06.2012, and he was arrested from his house in Bihar on 26.06.2012. The dead body (bones and hairs) of the victim was found on 29.06.2012 after a period of 26 days. Till, the accused left to Bihar on 03.06.2012, no F.I.R was registered. Thus, even if the last seen together theory is believed, as per the evidence of child witness PW-4, then also the prosecution has to come out with something more to establish the connecting link with the accused and the crime committed. It is trite that the burden of proving a fact is always on the prosecution. In the case of ***Dinesh (supra***) has held that failure to give any explanation of the presence of accused with the deceased in his statement recorded under section 313 of the Evidence Act cannot be formed the basis to convict the accused. It is held that Section 106 of the Evidence act is an exception to the rule, which is Section 101 of the Evidence Act, and it comes into play only in a limited sense where the evidence is of a nature which is especially within the knowledge of that person and then the burden of proving that fact shifts upon him that person. It is held that the burden of proof is always with the prosecution. It is the prosecution which has to prove its case beyond a reasonable doubt. Section 106 of the Evidence Act does not alter that position. What has to be kept in mind is that Section

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106 of the Evidence Act, only comes into play when the other facts have been established by the prosecution.

MOTIVE:

37. The trial court has convicted the accused by attributing motive to him for murdering the deceased by recording that there was prior enmity between the accused and Salman, who is brother of the deceased and the complainant. However, interestingly, Salman is not examined as a witness. The trial Court has recorded that Salman and the accused were working together and there were frequent quarrels between them relating to his salary, and the accused has, in order to take revenge he enticed the deceased and murdered her. In absence of the evidence of the brother of deceased, the trial court has absolutely misdirected itself in convicting the appellant.

38. From the discussion and the threadbare examination of the evidence, the prosecution has failed to establish circumstantial evidence beyond a reasonable doubt. In order to sustain the conviction on the basis of the circumstantial evidence, it is necessary that the circumstances from which an inference of guilt is sought to be drawn, must be conjointly and firmly established and such circumstances should be definite tendency unerringly pointing towards the guilt of the accused and the circumstance after taking it cumulatively, would form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and it should also be

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incapable of explanation on any other hypothesis than that of the guilt of the accused. The evidence in the present case unerringly does not found the guilt of the accused in the offence, that too, which is very serious in nature inviting serious consequences. Hence, the evidence, which is of doubtful in character cannot be used against the accused to convict him in a serious offence like murder.

:: ORDER ::

39. In view of the foregoing discussion, we are of the opinion that the Trial Court has committed an error in recording the conviction of the appellant by holding him guilty of the offence. Thus, on the substratum of the overall analysis of facts and circumstances of the case and on examination of the evidence threadbare, the appeal is **allowed**. The impugned judgment and order dated 20.09.2014 passed by Additional Sessions Judge, Vadodara in Sessions Case No.237 of 2012 convicting and sentencing the accused - appellant is set aside and he is acquitted of the charges framed against him. The accused – appellant is ordered to be released forthwith, if not required in any other case.

40. Since the main appeal itself is disposed of by this judgment and order, the interim application being Criminal Misc. Application No.1 of 2023 filed in the captioned appeal seeking regular bail by the appellant does not survive and the same stands disposed of accordingly.

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41. The record and proceedings, if any received from the Trial Court, shall be transmitted back to the concerned Court forthwith.

:: FURTHER ORDER ::

42. In our opinion, the outcome of the serious offence of murder of seven year girl could have been altered, if the investigation was carried out in a proper manner and the prosecution was vigilant enough to establish the guilt. The investigation suffers from major flaws. The most glaring flaw was the drawing of discovery panchanma (Exh.29). If the same was appropriately drawn and proved before the trial Court, the prosecution could have successfully established the discovery of the dead body (bones and hairs) of the victim from a secluded place. The remains of the victim were found after 26 days from a place, which is not accessible by people. But for the remissness of the Investigating Officer and further by the trial Court, the contents of the panchanama are not proved. It is also noticed by us that in most of the matters the discovery panchanama is not proved due to the incorrect procedure followed by the Investigating officer and the Trial Courts.

We may, at this stage, incorporate the observations of the Supreme Court in the case of Sister Mina Lalita Baruwa vs. State of Orissa, 2013 (16) S.C.C. 173. The same are as under:

> ***"19*** *In criminal jurisprudence, while the offence is against the society, it is the infortunate victim who is the actual sufferer and, therefore, it is imperative for the to and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, the duty and responsibility of the Court to be alive and alert in the*

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> *course of trial of a criminal case and ensure that the evidence recorded in accordingly. with law reflect every bit of vital information placed before it. It can also be said that in that process the Court should be conscious of its responsibility and at when the prosecution either deliberately or inadvertently omit to bring forth a piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice the case of any party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. Neither the prosecution nor the Court should remain a silent spectator in such situations.*
>
> *............ The whole scheme of the Code of Criminal Procedure envisages foolproof system in dealing with a crime alleged against the accused and thereby ensure that the guilty does not escape and innocent is not punished.......*"

Thus, it is imperative for the prosecution to ensure that no stone is left unturned to prove the guilt of the accused, and it is also the duty and responsibility of the Court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law and the trial Court should be conscious of its responsibility and it should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight.

43. Hence, we pass the following further order:

(A) The State Legal Secretary and the Director General of Police are hereby directed to prepare guidelines / administrative instructions in the form of circular intimating all the police officers, who are assigned the investigation, to prepare the discovery panchnama, as per the law enunciated by the Apex Court in the cases of Subramanya vs. State of

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Karnataka, 2022 S.C.C. OnLine SC 1400 and Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh, AIR 2022 S.C. 5273, as reiterated by us in the present judgment. Such administrative instructions shall specify the procedure to be adopted by the Investigating Officer in drawing the discovery panchnama, and also in case the panchas of such panchnama turn hostile, the procedure / approach, which shall be adopted by the Investigating Officer to prove the contents of the panchnama before the trial Court. Such guidelines shall be framed within a period of four weeks.

44. Registry shall communicate this order to the Office of learned Public Prosecutor, State Legal Secretary, the Director General of Police, Gujarat State and the Director of Prosecution.

45. The Registry is directed to intimate this order to all the trial Courts with instructions to follow the appropriate procedure for proving the contents of the panchnama, as per the law enunciated hereinabove.

46. In order to see the compliance of the directions, Registry is directed to list the matter on 06.10.2023.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(M. R. MENGDEY,J)

MAHESH/01

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