rape could be formed, as the relevant body parts had completely decomposed.

75. In view of these facts, when rape could not be affirmatively established, the motive remains undisclosed. Suspicion, however strong, may never replace proof necessary to persuade the Court to accept the existence of complete chain of circumstances. Unless the chain of evidence is found to be complete, no conviction may arise or be sustained on that count.

76. For the reasons noted above, we find that the learned trial court has erred in reaching an order of conviction in the absence of convincing evidence (either direct or circumstantial).

77. Consequently, the appeal succeeds and is **allowed**.

78. The judgement and order dated 27.02.1991, passed by the learned II Additional Sessions Judge, Rampur in Sessions Trial No.101 of 1988 (State Vs. Taaley Hasan and another), arising out of Case Crime No.133 of 1987, under Section 376 & 302/201 I.P.C., Police Station-Shahabad, District Rampur, is hereby **set aside.**

79. The appellants are acquitted of the charges for lack of evidence led by the prosecution. Since the appellants are in Jail, they be released forthwith subject to the condition that they are not wanted in any other case and subject to compliance of Section 437A Cr.P.C.

80. Let the trial court record along with a copy of this order be transmitted to the court concerned through Registrar (Compliance) forthwith and a copy of this order may also be sent to the Jail authorities concerned.

(2025) 5 ILRA 1224
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE SAMIT GOPAL, J.

Criminal Appeal No. 1557 of 2020
With
Criminal Appeal No. 1558 of 2020

Naushad ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Kripa Shankar Mishra

Counsel for the Respondent:
G.A., A.N. Mulla, Shashi Shekhar Tiwari, Arun Kumar Pandey

(A) Criminal Law - Conviction on Circumstantial Evidence – Indian Penal Code, 1860 – Sections 364, 302/34 & 201 – Indian Evidence Act, 1872 – Sections 27 & 65-B – Principles governing conviction based solely on circumstantial evidence reiterated - The circumstances from which conclusion of guilt is sought to be drawn must be cogently and firmly established - that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused - should 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 should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence - Chain of circumstances incomplete, conviction cannot be sustained - Circumstantial evidence must be so complete as to exclude every hypothesis other than that of guilt of the

accused - Each link unless connected together form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused. (Para 44, 46 to 49, 68 to 72)

(B) Criminal Law - Admissibility of Electronic Records – Indian Evidence Act, 1872 – Section 65-B – A certificate under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record - oral evidence in place of certificate cannot suffice - C.C.T.V. footage cannot be admitted in evidence unless accompanied by a certificate under Section 65-B - Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise - To hold otherwise would render Section 65-B(4) otiose. (Para 40 to 42, 49, 71)

Accused appellants were alleged to have kidnapped and murdered a child (aged 5 years) - FIR initially lodged against unknown persons under Section 364 IPC - based on missing complaint - names of accused surfaced subsequently through supplementary application - Recovery of dead body alleged on the basis of accused's disclosure - prosecution case based entirely on circumstantial evidence including last seen and CCTV footage - without required certification and without examining relevant witnesses - Trial court convicted the appellants using circumstantial evidence. (Para 2–16, 39, 43)

HELD: - Prosecution failed to establish a complete chain of circumstantial evidence linking the accused to the offence. **Links in the chain of circumstances conspicuously missing. Investigation in the present matter is not up-to-the mark. No credible, legal, admissible, or reliable evidence on record to inculpate the appellants. Conviction set aside. Accused-appellants to be released forthwith unless required in any other case. (Para 71, 72, 74, 75)**

Appeals allowed. (E-7)

List of Cases cited:

1. Anvar P.V. Vs. P.K. Basheer , (2014) 10 SCC 473

2. Chandrabhan Sudam Sanap Vs. St. of Maha. , 2025 SCC OnLine SC 174

3. Queen-Empress Vs. Hosh Nak, 1941 All LJ 416

4. Hanumant, S/O Govind Nargundkar Vs. St. of M.P. , AIR 1952 SC 343

5. Khasbaba Maruti Sholke Vs. The St. of Maha., (1973) 2 SCC 449

6. Sharad Birdhichand Sarda Vs. St. of Maha., (1984) 4 SCC 116

7. Ram Kishan Mithan Lal Sharma Vs. St. of Bom., AIR 1955 SC 104

8. Pulukari Kottaiah Vs. King Emperor, AIR 1947 PC 67

9. Delhi Administration Vs. Balkrishan, AIR 1972 SC 3

10. Babu Sahebagouda Rudragoudar Vs. St. of Karn., (2024) 8 SCC 149

11. Jai Dev and Hari Singh Vs. St. of Punj, AIR 1963 SC 612

12. Andhra Pradesh Vs. Cheemalapati Ganeswara Rao, AIR 1963 SC 1850

13. Geejaganda Somaiah Vs. St. of Karn., (2007) 9 SCC 315

(Delivered by Hon'ble Samit Gopal, J.)

1. These two appeals are connected together as they are of co-accused and arise out of the same judgement and order of conviction.

2. The present appeals have been filed by the appellants Naushad and Ahsan against the judgement and order dated

17.03.2020 passed by Addl. Sessions Judge/F.T.C Court No.1, Saharanpur in S.T. No.634 of 2017 (State of U.P. Vs. Ahsan and another) whereby the accused-appellants have been convicted and sentenced under Section 364 IPC to life imprisonment, a fine of Rs.25,000/- and in default of payment of fine to 6 months additional imprisonment each, under Section 302/34 IPC to life imprisonment and a fine of Rs.25,000/- and in default of payment of fine to 6 months additional imprisonment each and under Section 201 IPC to 5 years R.I. and a fine of Rs.5,000/- and in default of payment of fine to 1 month additional imprisonment each. The sentences have been ordered to run concurrently. The trial court has ordered that set off be granted to the accused-appellants for the period already undergone in jail by them.

3. A typed application dated 10.8.2017 was given by Nadeem addressed to the Inspector Police Station Kotwali Devband, district Saharanpur alleging therein that his son Mohd. Zaid aged about 5 years and describing his physique wearing white kurta and pajama and yellow coloured sleeper, had gone missing on 10.8.2017 at about 11.15 a.m. without telling anyone. He was searched by him a lot but could not be traced. He had to come to him after being troubled and being sad. He prays that his missing report regarding his son be registered. The said application is Exb. Ka-1 to the records.

4. On the basis of said application, a FIR as Case Crime No.0777 of 2017 under Section 364 IPC, Police Station Devband, district Saharanpur was lodged on 10.8.2017 at 11.15 hours against unknown persons. The Chik FIR is Exb. Ka-5 to the records.

5. Subsequently a handwritten application dated 10.8.2017 was given by Nadeem to the Inspector Kotwali Devband, district Saharanpur alleging therein that on 10.8.2017 he had got a missing report registered regarding his son Zaid and now he has come to know that his son was taken by Ahsan, S/o Majid and Naushad, S/o Zulfqar who were working with him who have kidnapped him. Gulsher, S/o Shamim and Sharique, S/o Mohd. Khalid have seen them taking away his son Zaid. A C.C.T.V camera installed in the house of Dr. Saeed Anwar has also recorded them taking away his son. The footage of the camera be taken and legal action be taken against Ahsan and Naushad. The said application is marked as Exb. Ka-2 to the records. The said application Exb. Ka-2 to the records was registered in G.D. No.43 at 21.15 hours on 10.8.2017 at Police Station Kotwali Devband, District Saharanpur.

6. The accused Naushad and Ahsan are alleged to have been arrested in the night of 10/11.8.2017 and it is alleged that on their pointing out on 11.8.2017 at 4.30 a.m. in the presence of witnesses Waseem and Mohd. Aslam from the sugarcane field of Yaqoob, S/o Sharique by going 15 steps inside, the dead-body of Zaid was recovered. A recovery memo dated 11.8.2017 to the said effect was prepared in which the officer concerned mentioned that Section 302/201 IPC has been added in the present case. It is further mentioned that the memo has been prepared by him on the dictation of Inspector Pankaj Kumar Tyagi by Devendra Kumar. The said memo is Exb. Ka-3 to the records.

7. The inquest on the body of the deceased Zaid was conducted on 11.8.2017 at 6.30 a.m. which concluded at 8 a.m. The same was done by Sub-Inspector Yogendra

Singh of Police Station Kotwali Devband, district Saharanpur which is Exb. Ka-10 to the records.

8. Subsequently the postmortem examination of the deceased Zaid was conducted on 11.8.2017 at 11.05 a.m. by Dr. Virendra Bhatt (P.W.-4) wherein the doctor noted the following ante-mortem injuries:-

"1. Multiple bruises and abrasions around to mouth and nostril.
2. Mud particles present all over the body."

9. The cause of death was opined as asphyxia as a result of ante-mortem drowning. The said postmortem report is Exb. Ka-4 to the records.

10. The kurta and pajama of the deceased were sent to the Forensic Science Laboratory, U.P., Agra for its examination. The report of the Forensic Science Lab dated 5.4.2019 states that both the items were found to contain blood in it which was human blood but the same was disintegrated and thus the source could not be known.

11. The investigation concluded and a charge sheet dated 14.9.2017 was filed against the accused-appellants under Section 364, 302, 201 IPC. The same is Exb. Ka-9 to the records.

12. On the said charge sheet, Addl. Chief Judicial Magistrate, Devband vide his order dated 1.11.2017 took cognizance.

13. The charge under Sections 364, 302/34 and 201 IPC was framed against the accused-appellants by the Sessions Judge, Saharanpur vide order dated 21.12.2017 which was read-over and explained to them who denied it and claimed to be tried.

14. In the trial the prosecution produced Nadeem, the first informant and father of the deceased as P.W.1, Gulsher a witnesses of taking away the deceased as P.W.2, Waseem, a witness of recovery of the dead-body as P.W.3, Dr. Virendra Bhatt who conducted the postmortem as P.W.4, Head Constable Jitendra Singh Tomar, the person who prepared Chik FIR as P.W.5, Pankaj Kumar Tyagi, Investigating Officer as P.W.6, Ramzani, a witness of inquest as P.W.7 and Constable Bhupendra Kumar a witness of inquest and also the person who took the dead-body for postmortem was examined as P.W.8.

15. The accused-appellants in their statements under Sections 313 Cr.P.C. denied the prosecution version and stated to have been falsely implicated in the present matter and stated that they are innocent. They further stated that the prosecution witnesses are speaking a lie and the recovery which is shown, is a false recovery. Further they stated that the case has been lodged against them falsely. The accused Ahsan further stated that the first informant after threatening him used to commit sodomy on him and used to threaten him that if he discloses it to anyone he would implicate him falsely in a case. He did not give his Rs. 20,000/- due to him of work and even he used to visit him in jail and used to say that he has committed a wrong and would get him released soon. He states that he has been falsely implicated in the matter and is innocent.

16. The accused Naushad further states that he had given Rs. 3,000/- to the informant. He is the cousin brother of

accused Ahsan. As being his relative, he has been falsely implicated in the present case and is innocent.

17. No defence witness was produced by the accused persons but the accused in their defence filed list of documents numbered as 45-Ka enclosing copies of 9 applications of the informant given to Deputy Jailor, Devband for permission to meet him.

18. The trial court after considering the evidence and material on record came to the conclusion that the links in the chain of circumstances are well connected and the prosecution has established its case beyond reasonable doubt and thus convicted the accused-appellants as above.

19. P.W.1 Nadeem is the first informant and father of the deceased. He states that he knows the accused. Accused Ahsan works with him in making crackers. The accused Naushad used to visit Ahsan. His son aged about 5 years wearing white kurta and pajama and yellow sleeper went missing from the house on 10.8.2017 at about 11.15 a.m. He searched his son a lot but could not trace him and then on 10.8.2017 he got a missing report typed and signed it and gave it at the police station. He proves the same as Exb. Ka-1 to the records. He further states that after lodging of the missing report on 10.8.2017 in the evening when he came back while searching his son then Gulsher, S/o Shamim and Sharique, S/o Mohd. Khalid who are of his locality told that they saw his son going with Ahsan, his employee and Naushad. He further states that they went to the house of Dr. Saeed Anwar where C.C.T.V was installed and checked it and found that accused Ahsan had caught-hold the hands of his son and was going with him. He then gave a second application at the police station on 10.8.2017 which is proved by him as Exb. Ka-2. He further states that on 11.8.2017 the accused Ahsan and Naushad were arrested. Both the accused were taken to the sugarcane field of Yaqoob at about 4.30 a.m. from where they got the dead-body of his son recovered. His son Zaid was drowned by both the accused in the Sugarcane field which was filled with water. He can file the C.C.T.V. footage which at the present moment is not with him. He further states that his son was kidnapped. A photograph of the kidnappers can be seen in the C.C.T.V. footage in the camera of Dr. Saeed Anwar. He files the photograph and the C.C.T.V. footage of his son before kidnapping which is marked as material Exb.1 and two photograph of later on when the accused had caught his hand and were taking him have also been filed, the same are marked as material Exb.2 and 3.

20. In his cross-examination he states that the photograph have been prepared by him from the C.C.T.V. footage of Dr. Anwar. He knows Dr. Saeed Anwar since he is of the same locality. Material Exb.1 is the photograph of his son prior to the incident. The said photograph was got made by him recently. The accused Ahsan is working with him since the last 3 years. The accused Naushad is the relative of Ahsan. His son used to go Madarsa for studies which is behind his house. He used to go daily and come back. He used to go for studies at 7 a.m. and the Madarsa used to close at 11 a.m. On the day of incident he had gone to village Mahikota and he did not see the incident. He did not go to call Ahsan at 9 a.m. to his house. He states that it is incorrect to state that he went to call accused Ahsan at 9 a.m. to his house and on

being tutored he is denying it. He searched his son along with other people.

21. Gulsher and Sharique are the witnesses of the incident. Both the said witnesses did not go with him for search. Witness Sharique is his cousin brother. Gulsher is not his relative and lives in a different locality. After his son went missing, there was lot of news about it in the nearby places. He had also got an announcement done about the same. He did not go to the house of Ahsan in the evening but after the incident Ahsan himself came to him and for about two hours joined in the search and then absconded. The missing report was written outside the police station. He then states that it was written in the locality. When he was writing the missing report, many people had gathered there. Witness Gulsher and Sharique were not present at that time. When he came back from the police station after lodging the missing report then he met them. He denies the suggestion that they were with him at the police station. He states that he does not know from where the accused had come and on which day. The accused were arrested in the night and brought to the police station. He had also gone to the police station. He does not know when the inquest on the body of his son was done. He had gone to hospital where the dead-body was kept. The house of Gulsher is at a distance from his house but the localities are nearby. He knows Naushad as he used to come to Ahsan. Ahsan did not take his son to stroll. He never gave anything to his son. He denies the suggestion that Ahsan previously used to take his son for walking and used to love him a lot. He states that it is incorrect that he is giving this statement after being tutored. His statement was recorded by the Investigating Officer after lodging of the missing report on 10.8.2017 after which his statement was not recorded. He visited the accused in jail many times. He denies the suggestion that the accused did not kidnap his son and did not murder him and that the accused did not take his son. He further denies that material Exb. 2, the photograph is also of prior to the incident. He states that he did not show the place where the C.C.T.V. was installed to the Investigating Officer. He further denies that there is no C.C.T.V. camera installed. He further denies that accused Ahsan and Naushad had money due on him and in order to misappropriate the same, he has got them falsely implicated. He further denies the suggestion that he used to commit sodomy on Ahsan against his wishes after threatening him and further denies that he never threatened him that if he tells it to anyone, he would send him in jail by implicating him in a false case. He denies that due to the same he went to meet Ahsan in the jail. He further denies that he had told Ahsan that he would get him released soon. He further denies that he has stated to the accused that he has got them falsely implicated. He further denies that he is giving a false statement on the pressure of the police.

22. P.W.2 Gulsher is a rickshaw puller and is a witness of taking away the deceased by the accused persons. He states that accused Ahsan and Naushad used to work at the place of the informant Nadeem. On 10.8.2017 at about 11-11.30 a.m. when he was waiting for passengers and roaming around, he saw both the accused taking Zaid, the child of the informant. The accused Ahsan was holding the fingers of the child. He continued transporting the passengers from one place to other and then reached his house at about 8 p.m. In the morning when he went with his rickshaw then he came to know that Zaid is missing.

He had told the fact that Zaid was taken away by Ahsan and Naushad and he had seen them doing so at the police station. He had come to know that the dead-body of Zaid was recovered from the field.

23. In his cross-examination he states that his house is situated at a distance of 1-1.1/2 km. from the house of the informant. He used to visit the house of Nadeem as he used to transport material on his rickshaw and thus he knew him very well. He does not know as to how many children Nadeem has. He does not know that Zaid (deceased) goes to school for study or not. The accused Ahsan mostly lives in the house of the informant and used to take Zaid for roaming. Earlier he had also seen him, taking Zaid for roaming number of times. The Investigating Officer had recorded his statement on the next day in the morning. He then states that his statement was recorded after about 20 days at the police station after which his statement was never again recorded. From the day of incident to the next day he had gone to the police station on his own. He had told the Investigating Officer that he had gone to the police station on the next day of incident but if the same is not written in his statement, he cannot tell the reason about it. On the next day he came to know about Zaid missing from persons of the locality. He does not know about broadcast from the mosque of the locality regarding Zaid going missing. He denies the suggestion that he did not see the accused taking Zaid on the day of incident at about 11.30 a.m. He further denies that he did not go to the police station and did not tell anything to the Investigating Officer. He further denies that as he is a friend of the informant, thus on his saying he is giving a false statement.

24. P.W.3 Waseem is the witness of recovery of the dead-body. He states that on 11.8.2017 at about 4-4.30 a.m., he heard that the dead-body of Zaid is lying in the Sugarcane field of Yaqoob. When he reached there, he found the dead-body lying on the medh of the field. It was about 15-20 steps inside the field. The accused Ahsan and Naushad had got it recovered in their presence. The police then took out the dead-body and took it in its possession and prepared recovery memo on which he also signed. He identifies his signature on it. The same is marked as Exb.Ka-3 to the records.

25. In his cross-examination he states that the informant of the present matter lives in a different locality than him. His locality is situated around 300-400 mtr. away from the police station. The place from where the dead-body was recovered is situated at about half kilometer from his house. In between his house and the police station on both the sides of the road, there is a lot of population. When he reached the said place apart from the police, there were around 10-12 other people present. He was present there for about 30 minutes and the papers were prepared there. He states that the dead-body of Zaid was sealed at the said place and sent for postmortem. He had signed at only one place after which he had come back to the house of the deceased. He had reached the said house at about 6 a.m. and remained there till 9-9.30 a.m. The father of the deceased and his family members were in the house. He was present at the house of the deceased at about 4.30 a.m. and there only he had heard that the dead-body of Zaid has been recovered and then 10-12 people proceeded for the said place. In the said night he had stayed at the house of the informant. His statement was recorded by the Investigating Officer in the evening at the police station. He had told the Investigating Officer that the accused

Ahsan and Naushad had got the dead-body recovered and then after taking out the dead-body, a memo was prepared in which he had signed but if the same is not in the statement, he cannot tell the reason. He states that it is incorrect to say that he did not tell the Investigating Officer about it and now he is telling it to give the case a different colour. He states that when he had signed on Exb. Ka-3, except for his signature, there was no other signature on it. He states that it is incorrect that he had signed on a blank paper at the police station. He states that it is incorrect that the dead-body was not recovered in his presence from the said place and no paper work was done regarding it. He further states that it is incorrect to state that he did not go to the place of recovery on the said date and time. He further states that it is incorrect that he is giving the said statement on being tutored as the informant is his friend and is giving false statement.

26. P.W.4 Dr. Virendra Bhatt conducted the postmortem of the deceased on 11.8.2017 at about 11 a.m. He proves the said postmortem which is Exb. Ka-1 to the records. The noting of the doctor have already been stated above and thus are not being repeated herein.

27. In his cross-examination he states that he did not mention the time of conducting the postmortem in Exb.Ka-4. He further states that if the deceased falls in a drain of water or a big drain, he would die due to drowning. The deceased died due to drowning. The deceased would have died on 10.8.2017 at about 11 a.m. or 5-6 hours before. There was injury on the face of the deceased.

28. P.W.5 Jitendra Singh Tomar, is the Head Constable who transcribed the Chik FIR and the G.D regarding the same. He proves the Chik FIR as Exb. Ka-5 to the records and the G.D. as Exb. Ka-6 to the records.

29. In his cross-examination he states that Exb. Ka-5 was typed by the computer operator on his dictation in which Section 364 IPC was mentioned and the FIR was lodged against unknown persons. He further states that in column 12 of the FIR it is mentioned that Mohd. Zaid had gone on 10.8.2017 at about 11.15 a.m. and it is also written that it is requested that a missing report regarding the boy be lodged. He states that in column 7 the name of accused Ahsan and Naushad is not mentioned which had surfaced but the same is against unknown persons. He states that it is correct that in Exb.Ka-6, there is no name of any accused mentioned. He states that the FIR was lodged under Section 364 IPC and no signature or thumb impression of the informant was taken in column 14. He further states that under the signature of the Circle Officer, no date is mentioned. He further states that in Exb. Ka-5, there is no signature of his and there is no column for his signature. The computer operator has also not signed on it. At the time of lodging of the FIR, the Station House Officer was present at the police station who was informed about the incident. The In-Charge who was the Investigating Officer of the matter is sub-ordinate to the S.H.O and the witness is sub-ordinate to him and all the directions issued by him were to be followed which was his responsibility. He states that in Exb.Ka-6 under his signature the date is not mentioned and the In-Charge Inspector has not signed on it. To a suggestion that the FIR is ante-timed and on the saying of the In-Charge, he denies the same.

30. P.W.6 S.H.O Pankaj Kumar Tyagi is the Investigating Officer of the matter.

He states that the FIR of the matter was lodged under Section 364 IPC against unknown person regarding Zaid, the son of the informant going missing. The investigation was taken by him. On the same day the informant gave him another application regarding Ahsan and Naushad kidnapping his son which was noted in the G.D. He states of recording the statements of the witnesses, recording of the recovery and then filing of charge sheet against accused Ahsan and Naushad under Section 302, 364, 201 IPC. He states that the site-plan of the place of recovery of the dead-body was prepared by him which is Exb. Ka-7 to the records. He further states that the place from where the child was kidnapped was seen and a site-plan was prepared by him which is Exb.Ka-8 to the records. He proves the charge sheet as Exb. Ka-9 to the records. He further proves the video C.D as material Exb. 4 and another C.D as material Exb. 5.

31. In his cross-examination he states that on none of the C.D's the time of its preparation and its end is mentioned and there is no date mentioned below the signature of the Circle Officer on the same. He states that except for the father of the deceased Zaid, who is the informant, he did not interrogate any of his family members. He also did not interrogate any person from the school where the deceased was studying. He states that he did not interrogate the owner of the shop where the C.C.T.V footage was stated to be installed and neither did he interrogate any person of the nearby place. He states that he did not himself take the C.C.T.V. Footage. The distance between the place of incident and the police station is 1-1.1/2 km. The distance between the house of the informant and the place of incident is about 2 km. The accused persons were not beaten by him or by anyone else. He cannot tell as to how they received injuries. He does not remember that at what time police proceeded to arrest the accused. The distance of place of arrest from police station is 3-3.1/2 km. Both the accused were arrested from the house of accused Ahsan. At that time the parents and family members of Ahsan were present there and arrest memo was prepared. He states that it is true that there is no signature of parents or family members of accused Ahsan on paper no.25/1 and in the column of date, no date is mentioned. In column 9 regarding injuries, there is no description mentioned. There is no mention as to whom the information regarding arrest has been given. There is no noting about the time when the accused were sent for medical examination. In column 6 it is mentioned that on the pointing out of the accused, the dead-body of the deceased was recovered but there is no detail given of the witness who was present at the time of arrest. He had made the memo and had converted the case for which he had prepared the C.D but he had added Section 302, 201 IPC before preparing Exb. Ka-3. He further states that it is correct that recovery memo was not made by him and there is no mention in it that the dead-body is being sent to C.H.C. and there is no reason mentioned in it for it. He further states that it is correct that the dead-body was not sealed at the place of recovery. In the recovery memo there is no mention as to who identified the dead-body. He does not remember as to how many persons have been shown in ravangi for the recovery. He states that it is incorrect that on the recovery memo he and S.I. Devendra Singh had only signed but there is no signature of any other police personnel. He further states that it is correct that in the name of witness Waseem there is an overwriting and there is no reference of

the name of the accused in it. He states that it is correct that in Exb. Ka-3 at the place of recovery of the dead-body in the Sugarcane field, there is no reference of any pond filled with water being there. He states that it is incorrect that the dead-body has not been recovered at the said time and place and on the pointing out of the accused but all the documents have been prepared at the police station which are ante-timed and just in order to give the case a different colour, recovery on the pointing out of the accused of dead-body has been shown. It is incorrect that false recovery has been shown on the pointing out of the accused. He states that the site-plan of the place of recovery of dead-body has been prepared by him on 13.8.2017. He further states that the said site-plan has been prepared after two days of recovery of the dead-body but no reason has been given regarding delay in making of it. He states that in the site-plan the vehicle from which they had gone is not shown and even the route of the movement of the witnesses is not mentioned. He states that it is not shown in the site-plan that the place of recovery was filled with water. He states that the owner of the field was not called and he was also not interrogated. He denies that the site-plan was prepared at the police station and is also ante-timed just to give a different colour to the incident. He states that the name of the accused was not mentioned in the site-plan and there is an overwriting on Section 201 IPC.

32. He states that in Exb. Ka-8 which is the site plan of the place of incident, the name of the accused is not mentioned. The place where C.C.T.V camera was installed is also not shown in Exb. Ka-8. It is correct that the place from where the witnesses have seen the accused taking the deceased is also not mentioned in the site-plan and further it is not mentioned from where the accused had called the deceased. He states that it is correct that in the site-plan Exb. Ka-8, the date of its preparation is not mentioned and the distance between the house of the informant and place "A" is also not mentioned. The site-plan was prepared on the pointing out of the informant. He states that the informant is not an eye-witness of the incident. He further states that a missing report of the deceased was not registered but a case of kidnapping was registered against unknown persons. He states that when missing report is registered, no section is mentioned in it. After the arrest of the accused, the informant had come to the police station or not he does not remember. He does not remember that after how many days he had interrogated witness Gulsher. He then states that he does not remember that witness P.W.3 Waseem has stated that the accused Ahsan and Naushad had got the dead-body recovered in his presence and his signature was also got done on the memo and if he had told him then the same would have been mentioned in his statement. It is incorrect to state that he has not investigated the matter and in conspiracy with the informant has submitted a false and baseless charge sheet against the accused. He further states that it is incorrect that all the proceedings have been done in the police station and are ante-timed just to give a different colour to the matter and to show good work and papers have been prepared in a false manner.

33. P.W.7 Ramjani is a witness of inquest. He proves his signature on the inquest which is marked as Exb. Ka-10. In his cross-examination he states that in the opinion of five witnesses of inquest, the deceased died due to drowning. He denies that the inquest was not prepared before him and he had only signed on it.

34. P.W.8 Constable Bhupendra Kumar is a witness of inquest who was subsequently handed over the dead-body and he and constable Harsh Tomar took it for postmortem. He proves Form 13 and other relevant documents being Exb. Ka-11 to 14.

35. In his cross-examination he states that he left the police station in the morning along with Harsh Tomar. He went to C.H.C on his motorcycle. He states that in Exb. Ka-10 the name of the accused is not mentioned and there is an overwriting on digit 4 of Section 364 IPC in it. He states that in column 1 of Exb. Ka-10, the date of report, time and start of investigation and place is not mentioned. He states that in column 4 at the place of recovery of dead-body C.H.C. Devband is written. He further states that in column 7, the time of closure of the said document is not mentioned. He states that he reached the postmortem house with the dead-body.

36. Heard Sri Kripa Shankar Mishra, learned counsel for the appellants in both the appeals, Sri A.N. Mulla, Sri Shashi Shekhar Tiwari, Sri Arun Kumar Pandey, learned AGAs for the State and perused the records (the paper-book, the High Court file and the trial court records).

37. Learned counsel for the appellants submitted as under:-

(i). The FIR was lodged under Section 364 IPC against unknown person although a missing report was given for being registered on 10.8.2017.

(ii). The disclosure of the name of the appellants/accused came in the present matter for the first time in the second application given by the informant on 10.8.2017.

(iii). In the alleged recovery memo pertaining to recovery of dead-body, it is mentioned that Section 302/201 IPC has been added in the present matter.

(iv). The inquest on the body of the deceased was conducted after its recovery but still in the recovery memo, despite the fact that the Investigating Officer had written that Section 302 and 201 IPC have been added, the inquest only states of the case being under Section 364/302 IPC. Section 201 IPC was missing in the inquest report.

(v). P.W.1 Nadeem is not an eye-witness of the accused taking away the deceased with them. He discloses the names of the accused in the second application dated 10.8.2017 and states that Gulsher and Sharique were the witnesses of taking away and the same was also recorded in the C.C.T.V. camera installed in the house of Dr. Saeed Anwar.

(vi). The evidence of C.C.T.V. footage cannot be relied upon at all since Dr. Saeed Anwar, the person on whose house/premises, the said camera is stated to have been installed was not examined, there is no certificate under Section 65-B of the Evidence Act regarding it and there is no certainty of the date and time of the said clipping as even P.W.2 Gulsher states that the accused used to take the child even earlier for walk.

(vii). The present case is a case of circumstantial evidence in which the links in the chain of circumstances are conspicuously missing.

(viii). The arrest of the accused-appellant is wholly doubtful inasmuch as the Investigating Officer states that there was no signature of any witness in the recovery memo and the date in the same was also missing. He further states that the details of the person to whom information about missing was not mentioned and also

the recovery of the dead-body is doubtful inasmuch as the same is alleged to have been recovered on 11.8.2017 but site-plan regarding the said recovery has been prepared on 13.8.2017 for which no explanation whatsoever has been given by the Investigating Officer. The same would go to show that the said document was prepared later on as an afterthought.

(ix). The site-plan regarding the incident of taking away the deceased does not bear the date on it. In it the place where the C.C.T.V. camera is installed is also not shown. There is no explanation given regarding the same.

(x). The place from where the dead-body of the deceased was recovered was Sugarcane field and there is nothing on record to show that it was filled with water so that the child could drown in it.

(xi). The fact which appears is that the deceased died somewhere due to drowning after which the accused persons who were known to the informant were involved in the present matter as the informant was having some animosity with them and then the police in order to show good work has implicated them. The entire investigation in the present matter is done at the police station and the papers have been prepared just to give a different colour to the case.

(xii). The appellants have no motive to commit the said offence.

(xiii). The appeal be allowed and judgement and order of conviction be set-aside and the accused-appellant be acquitted of the charges levelled against them and they be directed to be released from jail forthwith since they are in jail.

38. Per contra learned counsels for the State opposed the prayer for quashing and submitted as follows:-

(i). The accused-appellants are known to the first informant.

(ii). Gulsher, P.W.2 has stated of seeing them taking the deceased with them.

(iii). The dead-body of the deceased was recovered on the pointing out of both the accused-appellants.

(iv). The accused-appellants were seen taking away the deceased in the C.C.T.V. footage of a camera installed at the premises of Dr. Saeed Anwar.

(v). The F.S.L report shows human blood present on the clothes of the deceased.

(vi). The prosecution has proved its case beyond reasonable doubt and the links in the chain are complete.

(vii). The present appeal is devoid of any merit and is liable to be dismissed.

39. After having heard the learned counsels for the parties and perusing the records, it is evident that the accused-appellants have been made accused in the present matter on the basis of second application dated 10.8.2017 given by the first informant to the police. Initially a missing report was given by him which was registered as a FIR under Section 364 IPC in which they are not named. He then on the same day gives another application to the police, stating therein that Gulsher and Sharique saw the accused Ahsan and Naushad taking his son Zaid and the same is also recorded in the C.C.T.V. of which camera is installed at the house of Dr. Saeed Anwar. The accused-appellants were then made accused in the present matter. The accused Ahsan was working in the establishment of the informant. The accused Naushad was relative of Ahsan and used to visit him and thus was known to the informant. The prosecution case is of both the accused then being arrested in the night of 10/11.8.2017. A memo of arrest is stated

to have drawn by the arresting officer P.W.6 who in his cross-examination states that accused were arrested from the house of accused Ahsan where Naushad was also present and at that time family members and parents of Ahsan were also present and a memo was prepared. He states that there is no signature of the parents or family members of Ahsan on the memo. He further states that in the column of date there is no date mentioned. He further states that there is no noting in it as to who was informed regarding their arrest. The memo of arrest thus is incomplete and lacks vital details in it. He then states to have taken the accused and on their pointing out states to have recovered the dead-body of the deceased Zaid from the sugarcane field of one Yaqoob. Yaqoob has not been examined by the prosecution. The cause of death of the deceased is due to asphyxia as a result of ante-mortem drowning. The site-plan of the place of recovery of the dead-body has been prepared after two days of the alleged recovery and even therein there is no mention of the field being filled with water and thus there is nothing on record to corroborate the fact that the field was filled with water. The site-plan of the place from which the deceased was alleged to have been taken by the accused persons does not bear the date on which it was prepared. There is no justifiable reason given by the Investigating Officer as to why the date in the site-plan regarding the place of taking away the deceased has not been mentioned and further as to why the site-plan regarding the place of recovery of dead-body has been prepared after two days of the alleged recovery. Further the C.C.T.V. footage is being relied by the prosecution to show the accused persons taking away the deceased. The said C.C.T.V. camera is stated to be installed at the house of Dr. Saeed Anwar. Dr. Saeed Anwar has not been examined in the present matter. The said C.C.T.V. footage does not show the date and time of the deceased being taken away by the accused persons. Even there is no certificate under Section 65-B of the Indian Evidence Act with regards to the said C.C.T.V. footage.

40. The law with regards to admissibility of electronic evidence is trite. A C.C.T.V. footage can be admissible in evidence if it meets the criteria of Section 65-B of the Indian Evidence Act. A certificate under the said section must accompany the electronic record when the same is produced in evidence. The requirement of a certificate under Section 65-B (4) of the Indian Evidence Act is a condition precedent to the admissibility of evidence by way of electronic evidence.

41. In the case of **Anvar P.V. v. P.K. Basheer : (2014) 10 SCC 473**, it was held by the Apex Court as under:

"22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC

600 : 2005 SCC (Cri) 1715], does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

42. In the case of Chandrabhan Sudam Sanap Vs. State of Maharashtra : 2025 SCC OnLine SC 174 the Apex Court while considering the question of admissibility of electronic evidence held as under:

"47. A two-Judge Bench in a referral order reported in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 3 SCC 216 referred the following question to a larger bench:

"3. We are of the considered opinion that in view of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], the pronouncement of this Court in *Shafhi Mohammad [Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801 : (2018) 2 SCC (Civ) 346 : (2018) 1 SCC (Cri) 860] needs reconsideration. With the passage of time, reliance on electronic records during investigation is bound to increase. The law therefore needs to be laid down in this regard with certainty. We, therefore, consider it appropriate to refer this matter to a larger Bench. Needless to say that there is an element of urgency in the matter."

48. The reference came to be answered in the judgment reported in (2020) 7 SCC 1 by a three-Judge bench in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal The relevant portions of which are as under:—

"45. Thus, it is clear that the major premise of Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] that such certificate cannot be secured by persons who are not in possession of an electronic device is wholly incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under Section 65-B(4) in cases in which such person refuses to give it.

46. Resultantly, the judgment dated 3-4-2018 of a Division Bench of this Court reported as Shafhi Mohd. v. State of H.P. [Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704], in following the law incorrectly laid down in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865], must also be, and is hereby, overruled.

47. However, a caveat must be entered here. The facts of the present case show that despite all efforts made by the respondents, both through the High Court and otherwise, to get the requisite certificate under Section 65-B(4) of the Evidence Act from the authorities concerned, yet the authorities concerned wilfully refused, on some pretext or the other, to give such certificate. In a fact-circumstance where the requisite certificate has been applied for from the person or the authority concerned, and the person or

authority either refuses to give such certificate, or does not reply to such demand, the party asking for such certificate can apply to the court for its production under the provisions aforementioned of the Evidence Act, CPC or CrPC. Once such application is made to the court, and the court then orders or directs that the requisite certificate be produced by a person to whom it sends a summons to produce such certificate, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate.….

52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC.

56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law.

61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], and incorrectly "clarified" in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC

807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865]. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, [L.R.] 1 Ch. 426], which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

73. The reference is thus answered by stating that:

73.1. Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in Tomaso Bruno [Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54], being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] and the judgment dated 3-4-2018 reported as Shafhi Mohd. v. State of H.P. [Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704], do not lay down the law correctly and are therefore overruled.

73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as "… if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act …" is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,…". With this clarification, the law stated in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not need to be revisited."

(Emphasis supplied)

49. This judgment has put the matter beyond controversy. In view of the above, there is no manner of doubt that certificate under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record and further it is clear that the Court has also held Anvar P.V. (supra) to be the correct position of law."

43. When we further go through the evidence adduced during trial by P.W.1, we find that the fact regarding mentioning of

the names of the accused-appellants in the second application given by the informant to the police has been explained by him in his testimony in which he states that in the evening after he had got the missing report lodged on 10.8.2017, Gulsher and Sharique told him that they had seen his son going with the accused Ahsan and Naushad. Sharique has not been examined by the prosecution in the present matter. Gulsher has been examined as P.W.2 who in his testimony does not state meeting the informant on 10.8.2017 but he states that on the next day i.e. 11.8.2017 he came to know that Zaid is missing and then he went to the police station and told the police that he saw Ahsan and Naushad taking him away. The said two facts are contrary in themselves. The present case is a case based on circumstantial evidence.

44. There is no eye witness of the incident and the entire case of the prosecution rests on circumstantial evidence.

45. The case of **Queen-Empress Vs. Hosh Nak : 1941 All LJ 416** is worth referring at this juncture which is a locus classicus on the issue of circumstantial evidence. This is a very old decision which was printed in the Allahabad Law Journal after sixty years of its decision on the recommendation of Rt. Hon'ble Sir Tej Bahadur Sapru. In the case of Hosh Nak (supra), it has been held that to prove an offence by the circumstantial evidence four things are essential. They are:

(1) : That the circumstance from which the conclusion is drawn be fully established.

(2) : That all the facts should be consistent with the hypothesis.

(3) : That the circumstances should be of a conclusive nature and tendency.

(4) : That the circumstances should, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved.

46. Then in the case of **Hanumant, son of Govind Nargundkar Vs. State of Madhya Pradesh : AIR 1952 SC 343** it has been held in para 10 by the Apex Court as under:

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

47. Thereafter, in the case of **Khasbaba Maruti Sholke Vs. The State of Maharashtra : (1973) 2 SCC 449** it was held by the Apex Court as under:

"18. In order to base the conviction of an accused on circumstantial evidence the court must be certain that the circumstantial evidence is of such a character as is consistent only with the guilt of the accused. If, however, the

circumstantial evidence admits of any other rational explanation, in such an event an element of doubt would creep in and the accused must necessarily have the benefit thereof. The circumstances relied upon should be of a conclusive character and should exclude every hypothesis other than that of the guilt of the accused. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances must show that within all reasonable probability the impugned act must have been done by the accused. If two inferences are possible from the circumstantial evidence, one pointing to the guilt of the accused, and the other, also plausible, that the commission of the crime was the act of some one else, the circumstantial evidence would not warrant the conviction of the accused……..."

48. The circumstantial evidence must be so complete as to exclude every hypothesis other than that of guilt of the accused.

49. In the celebrated case of **Sharad Birdhichand Sarda Vs. State of Maharashtra : (1984) 4 SCC 116** the Apex Court has described five principles of circumstantial evidence as the pillars on circumstantial evidence. The five principles have been narrated in para 153 which is extracted herein :

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

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

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable and 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 to leave by reasonable grounds 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."

Further in paragraph 154 of the said judgment it was held as under:

"154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence".

7. The cardinal principle of criminal jurisprudence is that the prosecution has to stand on its own legs and it should prove its case beyond reasonable doubt. Doubt must be of a reasonable man and reasonableness of

doubt must be commensurate with the nature of the offence to be investigated.

50. Before appreciating the evidence on record it is necessary to point out **Section 27 of the Indian Evidence Act, 1872** which reads as under:

"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."

51. It is clear from the reading of Section 27 of the Evidence Act that this Section is based on doctrine of confirmation by subsequent facts. That doctrine is that where, in consequence of a confession otherwise inadmissible, search is made and facts are discovered, it is a guarantee that the confession made was true. But only that portion of the information can be proved which relates distinctly or strictly to the facts discovered.

52. In the case of **Ram Kishan Mithan Lal Sharma Vs. State of Bombay : AIR 1955 SC 104**, it is held by the Apex Court that Section 27 of the Evidence Act is an exception to the rules enacted in Sections 25 and 26 of the Act which provide that no confession made to a police officer shall be proved against a person accused of an offence and that no confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Where, however, any fact is discovered in consequence of information received from a person accused of any offence in the custody of a police officer, that part of the information as relates distinctly to the fact thereby discovered can be proved whether it amounts to a confession or not.

53. In the case of **Pulukari Kottaiah Vs. King Emperor : AIR 1947 PC 67** it has been held as follows : "the condition necessary to bring S. 27 into operation is that the discovery of a fact must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved".

54. The Section is based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence, but 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.

55. In the case of **Delhi Administration Vs. Balkrishan : AIR 1972 SC 3** the Apex Court has held that Section 27 of the Evidence Act is by way of a proviso to Sections 25 and 26 and a statement by way of confession made in police custody which distinctly relates to the fact discovered is admissible is evidence against the accused.

56. It cannot be lost sight of that Section 27 of the Evidence Act has frequently been misused by the police against an accused. Court should, therefore, be cautious and vigilant about the application of the above provision. The protection afforded by the provisions under

Sections 25 and 26 of the Evidence Act is sought to be overcome by the police by taking resort to the provisions of Section 27 of the Evidence Act. The validity of Section 27 of the Evidence Act has been upheld by the Apex Court.

57. After the arrest of accused-appellants, the police proceeded with them for recovery of the dead-body and it is alleged that on their pointing out, the recovery of the dead-body of the deceased Mohd. Zaid was done. A memo about the recovery was prepared which is stated to be written by Devendra Kumar, Sub-Inspector on the dictation of Inspector Pankaj Kumar Tyagi, the same is Exb. Ka-3. The Apex Court in the case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka : (2024) 8 SCC 149** has held and reiterated the law as to prove a disclosure statement recorded under Section27 of the Evidence Act. It has been held as under:

"60. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Evidence Act, 1872 (hereinafter being referred to as "the Evidence Act") and the discoveries made in furtherance thereof.

61. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in State of U.P. v. Deoman Upadhyaya [State of U.P. v. Deoman Upadhyaya, 1960 SCC OnLine SC 8 : AIR 1960 SC 1125] .

62. Thus, when the investigating officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The investigating officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

63. As per Section 60 of the Evidence Act, oral evidence in all cases must be direct. The section leaves no ambiguity and mandates that no secondary/hearsay evidence can be given in case of oral evidence, except for the circumstances enumerated in the section. In case of a person who asserts to have heard a fact, only his evidence must be given in respect of the same.

64. The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject-matter of consideration by this Court in various judgments, some of which are being referred to below.

65. In Mohd. Abdul Hafeez v. State of A.P. [Mohd. Abdul Hafeez v. State of A.P., (1983) 1 SCC 143 : 1983 SCC (Cri) 139], it was held by this Court as follows : (SCC p. 146, para 5)

"5. … If evidence otherwise confessional in character is admissible under Section 27 of the Evidence Act, it is obligatory upon the investigating officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person."

66. Further, in Subramanya v. State of

Karnataka [Subramanya v. State of Karnataka, (2023) 11 SCC 255], it was held as under : (SCC pp. 299-300, paras 76 to 78)

"76. 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.'

77. 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.

78. 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, 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 (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."

(emphasis supplied)

67. Similar view was taken by this Court in Ramanand v. State of U.P. [Ramanand v. State of U.P., (2023) 16 SCC 510 : 2022 SCC OnLine SC 1396], wherein this Court held that mere exhibiting of memorandum prepared by the investigating officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the investigating

officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement."

58. The Investigating Officer states that after arrest of the accused from the house of Ahsan he interrogated them and noted it in the case diary and then effected the recovery of the dead body of Zaid on their pointing out.

The memorandum of the statement of the accused has not been proved by the Investigating Officer and it is only the memo regarding the recovery of dead body has been proved by him.

59. Now coming to the applicability of Section 313 Cr.P.C. in the instant case, it is germane to point out here that Section 313 of the Code of Criminal Procedure, 1973 is for the purpose of enabling the accused personally to explain any circumstance appearing in the evidence against him.

60. In view thereof the nature of questions put to the appellant, under Section 313 of the Cr. P. C. also needs to be seen and referred. The questions put to the appellant were too complex to be answered by an accused. The questions should have been clearer giving the correct fact independently and in a straight forward manner than mixing it with too many circumstances and expecting a clear reply from the accused. One such example is question No. 4 put to both the accused which runs in more than one page and to be more precise in 33 lines. Identically, question No's. 7 and 9 are also very long questions relating to distinct events but asked collectively and are complex questions. Expecting that it is thus a circumstance put to the accused for his reply is really imaginary.

The questions put to the accused must be comprehensible to him, even though he is an illiterate person. A complex question involving several facets of the issue in one string should be avoided. The question should not contain more than one circumstance or a combination of several instances. The question must be fair. In this examination, it is improper for the court to read out a long string of question and ask the accused whether the statement is correct or not. The accused must be questioned about each material circumstance separately so as to provide the accused an opportunity for a fair explanation.

16. Section 313 of the Code of Criminal Procedure, 1973 reads as follows:

"313: Power to examine accused :

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section."

61. From the reading of the Section it is clear that it is duty of the Court to find out whether the circumstances put to the accused under Section 313 Cr. P. C. were intelligible to him and whether he could answer the same after understanding the same and whether the question has caused any prejudice to the accused.

62. It is a matter of law that the circumstances appearing in evidence against the accused have to be put to the accused for the purposes of enabling the accused to explain such circumstances. This is a mandatory duty of the Court. We have examined the entire statement recorded under Section 313 Cr. P. C.

63. In the case of **Jai Dev and Hari Singh v. State of Punjab : AIR 1963 SC 612** it has been held by the Apex Court that the examination of the accused person under Section 342 Cr. P. C. (old) is intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342 Cr.P.C. The true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross examination of the accused persons.

64. From the above decision it is clear that the question should only give the circumstances and not the details, which may otherwise amount to cross examination of the accused.

65. In the case of **State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao : AIR 1963 SC 1850** the Apex Court has held that the accused should not be put involved questions embracing a number of matters.

66. It is a well settled principle of law that a conviction cannot be founded on

circumstantial evidence alone unless it cannot be explained on any hypothesis other than that of the guilt of the accused.

67. It is well settled that in a case which rests on circumstantial evidence, law postulates two fold requirements:-

(i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.

(ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

68. The case of **Sharad Birdhichand Sarda (supra)** has enunciated the aforesaid principle as under:-

"The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; that the circumstances taken cumulatively should 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the Accused and inconsistent with his innocence".

69. It is well settled that in a case based on circumstantial evidence the Courts ought to have a conscientious approach and conviction ought to be recorded only in case in which all the links of the chain are complete and pointing to the guilt of the accused. Each link unless connected together form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.

70. In cases where the evidence is purely circumstantial in nature, the circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and must form a complete chain unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution. Referring to several earlier decisions the Apex Court in the case of **Geejaganda Somaiah Vs. State of Karnataka : (2007) 9 SCC 315** in para 15 held as follows:-

"15. Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

The same principle has been reiterated in a catena of later judgments.

71. In so far as the evidence of C.C.T.V is concerned, the same is without any appropriate certificate under Section 65-B (4) of the Evidence Act. Thus reliance on the said C.C.T.V. footage cannot be

done. The FIR of the matter was lodged under Section 364 IPC. A memo of recovery Exb. Ka-3 is stated to have been drawn on 11.8.2017 on the dictation of the Investigating Officer Pankaj Kumar Tyagi in which it is mentioned that Section 302/201 IPC has been added in the present matter. The inquest on the body of the deceased was subsequently conducted in which only Section 364/302 IPC are mentioned. There is no reference of Section 201 IPC in the same. In the site-plan of the place from where the deceased is stated to have been taken by the accused-appellants, there is mention of the fact that the same is of the place of occurrence relating to Case Crime No.777 of 2017 under Section 364, 302, 201 IPC. The said site-plan is Exb. Ka-8 to the records. It is really surprising as to how the said documents mentions Section 364/302/201 IPC on it as the FIR was lodged under Section 364 IPC only but as per Exb.Ka-3 drawn on 11.8.2017, Section 302/201 IPC was added in the matter. The same goes to show that the said site-plan Exb. Ka-8 which does not bear the date on which it was prepared is an ante-timed document. The recovery of dead body is also not trustworthy in as much as the same has been shown to have been recovered from a sugarcane field where there is no mention of any water being present but the cause of death is asphyxia as a result of anti-mortem drowning and it is not the case of the prosecution that the murder has been committed somewhere else and the dead body had been thrown at the said place. The statements of the accused allegedly recorded by the Investigating Officer after which the recovery of dead body on their pointing out is alleged has not been proved by him. Further, the dead body was not sealed at the place of its recovery for which there is no explanation given at all. The inquest on it was performed at C.H.C. which is the place shown in it as the place of its recovery. Thus the recovery of dead body also is not in consonance of the prosecution story and the medical evidence. Thus, the unreliability of evidence of last seen, the inadmissibility of C.C.T.V. footage, the glaring irregularities in recovery of dead body, absence of corroboration of evidence relating to the cause of death, absence of any motive and the documents of investigation being prepared in a totally careless manner leave no doubt but to come to a conclusion that the links in the chain of circumstances are missing and the investigation is not up-to-the mark.

72. Looking to the glaring illegalities, irregularities and inconsistencies in the prosecution version this Court comes to the conclusion that the implication of the appellants in the present case is without any legal, admissible and credible evidence.

73. The appeals thus succeed and are allowed.

74. The judgment and order of the trial court convicting and sentencing the appellants is hereby set-aside.

75. The accused-appellants are stated to be in jail. They are directed to be released from jail forthwith if not wanted in any other case.

76. At this juncture this Court feels it proper to comment on the totally lethargic and indiscipline manner of investigation done by the P.W.6 Pankaj Kumar Tyagi, the then S.H.O, Police Station Devband, district Saharanpur, the Court feels that he

is incompetent officer to conduct investigation much less investigation of complicated matter like the present one which is based on circumstantial evidence.

77. The office is directed to send the certified copy of this judgment along with the trial court records to the trial court concerned for necessary information and follow-up action.

78. Copy of this judgement be also sent to the D.G.P., U.P. Lucknow by the Registrar (Compliance) within one week from today for information and necessary action.

79. Since the appeals are being decided, pending application(s), if any, and bail applications shall stand disposed of.

(2025) 5 ILRA 1249
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.05.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE HARVIR SINGH, J.

Criminal Appeal No. 1820 of 2015

Pankaj **...Appellant**

Versus

State of U.P. **...Respondent**

Counsel for the Appellant:
Sri Ajay Kumar Mishra, Sri Arun Kumar Singh, Sri Vivek Singh

Counsel for the Respondent:
G.A., Sri Vivek Kumar Singh

Benefit of doubt-incident had taken place in the dark hours of night-no eye witness-nobody was named in the FIR- the father and brother of the deceased, -who are said to have taken the victim to hospital -not been produced by the prosecution-relevant witnesses, whose testimony appears to be material to corroborate the prosecution story-if not produced, then adverse inference may be drawn against the prosecution –benefit of doubt extended.

Appeal allowed. (E-9)

List of Cases cited:

1. Ratnu Yadav Vs St. of Chhatisgarh, Criminal Appeal No.1365 of 2018

2. Babu Sahebagouda Rudragoudar & ors. Vs St. of Karn. (Criminal Appeal No. 985 of 2010)

3. St. of Uttar Pradesh Vs Deoman Upadhyaya (AIR 1960 SC 1125)

4. Mohd. Abdul Hafeez Vs St. of Andhra Pradesh (1983) 1 SCC 143

5. Ramanand @ Nandlal Bharti Vs St. of U.P. (2022 SCC Online SC 1396)

(Delivered by Hon'ble Rajiv Gupta, J.)

1. Heard Shri Ajay Kumar Mishra, learned counsel for the accused-appellant, Shri A.N. Mulla and Shri Ashish Tiwari, learned A.G.A. for the State, Shri Vivek Kumar Singh, learned counsel for the first informant and perused the trial court record.

2. The instant criminal appeal has been filed against the judgment and order dated 09.03.2015 passed by Additional Sessions Judge, Court No. 13, Meerut in Sessions Trial No. 418 of 2010 (State Vs. Pankaj and Another), arising out of Case Crime No. 432 of 2009, under Sections 302 IPC, Police Station Saroorpur, District Meerut and Sessions Trial No.419 of 2010 (State Vs.Pankaj), arising out of Case Crime No. 476 of 2009, under Section 25/4 of Arms Act, Police Station Saroorpur, District Meerut, by which, the appellant has