IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 16th OF OCTOBER, 2024

CRIMINAL APPEAL No. 122 of 2011

SURAJBAI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

Appearance:

None for the appellants.

Shri Akshay Namdeo – Government Advocate for the respondent/State.

Reserved on : 19/09/2024

Pronounced on : 16th/10/2024

JUDGMENT

Per: Justice G.S. Ahluwalia

This Criminal Appeal under Section 374(2) of Cr.P.C. has been filed against the Judgment and Sentence dated 23-12-2010 passed by 2nd Additional Judge to the Court of 4th Additional Sessions Judge (Fast Track), Khandwa in S.T. No.117/2009, by which both the appellants have been convicted and sentenced as under :

S.No.	Offence under Section	Sentence
1	302/34 of IPC	Life Imprisonment and fine of Rs.500/- in default R.I. for 6 months

2. The prosecution story in short is that on 21-9-2008, at about 7:30 A.M., appellant Surajbai gave an information that She was sleeping in her

house. At about 3:30 A.M., her mother-in-law namely Sukmabai came to her house and raised an alarm, as a result She woke up. On enquiry She was informed by Sukma bai that deceased Hari @ Bhaggu is hanging on a *Neem* tree. She accordingly rushed to the spot and cut the rope with the help of *Darati.* Chhaya claimed that Hari is still alive. Accordingly She took her younger brother-in-law Hari to hospital where compounder Rajle Babu was called, who informed that the deceased has expired. Accordingly, the dead body was brought back to the house. On this report, the police registered *Merg No.*51/2008. After *Merg enquiry,* the police registered crime no.185/2009 against the appellant Surajbai and others for offence under Sections 302, 201, 203 of IPC, on the allegations, that in fact the appellants had administered poison to the deceased and with an intention to cause disappearance of evidence, tried to give the shape of suicide by hanging the deceased on Neem Tree and the appellant Surajbai also gave a false information to the police. Accordingly, offence against the appellants and Rekha bai was registered. The appellants were arrested and after completing the investigation, police filed the charge sheet.

3. It appears that Rekhabai was a juvenile, therefore, She must have been produced before JJB. However there is nothing on record to suggest as to what happened to the trial of Rekha bai.

4. The Trial Court by order dated 30-7-2009 framed charges under Sections 302/34 and 201 of IPC against the appellant Bhuribai and under Sections 302/34, 201 and 203 of IPC against the appellant Surajbai. The Appellants abjured their guilt and pleaded not guilty.

5. Prosecution examined Dinesh (P.W.1), Phoolabai (P.W.2), Kadwa (P.W.3), Dr. Anil Kumar (P.W.4), Sewantibai (P.W.5), Sukmabai (P.W.6), Suresh (P.W.7), Mohanlal (P.W.8), N.K. Suryavanshi (P.W.9), H.S. Rawat (P.W.10), B.S. Chouhan (P.W.11) and Chetnath Singh (P.W.12).

6. Appellants did not examine any witness in their defence.

7. Trial Court by impugned Judgment and sentence convicted the appellants for offence under Section 302/34 of IPC and acquitted them for offence under Sections 201, 203 of IPC.

8. On 5-9-2024, none had appeared for the appellants, therefore, *amicus curiae* was appointed however, on 19-9-2024, even the *amicus curiae* did not appear therefore, in the light of Judgment passed by Supreme Court in the case of **Suryabaksh Singh Vs. State of U.P.** reported in **(2014) 14 SCC 222** this Court itself went through the record of the Trial Court and heard the learned Counsel for the State.

9. Considered the record of the Trial Court and heard the learned Counsel for the State.

10. This case is based on circumstantial evidences, which can be summarized as under:

(a) Appellant Bhuribai had come to the house of appellant Surajbai and on the date of incident, appellant Bhuribai was in the house of appellant Surajbai;

(b) Appellant Surajbai, after the death of her husband Pannalal, started living along with deceased Hari @ Bhaggu and also ousted the wife of Hari @ Bhaggu;

(c) About 15 days prior to the date of incident, some quarrel took place between appellant Surajbai and Hari @ Bhaggu and Hari ran away from the house of Surajbai after causing injury to her by *Darati*;

(d) On the fateful day, Hari @ Bhaggu came back to the house of appellant Surajbai;

(e) In the night, Suresh (P.W.7) heard the noise of Hari @ Bhaggu that medicine may not be administered to him and this witness also heard the noise of strangulation;

(f) Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6) stated that Rekhabai came to their house at about 4-4:30 A.M. and gave information to these witnesses;

(g) Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6) rushed towards the hospital and found that Hari @ Bhaggu was lying in a bullock cart and the compounder declared him dead;

(h) The appellant Surajbai lodged the FIR;

(i) Dead body was brought back to the house of appellant Surajbai by Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6);

(j) The cause of death of Hari @ Bhaggu was homicidal in nature and poison was also found in viscera

(k) One bottle of pesticide was also found in the courtyard of the house of appellant Surajbai.

11. Before considering the facts of the case, this Court would like to consider the law governing the field of circumstantial evidence.

12. The Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra,** reported in **(1984) 4 SCC 116** has held as under:

> **152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant* v. *State of Madhya Pradesh*. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi* v. *State*

of Uttar Pradesh and *Ramgopal* v. *State of Maharashtra*. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*:

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

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

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

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* where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

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

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

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

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

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

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *King* v. *Horry* thus:

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. *Horry case* was approved by this Court in *Anant Chintaman Lagu* v. *State of Bombay*. *Lagu case* as also the principles enunciated by this Court in *Hanumant case* have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — *Tufail case*, *Ramgopal case*, *Chandrakant Nyalchand Seth* v. *State of Bombay*, *Dharambir Singh* v. *State of Punjab*. There are a number of other cases where although *Hanumant case*[1] has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed* v. *Delhi Administration*, *Mohan Lal Pangasa* v. *State of U.P.*, *Shankarlal Gyarasilal Dixit* v. *State of Maharashtra* and *M.G. Agarwal* v. *State of Maharashtra* — a five-Judge Bench decision.

13. The Supreme Court in the case of **Shailendra Rajdev Pasvan v. State of Gujarat,** reported in **(2020) 14 SCC 750** has held as under:

> **13.** Thus, the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates twofold requirements:
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> (*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.
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> (*ii*) All the circumstances must be consistent pointing only towards the guilt of the accused.
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> **14.** This Court in *Trimukh Maroti Kirkan* v. *State of Maharashtra* has enunciated the aforesaid principle as under: (SCC p. 689, para 12)
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> "*12*. … 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."
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> **15.** Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In *Bodhraj* v. *State of J&K*, *Rambraksh* v. *State of Chhattisgarh*, *Anjan Kumar Sarma* v. *State of Assam* following principle of law, in this regard, has been enunciated: (*Shailendra Rajdev Pasvan case*, SCC OnLine Guj para 16)
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> "*16*. …The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of 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 accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

Whether the death of Hari @ Bhaggu was homicidal in nature or not?

14. Dr. Anil Kumar (P.W.4) had conducted the post mortem of the dead body of Hari @ Bhaggu and found the following injuries :

> A dead body of male lying supine wearing white and blue lines *choukadi* shirt, purple colour *baniyan*, gray colour paint, green colour underwear RUPT frontline, printed over elastic, metallic ring around right finger, both ears are clear, both eyes are closed, pupil dilated, nostrils are clear, mouth partially open, tongue situated in oral cavity. Cadaveric lividity present back and buttock region, rigor mortis present upper and lower extremities, ligature mark present red in colour lower half of neck region, continuous upward backward to base of skull.
> Injuries : (1) Abrasion red colour 9 x1 cm semicircular shape extend from just above medial end of clavicle bone region to upward right side of neck region;
> (2) Abrasion red colour continuous with groove anterior aspect of neck region. 41x1 cm extend from lower ½ of middle of neck to upward (Illegible) to post base of skull region. Right side and middle of neck to upward post to mastoid process bone region to base of skull region. Underneath sub-cutaneous tissue Ecchymosed.
> In stomach and small and large intestine white colour with pungent odor material was found.
> Cause of death : In my opinion, mode of death of asphyxia leading cardio respiratory arrest and death. Cause of death is uncertain. Hence viscera and wearing cloths preserved sealed and sent to P.S. Piplod for chemical examination. Duration since death is within 24 hours at time of P.M. The post mortem report is Ex. P.7.

15. A query was raised by the police and in response to that query, it was opined by this witness that (i) since, white coloured pungent odor

material was found in the stomach and ligature mark was found on the base of the neck, therefore, it appears that it cannot be because of suicide, (ii) ligature mark and presence of pungent odor material is not possible in case of suicide, (iii) Viscera has been preserved and only after receipt of FSL report any opinion can be formed as to whether death was on account of poisonous substance, (iv) rope was not there around the neck, therefore, ligature marks caused immediately after the death can appear as ante-mortem in nature, therefore, it is not possible to tell as to whether the ligature mark was post mortem in nature or not, and (v) ligature marks found on the neck could not have been self-inflicted. The query report is Ex. P.9.

16. After the receipt of F.S.L report, another query was raised and it was replied by this witness that ligature marks found were not indicative of suicide, since, poison was found in viscera, therefore, death could have been on account of poison. Ligature marks were ante-mortem in nature and the deceased had not hanged himself after consuming poison. The query report is Ex P.11.

17. This witness was cross-examined. He stated that the deceased was well built therefore, he was in a position to resist in case of forcible administration of poison, but also stated that if the deceased was under the influence of alcohol, then he could not have resisted. He further stated that presence of Ecchymosis indicates that ligature mark was ante-mortem in nature or was caused immediately after the death while blood was in circulation. He further stated that since, the ligature mark was found on the base of the neck, therefore, it could not have been caused due to hanging otherwise, the ligature mark would have been found on the upper part of neck.

18. Thus, it is clear that presence of ligature mark on the base of neck indicates that the death was not suicidal in nature and it was homicidal in nature.

Evidence led by prosecution

19. **Dinesh (P.W.1)** is the younger brother of the deceased. He stated that he was sleeping in his house. Rekhabai, who is his niece, came to his house at about 4-4:30 A.M. and informed that he should immediately accompany her as the deceased is to be taken to hospital as he has consumed poison. Thereafter, he went towards the house of Surajbai, but he heard the noise of crying coming from the side of the hospital, therefore, he went towards the hospital which is on the back side of the house of appellant Surajbai. He found that the dead body of his brother was lying on a bullock cart parked outside the hospital. Raju, who is posted as Compounder in the hospital, checked his brother and informed that he is no more and accordingly, suggested that the dead body may be taken back to the house. Surajbai was not present on the spot as She had already gone to the police station. Thereafter, they brought the dead body to the house of Surajbai and kept the same in the courtyard of the house of Surajbai. Police also reached there and *Safina form* Ex. P.1 was issued and inquest report, Ex. P.2 was prepared. Both the documents were signed by him. After the post mortem was done, the dead body was handed over vide delivery memo Ex. P.3. The spot map, Ex. P.4 was prepared on his instructions. He further stated that his brother had illicit relations with the appellant Surajbai and they were residing together. About 15 days prior to the death, a quarrel took place between his brother and Surajbai. His niece Rekhabai and appellant Surajbai had poured kerosene oil on Hari and before they could lit the fire, Hari caused an injury to Surajbai by *Darati* and ran away. Thereafter, he started residing in the house of his elder sister

Sewantibai in village Dhangaon. Appellant Bhuribai is the sister of Appellant Surajbai. At the time of incident, Bhuribai was with appellant Surajbai. The sister of this witness, namely, Chhayabai had come to his house for her delivery. Phoolabai is his elder sister, who had come to his house on account of dispute with her husband. After the incident, he was informed by Suresh that he had heard the noise that "please donot administer poison to him". This witness was cross-examined.

20. For the purposes of appreciation of his evidence, his evidence can be summarized as under:

(a) Rekhabai, came to his house at about 4-4:30 A.M. and informed that he should immediately accompany her as the deceased is to be taken to hospital as he has consumed poison;

(b) He went to the hospital and found that his brother was lying on a bullock cart, and Compounder of the hospital informed that his brother is no more;

(c) Appellant Surajbai had already left for Police Station;

(d) After the death of Pannalal, appellant Surajbai had illicit relations with Hari @ Bhaggu;

(e) About 15 days prior to the death, a quarrel took place between his brother and Surajbai. His niece Rekhabai and appellant Surajbai had poured kerosene oil on Hari and before they could lit fire, Hari caused an injury to Surajbai by *Darati* and ran away. Thereafter, he started residing in the house of his elder sister Sewantibai in village Dhangaon.

(f) After the incident, he was informed by Suresh (P.W.7) that he had heard the noise that "please donot administer poison to him".

21. In cross-examination, he admitted that Pannalal got married to Surajbai about 25 years back, and 1-2 years thereafter, they started residing in a separate house situated at Kumtha Road. He further admitted that his ancestral house is in the mid of the village and is still in existence. During the life time of his father, Pannalal had separated from the family. He further admitted that the deceased Hari @ Bhaggu was residing with his family in the old house. The name of wife of Hari was Sunitabai. There are approximately 40-50 houses in between their old house and the house situated on Kumtha Road. He also claimed that Sunitabai was the third wife of Hari. The name of first wife of Hari was Lallibai and this witness expressed his ignorance about the name of his second wife. He also admitted that inspite of multiple marriages, the deceased Hari was residing with them in the old house. He admitted that Phoolabai had come to the house of this witness about 5-6 months prior to the incident. Chhayabai had already given birth to the child about 2 ½ months prior to the incident. He denied that Phoolabai used to quarrel with Sunitabai. He also denied that Phoolabai used to quarrel with the wife of this witness, but admitted that now he is residing in village Rustampur i.e., in the house of his in-laws. He denied that since, Phoolabai used to fight, therefore, both the ladies, i.e., Sunitabai and the wife of this witness went to their parental home. He admitted that about 10 days prior to incident, Hari had assaulted Surajbai by *Darati* which was reported by Surajbai to Police. He admitted that police was in search of Hari, but could not arrest Hari. He admitted that since, Surajbai had lodged a report against Hari, therefore, he and his family was annoyed with Surajbai. He denied for want of knowledge, that Hari in order to avoid his arrest was residing in Dhangaon. He admitted that his statements were recorded by the police after 4 months of the incident. Chhayabai and Phoolabai had already reached hospital prior to

his arrival. He claimed that when he left his house, his mother Sukma bai was in the house. He admitted that the house of Suresh is situated on the road which goes towards Panchayat Bhavan. He could not explain as to why the fact that Suresh had informed that he had heard the noise that "please donot administer medicine" is not mentioned in his police statement, Ex. D.1. He denied that Hari had never resided with Surajbai. He also stated that he had informed the police about illicit relations between Hari and Surajbai, but could not explain as to why this fact is not mentioned in his police statement, Ex. D.1.

22. One important aspect is that this witness has not stated that Suresh (P.W.7) was having multiple wives, and also admitted that Suresh resides in a house which is situated on a road which goes towards Panchayat Bhavan. The aforesaid fact shall be taken into consideration while appreciating the evidence of Suresh (P.W.7). Furthermore, the evidence of this witness that appellant Surajbai was having illicit relations with deceased Hari @ Bhaggu cannot be relied upon because this fact is not mentioned in his police statement, Ex. D.1 and it amounts to material contradiction. The allegation that Rekha bai had informed this witness that Hari has consumed some medicine and therefore, he has to be taken to hospital shall also be considered in the light of evidence of other witnesses. Whether this witness was residing in village Piplod or Rustampur is also an important aspect which shall be taken into consideration. The delay in recording of his police statement shall also be taken into consideration.

23. **Phoolabai (P.W.2)** has stated that the deceased was her brother. For the last 4-5 months, She was residing with her brother Dinesh as her husband used to assault her. Some quarrel took place between appellant Surajbai and the deceased and accordingly, Surajbai and her daughter

Rekhabai poured kerosene oil on Hari @ Bhaggu. Thereafter, Hari @ Bhaggu in order to save his life, assaulted Surajbai by *Darati* and thereafter ran away. First husband of Surajbai, namely, Pannalal has died about 10 years back. After the death of husband of Surajbai, the deceased Hari @ Bhaggu started living with Surajbai. Sunitabai, the wife of Hari @ Bhaggu, was also living with them. The incident took place about 12 months back. At about 4-4:30 A.M., Rekhabai came and informed that Hari @ Bhaggu has expired and he has been taken to hospital. She also informed that Surajbai, Bhuribai and She herself have administered poison to Hari @ Bhaggu. Thereafter, She and her sister Chhayabai (not examined) rushed to the hospital and found that Hari @ Bhaggu was lying on the bullock cart. One person from hospital was called who declared the deceased dead. Thereafter, they took the dead body to the house of Surajbai. Co-accused Bhuribai is the sister of appellant Surajbai and was residing in the house of Surajbai for the last 5-6 months prior to the date of incident. Surajbai, Bhuribai and Rekhabai have killed Hari @ Bhaggu by giving poison.

24. Thus, the evidence of Phoolabai (P.W.2) can be summarized as under :

(a) Some quarrel took place between appellant Surajbai and the deceased and accordingly, Surajbai and her daughter Rekhabai poured kerosene oil on Hari @ Bhaggu. Thereafter, Hari @ Bhaggu in order to save his life, assaulted Surajbai by *Darati* and thereafter ran away;

(b) At about 4-4:30 A.M., Rekhabai came and informed that Hari @ Bhaggu has expired and he has been taken to hospital.

(c) She also informed that Surajbai, Bhuribai and She herself have administered poison to Hari @ Bhaggu.

(d) Thereafter, She and her sister Chhayabai (not examined) rushed to the hospital and found that Hari @ Bhaggu was lying on the bullock cart. One person from hospital was called who declared the deceased dead.

(e) Thereafter, they took the dead body to the house of Surajbai.

(f) Co-accused Bhuribai is the sister of appellant Surajbai and was residing in the house of Surajbai for the last 5-6 months prior to the date of incident.

25. This witness was cross-examined. She admitted that her mother Sukmabai and appellant Surajbai were on inimical terms. Chhayabai was residing along with her brother Dinesh for the last 1 ½ years because her in-laws did not come to take her. She further stated that after the death of Pannalal, Surajbai started living with her younger-brother-in-law Hari. She denied that Sunitabai was ousted by the witnesses. After assaulting Surajbai, Hari @ Bhaggu came to her house and thereafter went to village Dhangaon. Surajbai had lodged report against Hari @ Bhaggu. Although She claimed that she had informed the police that Surajbai, Bhuribai and Rekhabai had poured kerosene oil on Hari @ Bhaggu, but could not explain as to why that fact is not mentioned in her police statement, Ex. D.2. She admitted that police had come to their house in search of Hari @ Bhaggu, however, She did not inform the police that Hari @ Bhaggu has gone to his sister's house at Dhangaon. She denied that on the date of incident, Hari @ Bhaggu had come to their house and they had requested him to go to police station. She denied that Hari @ Bhaggu had consumed poison in the house of this witness. She denied that thereafter, she took the dead body to the house of Surajbai. She claimed that She had informed the police that Surajbai, Bhuribai and Rekhabai have killed the deceased by

administering poison but could not explain as to why that fact is not mentioned in her police statement, Ex. D.2.

26. Thus, it is clear that there are major contradictions in her evidence. The allegation of pouring Kerosene Oil by the appellants and Rekhabai cannot be relied upon. The allegations that the appellants and Rekhabai had killed Hari also cannot be relied upon for the reason that it amounts to major contradiction. Further, it is clear that when police was in search of Hari, this witness did not disclose his whereabouts to the police. Further, whether Rekhabai had informed this witness or not shall also be considered at a later stage.

27. **Kadwa (P.W.3)** has turned hostile and did not support the prosecution case. He simply stated that he saw that Hari was lying in the courtyard of Surajbai. Other villagers had also come. Later on he came to know that Hari has expired. He further stated that Bhuribai had come to the house of Surajbai for her delivery. Hari was the younger-brother-in-law of appellant Surajbai and therefore, he used to visit her house frequently, but expressed his ignorance as to whether the deceased was residing with Suraj bai or not? In cross-examination by Public Prosecutor he stated that Hari @ Bhaggu was residing with his mother. In para 5 of his cross-examination, he once again stated that Hari @ Bhaggu was not residing permanently with Surajbai but he was residing with his mother and was occasionally visiting the house of Surajbai.

28. **Sewantibai (P.W.5)** has stated that deceased Bhaggu was her brother. It was about 1 year back. Bhaggu came to her and informed that he would reside in her house. His cloths were stained with kerosene oil and on enquiry, he informed that his ***Bhabhi Surajbai*** had poured kerosene oil on him and accordingly, he caused injury to Surajbai by *Darati*. He stayed in her house for 10-12 days. Police had also come to her

house in search of Hari and at that time, he had gone to the field. She requested her brother that he should go, otherwise She will be harassed by the police. In the evening, her brother went to village Piplod and on the next day, they got an information that Hari @ Bhaggu has expired. She was informed by Suresh, that he had heard the noise from the house of Surajbai that he may not be killed, but since, Suresh was not on talking terms with Surajbai, therefore, he did not go to her house.

29. Thus, it is clear that She is a hearsay witness. But this witness did not allege that the appellant Surajbai had illicit relations with Hari @ Bhaggu. On the contrary, the deceased called the appellant Surajbai as his **Bhabhi,** as it is evident from para 2 of her examination in chief. However, one thing is clear. When the police went to her house in search of Hari, then she did not give any information about the whereabouts of Hari although Hari @ Bhaggu was residing with her. Therefore, it is clear that She had screened the offender.

30. Thus, it is clear that this witness was examined only to show that after causing injury to appellant Surajbai, when the deceased came to her house, his cloths were stained with kerosene oil and the deceased stayed in the house of this witness. Police had also came to her house in search of Hari @ Bhaggu and therefore, She requested him to go back otherwise, she will be harassed by the Police. Thereafter, he went back to village Piplod in evening and on the next morning She came to know that he has expired.

31. **Sukmabai (P.W.6)** is the mother of deceased Hari @ Bhaggu. She stated that after the death of Pannalal, Surajbai started living with Hari @ Bhaggu. About 1 ½ years back, Surajbai had beaten Hari and poured kerosene oil on him. Thereafter, at about 11 P.M., he came to the house of this witness and informed that he would not live with Surajbai. Thereafter,

he went to Dhangaon, where he stayed for 10-12 days. At about 4 A.M. Rekhabai came to her house and informed that they should accompany her as quarrel is going on. Accordingly, her daughters Phoolabai and Chhayabai went there. Phoolabai and Chhayabai informed that Surajbai has taken Hari @ Bhaggu to the hospital on bullock cart. Then She went there but by that time, Hari @ Bhaggu had already expired. She doesnot know as to how, Hari has died.

32. Thus, her evidence can be summarized as under :

(a) Rekhabai, came to her house at about 4 A.M. and informed that they should accompany her as quarrel is going on;

(b) Phoolabai and Chhayabai informed that Surajbai has taken Hari @ Bhaggu to the hospital on bullock cart;

(c) She went to the hospital but by that time, her son had already expired;

(d) After the death of Pannalal, appellant Surajbai had started living with Hari @ Bhaggu;

(e) She doesnot know as to how Hari expired.

33. In her cross-examination, she stated that She has four sons, namely, Pannalal, Dhannalal, Hari @ Bhaggu and Dinesh. Dhannalal is residing separately in village Dhangaon, whereas his wife Rukmani is residing in village Piplod. Another wife of Dhannalal is residing in Dhangaon. Pannalal was residing separately along with Surajbai. Pannalal has expired about 10 years back. She admitted that her relations with Surajbai are not cordial. Phoolabai is residing with her for the last 2-3 years. Similarly, Chhayabai is residing with her for the last 2 years. The name of wife of Hari @ Bhaggu was Sunitabai. **Phoolabai and Chhayabai used to quarrel with Sunitabai, therefore, Sunitabai went to her parent's home at Jamner**. However, immediately thereafter, She resiled from the

said statement. The name of wife of Dinesh is Salitabai who is residing in her parent's home at Rustampur, but denied that since, Chhayabai and Phoolabai used to quarrel with Salitabai, therefore, she left her matrimonial house. She admitted that Dinesh also started living with his wife Salitabai in Rustampur. Hari @ Bhaggu, after assaulting Surajbai by *Darati* had come to her house at about 11-12 P.M. and informed her that he has caused injuries to Surajbai by *Darati*. Thereafter, he left for some unknown place. Police had gone to the house of Sewantibai in search of Hari @ Bhaggu. It was claimed by this witness that She had informed the police that Surajbai had kept Hari as her husband, but could not explain as to why that fact is not mentioned in her police statement, Ex. D.3. (The copy of police statement, Ex. D.3 is kept in B file along with other papers of charge sheet. Further in her police statement, Ex. D.3, this witness had stated that Hari used to have his meals in the house of Appellant Surajbai. No allegations were made that Hari had illicit relations with Surajbai.) It was claimed by this witness that She had informed the police that Surajbai had ousted Hari after assaulting him, but could not explain as to why this fact is not mentioned in her police statement, Ex. D.3. She had informed the police that Rekhabai had come and informed about the quarrel, but could not explain as to why this fact is not mentioned in her police statement, Ex. D.3. **Rekhabai after knocking the door had said that quarrel is going on and without waiting for opening of the door, She ran away. The door was opened by Phoolabai, but by that time, Rekha had run away. No talks took place between Rekha and Phoolabai. It was also stated that Dinesh (P.W.1) was sleeping in his house and he did not have any talks with Rekhabai but he was informed by his sisters.** The dead body was taken to the house of Surajbai from the hospital. On the report of Surajbai, the police was searching for Hari @

Bhaggu. Sewantibai had sent Hari @ Bhaggu to surrender. She further stated that She had not seen Rekha bai running away. What was stated by Rekhabai could not be heard by her, but she was informed by her daughters that Rekhabai had knocked the door. Thus, it is clear that this witness is completely unreliable so far as the information given by Rekhabai is concerned. This witness has also not stated that when Hari @ Bhaggu came to her house after causing injury to Surajbai, his cloths were stained with Kerosene oil. Furthermore, the evidence of this witness that the appellant Surajbai had kept Hari as her husband is also not reliable on account of major contradiction as this fact is not mentioned in her police statement, Ex. D.3.

34. **Suresh (P.W.7)** has stated that Hari @ Bhaggu was his cousin brother. After the death of Pannalal, the appellant Surajbai had started living with Hari @ Bhaggu. Surajbai ousted the wife of Hari @ Bhaggu, namely, Sunitabai. Rekhabai is the daughter of Surajbai and Bhuribai had come to the house of Surajbai for delivery purposes. It was about 1 ½ years back. Some dispute took place between Hari @ Bhaggu and Surajbai, and accordingly, Surajbai had poured kerosene oil on him. Hari @ Bhaggu assaulted Surajbai by *Darati* and ran away. About 10-12 days thereafter, Bhaggu came back to the house of Surajbai about 8-9 P.M. At about 11-12 in the night, he heard the screams of Hari @ Bhaggu who was pleading that he should not be compelled to drink medicine and he also heard the noise of strangulation. After some time, the things calmed down. In the same night at about 4 A.M., Surajbai, Bhuribai and Rekhabai took Hari @ Bhaggu to hospital on the bullock cart. Later on, he came to know that Hari @ Bhaggu has expired.

35. In cross-examination, this witness claimed that he has two wives. He claimed that he is residing with Rukmani and the wall of her house is

adjoining to the house of Surajbai. He admitted that Rukmani is his *Bhabhi* but claimed that after Dhannalal left the village, She started living with him. He admitted that he has no house near the house of Surajbai. He admitted that he has no material to prove that Rukmani is his wife/keep. He admitted that the name of his first wife is Santosh bai and no divorce with Santosh bai has taken place. He admitted that Santosh bai resides in a house which is situated on the road which goes toward Panchayat Bhavan. He denied that he resides in the house which is situated near Panchayat Bhavan. He admitted that his sons are residing in the house situated near the Panchayat Bhavan. He admitted that visits his sons.

36. Thus, the evidence of this witness can be summarized as under :

(a) That he has multiple wives and he was residing with Rukmani whereas his first wife is residing in the house which is situated near Panchayat Bhavan;

(b) In the night at about 8-9 P.M., deceased Hari @ Bhaggu came back to the house of appellant Surajbai;

(c) In the night at about 11-12 in the night, he heard the screams of Hari @ Bhaggu who was pleading that he should not be compelled to drink medicine.

(d) He also heard the noise of strangulation.

(e) After some time, the things calmed down.

(f) In the same night at about 4 A.M., Surajbai, Bhuribai and Rekhabai took Hari @ Bhaggu to hospital on the bullock cart.

37. Apart from the statement made by this witness in his cross-examination which has already been mentioned in para 35 of this judgment, this witness in his cross-examination further claimed that he had informed the police that 10-12 days after assaulting the appellant Surajbai,

the deceased Hari @ Bhaggu had come back to the house of appellant Surajbai, but could not explain as to why this fact is not mentioned in his police statement, Ex. D.4. He admitted that he had not informed the police, that Surajbai, Bhuribai and Rekhabai had taken the deceased Hari @ Bhaggu to hospital on bullock cart. He admitted that after causing injury to Surajbai, the deceased Hari @ Bhaggu had resided along with his sister in Janwar. He admitted that police was searching for Hari @ Bhaggu. Only on the basis of noise, he has stated that quarrel took place between Surajbai and deceased Hari @ Bhaggu. Thus, it is clear that the evidence of this witness to the effect that Hari @ Bhaggu had come back to the house of Surajbai cannot be relied upon, as the same amounts to material omission and contradiction. Similarly, the evidence, that it was the appellants Surajbai, Bhuribai and Rekhabai who took Hari @ Bhaggu to hospital in bullock cart cannot be relied upon as it amounts to material omission and contradiction. Similarly, his evidence that deceased Hari @ Bhaggu was pleading that medicine should not be given to him is also not reliable, as this witness claims that he had heard the noise only. Furthermore, it is clear from the evidence of autopsy surgeon, that the deceased was well built and could have resisted. The appellant Surajbai is a lady whereas the Appellant Bhuribai was pregnant at the time of incident. Rekhabai was a juvenile. Therefore, two ladies and one child could not have over powered Hari @ Bhaggu to administer poison.

38. Further, the presence of this witness near the house of appellant Surajbai is also doubtful. The house of this witness is situated at a distance from the house of appellant Surajbai, therefore, he could not have heard the noise from his house. Thus, he started claiming that Rukmani who is his *Bhabhi* was also his keep, therefore, he was residing along with Rukmani. This was claimed with a solitary intention to show his presence

in the house of Rukmani, whose house was adjoining to the house of appellant Surajbai. As already pointed out, Dinesh (P.W.1) had claimed that Suresh is residing in his house which is situated on the road which goes towards Panchayat Bhavan. Furthermore, the prosecution has not examined Rukmani about the presence of this witness in her house. Therefore, it is clear that this witness is not a reliable witness and is a created and concocted witness. Furthermore, this witness is a related witness. It is true that the evidence of related witness cannot be discarded merely on the ground of relationship, but the evidence of such witness has to be appreciated minutely.

39. Furthermore, there is another aspect of the matter. The dead body of Hari @ Bhaggu was found on 21-9-2008 and FIR, Ex. P. 16 was lodged on the same day. Whereas the police statement of Suresh (P.W.7) was recorded on 1-2-2009 i.e., after more than 4 months. B.S. Chauhan (P.W.11) is the investigating officer. He has admitted that he had recorded the statement of Suresh after 5 months of the incident. He further admitted that Suresh had not stated that Hari @ Bhaggu had returned back or he was taken to hospital by Surajbai, Bhuribai and Rekhabai on bullock cart. H.S. Rawat (P.W.10) has not stated that the statements of Suresh (P.W.7) were recorded during *Merg* enquiry. Thus, it is clear that police statements of Suresh (P.W.7) were recorded after 5 months of the incident, and no explanation has been given for the same. Therefore, the evidence of Suresh (P.W.7) is highly doubtful and cannot be relied upon.

Conclusion and appreciation of Circumstantial Evidence

(a) Recovery of piece of rope, sleeper, Darati and bottle of pesticide from the spot

40. H.S. Rawat (P.W.10) had recovered a piece of thin sky coloured rope with a knot, one *Darati,* sleeper and a bottle of pesticide vide seizure

memo Ex. P.22. These articles were seized from the spot. Who was the owner of sleeper has not been established by the prosecution. The circumstance of recovery of bottle of pesticide shall be considered at a later stage.

41. Since, the prosecution could not prove that the appellant Surajbai had tried to cause disappearance of evidence, by giving the shape of suicide, therefore, the Trial Court itself has acquitted the appellants for offence under Section 201 and 203 of IPC. But the FIR, Ex P.16 lodged by appellant Surajbai could have thrown some light with regard to the recovery of piece of rope with a knot and *Darati* but unfortunately, no investigation was done by the police with regard to the correctness of the information given by the appellant Surajbai.

(b) Appellant Surajbai, after the death of her husband Pannalal, started living along with deceased Hari @ Bhaggu and also ousted the wife of Hari @ Bhaggu

42. The evidence of the witnesses is not consistent with regard to this circumstance. Dinesh (P.W.1) has stated that after the death of Pannalal, Hari @ Bhaggu was residing with Appellant Surajbai. Phoolabai (P.W.2) has also stated that after the death of Pannalal, Hari @ Bhaggu had started living with appellant Surajbai and had ousted his own wife Sunitabai. Kadwa (P.W.3) has stated that he had never seen Hari @ Bhaggu residing permanently in the house of appellant Surajbai, whereas he was residing along with his mother and was occasionally visiting the house of Surajbai. Sewantibai (P.W.5) has not stated about relationship of Hari @ Bhaggu with appellant Surajbai, but on the contrary, She has stated in her examination in chief, that Hari @ Bhaggu had informed that his ***Bhabhi Surajbai*** had poured kerosene oil on him and accordingly, he caused injury to Surajbai by *Darati*. Thus, Hari @ Bhaggu had called the

appellant Surajbai as his **Bhabhi.** Sukmabai (P.W.6) stated that after the death of Pannalal, Surajbai started living with Hari @ Bhaggu. However, in cross-examination, this witness claimed that She had informed the police that Surajbai had kept Hari as her husband, but could not explain as to why that fact is not mentioned in her police statement, Ex. D.3. (The copy of police statement, Ex. D.3 is kept in B file along with other papers of charge sheet. Further in her police statement, Ex. D.3, this witness had stated that Hari used to have his meals in the house of Appellant Surajbai. No allegations were made that Hari had illicit relations with Surajbai.). Thus, there is major contradiction and omission in the evidence of Sukmabai (P.W.6). Suresh (P.W.7) had stated that appellant Surajbai had started living with Hari @ Bhaggu after the death of her husband Pannalal. Kadwa (P.W.3) has stated that in fact Hari @ Bhaggu was residing with his mother and was occasionally visiting the house of Surajbai. Occasional visit to the house of Surajbai by Hari @ Bhaggu was natural, because Surajbai was the widow of elder brother of Hari @ Bhaggu. Whether Dinesh (P.W.1), Phoolabai (P.W.2) and Suresh (P.W.7) are reliable witnesses or not shall be considered in the following paragraphs. But it is clear, that neither Sewantibai (P.W.5) nor Kadwa (P.W.3) said anything about illicit relationship of Sewanti bai with deceased Hari @ Bhaggu and the evidence of Sukmabai (P.W.6) cannot be relied upon as there is major omission and contradiction.

43. So far as ouster of Sunitabai (wife of Hari @ Bhaggu) is concerned, it is suffice to mention that the prosecution has not examined Sunitabai to prove this circumstance. Sunitabai was the best witness to prove that whether the Appellant Surajbai had ousted her from her matrimonial house or not. She could have explained the reasons for living in her parental home. She was the best witness to prove the relationship

between Surajbai and the deceased Hari @ Bhaggu. Furthermore, Sukmabai (P.W.6) has admitted that her daughters Chhayabai and Phoolabai used to quarrel with Sunitabai.

44. Thus, The prosecution has failed to prove that appellant Surajbai was residing with Hari @ Bhaggu as his keep. The character assassination of appellant Surajbai was done with an intention to attribute motive to her.

(c) ***About 15 days prior to the date of incident, some quarrel took place between appellant Surajbai and Hari @ Bhaggu and Hari ran away from the house of Surajbai after causing injury to her by Darati;***

45. The prosecution has also relied upon the FIR, Ex. P.18 lodged by Surajbai against Hari @ Bhaggu. The FIR, Ex. P.18 was lodged on 13-9-2008 at 12:15. The incident took place on 10-9-2008 at 8:00 P.M. In this FIR, it was alleged by appellant Surajbai that on 10-9-2008, her younger-brother-in-law Hari came to her house. He was in inebriated condition. He started abusing her children. When it was objected by her, then he assaulted her by *Darati* causing injury on her shoulder. Thereafter, she called her brother Parasram by informing him on phone. On the instructions of her brother, she lodged the report on 13-9-2008. Apart from that all the witnesses, namely Dinesh (P.W.1), Phoolabai (P.W.2), Sewantibai (P.W.5), Sukmabai (P.W.6) have admitted that Hari @ Bhaggu had caused injury to appellant Surajbai by *Darati* and thereafter ran away and started living in the house of Sewantibai (P.W.5) who is the resident of different village. Even the police was in search of Hari @ Bhaggu, but these witnesses did not disclose the whereabouts of Hari @ Bhaggu, although they were aware of the fact that Hari @ Bhaggu was residing in other village.

46. Now the only question for consideration is that whether Rekhabai, Surajbai and Bhuribai had poured Kerosene Oil on Hari @ Bhaggu as a result he retaliated by assaulting the appellant Surajbai by *Darati* or not?

47. Sewantibai (P.W.5) is the sister of Hari @ Bhaggu. She has claimed that when Hari @ Bhaggu came to her house, his cloths were stained with kerosene oil. Sewantibai (P.W.5) in para 4 of her cross-examination had claimed that Hari @ Bhaggu had come to her house at 8-9 in the morning. The evidence of Sewantibai (P.W.5) to the effect that cloths of Hari @ Bhaggu were stained with kerosene Oil is not reliable as it amounts to material contradiction as the aforesaid allegation is not mentioned in her police statement, Ex. D.2. Sukmabai (P.W.6), who is the mother of Hari @ Bhaggu, has stated in para 2 of her examination in chief, that Hari @ Bhaggu was beaten by Surajbai and had poured kerosene oil on him. Thereafter, Hari came to her house at 11 P.M. and informed that now he will not reside there and would go away. It appears that according to prosecution case, Hari @ Bhaggu went to the house of his mother and thereafter, to his sister. The deceased Hari @ Bhaggu went to the house of his mother at 11 P.M. and then went to the house of his sister Sewantibai on the next day at 8-9 A.M. How, the cloths can remain stained with Kerosene Oil even after so many hours, has not been explained by the prosecution. Although the prosecution has relied upon FIR, Ex. P.18 lodged by Surajbai to prove that She was assaulted by Hari @ Bhaggu at 8;00 A.M., therefore, even if it is presumed that kerosene oil was poured on Hari @ Bhaggu immediately prior thereto, then it is clear that the incident of pouring Kerosene oil must have taken place sometime between 7:30-8:00 P.M. Thereafter, Hari @ Bhaggu went to the house of his mother Sukmabai (P.W.6) at 11 P.M., but Sukmabai (P.W.6) did not notice that the cloths of Hari @ Bhaggu were stained with Kerosene oil.

Dinesh (P.W.1) has not stated that Hari @ Bhaggu had come to his house after the Kerosene Oil was poured by Surajbai. Although, Sewantibai (P.W.5) has stated that Hari @ Bhaggu came to her house on the next day at about 8 A.M., but how the cloths can remain stained with Kerosene Oil even after 12 hours? Therefore, it is clear that the evidence of Sewantibai (P.W.5) in this regard is unreliable. Thus, it is clear that the allegation that Surajbai had poured Kerosene Oil on Hari @ Bhaggu is nothing but an afterthought made with a view to attribute motive to the appellants Surajbai and Bhuribai.

(d) On the fateful day, Hari @ Bhaggu came back to the house of appellant Surajbai

48. If this circumstance is found to be proved, then it would amount to Last Seen Together.

49. It is the case of the prosecution itself that 10-12 days prior to the incident, the deceased Hari @ Bhaggu had left the house of appellant Surajbai, as he had assaulted the appellant Surajbai by *Darati*. The prosecution has examined only Suresh (P.W.7) to claim that the deceased Hari @ Bhaggu had returned to the house of Surajbai in the night of incident. However, he has admitted that the fact of returning back in the night is not mentioned in his police statement, Ex. D.4. Thus, it amounts to major contradiction. Furthermore, the police statement of Suresh (P.W.7) was recorded after 5 months of incident and the delay in recording statement has not been explained by the prosecution.

50. Therefore, there is no evidence on record to suggest that the deceased Hari @ Bhaggu had come back to the house of Surajbai or was seen for the last time in the company of appellant Surajbai.

(e) In the night, Suresh (P.W.7) heard the noise of Hari @ Bhaggu that medicine may not be administered to him and this witness also heard the noise of strangulation

51. Suresh (P.W.7) is the only witness who was examined by prosecution to prove this circumstance. In order to appreciate his evidence, this Court would like to consider as to whether the prosecution has proved that Suresh (P.W.7) was present in the house of Rukmani which is adjoining to the house of appellant Surajbai or not?

52. Dinesh (P.W.1) has stated that the house of Suresh is situated on the road which goes towards Panchayat Bhavan. The important aspect of the evidence of this witness is that this witness has not stated that Suresh (P.W.7) was having multiple wives, and also admitted that Suresh resides in a house which is situated on a road which goes towards Panchayat Bhavan.

53. However, Suresh (P.W.7) in cross-examination, claimed that he has two wives. He claimed that he is residing with Rukmani and the wall of her house is adjoining to the house of Surajbai. He admitted that Rukmani is his *Bhabhi* but claimed that after his brother Dhannalal left the village, She started living with him. He admitted that he has no house near the house of Surajbai. He admitted that he has no material to prove that Rukmani is his wife/keep. He admitted that the name of his first wife is Santosh bai and no divorce with Santosh bai has taken place. He admitted that Santosh bai resides in a house which is situated on the road which goes toward Panchayat Bhavan. He denied that he resides in the house which is situated near Panchayat Bhavan. He admitted that his sons are residing in the house situated near the Panchayat Bhavan. He admitted that visits his sons.

54. Rukmani was the best witness to prove as to whether Suresh (P.W.7) was living in her house as her husband or not and whether on the fateful day, he was in her house or not? But for the reasons best known to the prosecution, Rukmani was not examined. Thus, the presence of this witness near the house of appellant Surajbai is also doubtful. The house of this witness is situated at a distance from the house of appellant Surajbai, therefore, he could not have heard the noise from his house. Thus, he started claiming that Rukmani who is his *Bhabhi* was also his keep, therefore, he was residing along with Rukmani. This was claimed with a solitary intention to show his presence in the house of Rukmani, whose house was adjoining to the house of appellant Surajbai.

55. Therefore, this Court is of the considered opinion, that prosecution has failed to prove that Suresh (P.W.7) had heard the voice of deceased Hari @ Bhaggu thereby pleading that medicine may not be administered to him. Further the allegation that he had heard the noise of strangulation is not trustworthy.

(f) Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6) stated that Rekhabai came to their house at about 4-4:30 and gave information to these witnesses

56. Before considering this circumstance, this Court would like to reproduce that what witnesses have stated about the information given by Rekhabai.

57. As already mentioned, Rekhabai was made an accused, but since, She was juvenile, therefore, She must have been tried by JJB. But there is nothing on record to show as to what happened to her trial.

58. Dinesh (P.W.1) has stated that Rekhabai came and informed that he should come to take Hari to hospital as he has consumed medicine.

59. Phoolabai (P.W.2) stated that Rekhabai informed that Hari @ Bhaggu has expired and he has been taken to hospital. She further stated that Rekhabai had informed that the appellants and she herself had administered medicine to Hari.

60. Sukmabai (P.W.6) had claimed in her examination-in-chief, that Rekhabai knocked the door and informed that quarrel is going on between Surajbai and Hari @ Bhaggu. But in her cross-examination, she admitted that although Rekhabai had knocked the door, but before the door could be opened, She had already run away. It was further clarified that before Phoolabai (P.W.2) could open the door, Rekhabai had already ran away. Furthermore, She has admitted in her cross-examination, that She neither saw Rekhabai nor heard the information given by her. She clarified that her evidence is based on the information given by her daughters.

61. Thus, it is clear that the evidence of Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6) with regard to the information given by Rekhabai is not consistent.

62. Apart from that the evidence of Dinesh (P.W.1) that he was informed by Rekhabai is concerned, the same is not reliable because Sukmabai (P.W.6) has admitted that when Rekhabai came to her house, Dinesh (P.W.1) was sleeping in the house and he was not informed by Rekhabai and in fact Dinesh (P.W.1) was informed by his sisters. Further, the evidence of Phoolabai (P.W.2) also becomes doubtful, because, Sukmabai (P.W.6) has admitted that before the door could be opened, Rekhabai had already run away.

63. Furthermore, since, Rekhabai was implicated as an accused, therefore, at the most, her information given to the witnesses can be treated as an Extra Judicial Confession.

64. The Supreme Court in the case of **Sk. Yusuf v. State of W.B.,** reported in **(2011) 11 SCC 754** has held as under :

> 28….The Court while dealing with a circumstance of extra-judicial confession must keep in mind that it is a very weak type of evidence and requires appreciation with great caution. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witness must be clear, unambiguous and clearly convey that the accused is the perpetrator of the crime. The "extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility". (See *State of Rajasthan* v. *Raja Ram* and *Kulvinder Singh* v. *State of Haryana*.)

65. The Supreme Court in the case of **Kusal Toppo v. State of Jharkhand,** reported in **(2019) 13 SCC 676** has held as under :

> **18.** As argued by the learned amicus curiae appearing for the accused, an extra-judicial confession is a weak piece of evidence, and an accused cannot be convicted on its basis in the absence of other reliable evidence establishing the guilt of the accused. It will be pertinent to advert to the decisions relied upon by the learned amicus curiae at this juncture i.e. *Gopal Sah* and *Pancho*.
>
> **19.** In *Gopal Sah*, the Court held that an extra-judicial confession is, on the face of it, a weak piece of evidence and should not be relied upon to record a conviction, in the absence of a chain of cogent circumstances. In *Pancho* as well, the Court refused to convict the accused on the basis of an extra-judicial confession, in the absence of other evidence of sterling quality on record, establishing his involvement.
>
> **20.** In *Pancho*, the Court discussed the evidentiary value of an extra-judicial confession, as laid down by a Constitution Bench of this Court in *Haricharan Kurmi* v. *State of Bihar*. In this case, referring to Section 3 and Section 30 of the Evidence Act, 1872, the Court came to the conclusion that an extra-judicial confession cannot be treated as a substantive piece of evidence against the co-accused, holding that the proper judicial approach is to use it only to strengthen the opinion formed by the Court after perusing other evidence placed on record.
>
> **21.** It is pertinent to refer to the observations in *Pancho* in this regard: (SCC pp. 171-72, paras 26-28)

"*26*. In *Haricharan Kurmi* v. *State of Bihar* the Constitution Bench of this Court was again considering the same question. The Constitution Bench referred to Section 3 of the Evidence Act, 1872 and observed that confession of a co-accused is not evidence within the meaning of Section 3 of the Evidence Act. It is neither oral statement which the court permits or requires to be made before it as per Section 3(1) of the Evidence Act nor does it fall in the category of evidence referred to in Section 3(2) of the Evidence Act which covers all documents produced for the inspection of the court. This Court observed that even then Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused. Thus, though such a confession may not be evidence as strictly defined by Section 3 of the Evidence Act, "it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way". (*Haricharan case*, AIR p. 1188, para 11*a*.)

27. This Court in *Haricharan case* further observed that Section 30 merely enables the court to take the confession into account. It is not obligatory on the court to take the confession into account. This Court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right.

28. This Court in *Haricharan case* clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence Act, the fact remains that it is not evidence as defined in Section 3 of the Evidence Act. Therefore, in dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the

conclusion of guilt which the judicial mind is about to reach on the said other evidence."

22. Furthermore, in *Sahadevan* v. *State of T.N.*, this Court culled out certain principles regarding the reliability of an extra-judicial confession, which have also been relied upon in *Jagroop Singh* v. *State of Punjab*, *Tejinder Singh* v. *State of Punjab*, and *Vijay Shankar* v. *State of Haryana*. The principles as stated in *Sahadevan* are reproduced below: (SCC pp. 412-13, para 16)

"*16*. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(*i*) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(*ii*) It should be made voluntarily and should be truthful.

(*iii*) It should inspire confidence.

(*iv*) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(*v*) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(*vi*) Such statement essentially has to be proved like any other fact and in accordance with law."

23. The proposition that extra-judicial confessions are a weak type of evidence and should not be relied upon in the absence of corroborative evidence has also been affirmed by this Court in several other decisions, such as *Pakkirisamy* v. *State of T.N.*, *Makhan Singh* v. *State of Punjab*, *Baldev Singh* v. *State of Punjab*, and even recently in *Satish* v. *State of Haryana*.

66. According to Phoolabai (P.W.2) Rekhabai had informed that the appellants and She herself have administered medicine to the deceased. Thus, it can be said that Rekhabai had made an Extra Judicial Confession

to the witnesses. Any self inculpatory Extra Judicial Confession by a co-accused thereby implicating others is a weak type of evidence which cannot be relied upon against the co-accused persons, in absence of substantive and corroborative piece of evidence.

67. The Supreme Court in the case of **Chandrapal Vs. State of Chhatisgarh,** reported in **AIR 2022 SC 2542** has held as under :

> 10. This takes the court to examine the incriminating evidence relied upon by the prosecution, that is the extra judicial confession made by the co-accused Videshi. According to the prosecution, the accused Videshi had made self-inculpatory confession before the PW-4 Bhola Singh and also made confession before the PW-5 Chandrashekhar, PW-6 Baran Singh and PW-7 Dukaluram, involving the other accused including the present appellant. The prosecution had also produced an affidavit of Videshi (Ex-P/11) allegedly affirmed before the Notary. Though the Sessions Court relying upon the said evidence of extra judicial confession of Videshi convicted all the four accused, the High Court partly believing the said extra judicial confession, acquitted the three accused i.e., Bhagirathi, Mangal Singh and Videshi from the charges levelled against them under Section 302 read with 34 of IPC, however convicted them for the offence under Section 201 read with 34 by holding that the said accused had tried to cause disappearance of the evidence.
>
> 11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of State of M.P. Through CBI & Ors. Vs. Paltan Mallah & Ors., (2005) 3 SCC

169, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.

12. In Sahadevan & Anr. Vs. State of Tamil Nadu, (2012) 6 SCC 403, it was observed in para 14 as under:

"14. It is a settled principle of criminal jurisprudence that extra judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration."

The said ratio was also reiterated and followed by this court in cases of Jagroop Singh Vs. State of Punjab, (2012) 11 SCC 768, S.K. Yusuf Vs. State of West Bengal, (2011) 11 SCC 754 and Pancho Vs. State of Haryana, (2011) 10 SCC 165, wherein it has been specifically laid down that the extra judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution. It should be truthful and should inspire confidence. An extra judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution evidence. In the instant case it is true that the co-accused Videshi had allegedly made self-inculpatory extra judicial confession before the PW-4 Bhola Singh, and had made extra judicial confession before the other witnesses i.e., PW-5 Chandrashekhar, PW-6 Baran Singh Thakur and PW-7 Dukaluram stating, inter alia, that the other three accused i.e., Bhagirathi, Chandrapal and Mangal Singh had committed the murder and he (i.e. Videshi) was asked to assist them in

> disposing the dead bodies and concealing the evidence. However, the High Court, considering the inconsistency between the said two extra judicial confession made by the co-accused Videshi, did not find it safe to convict the other accused i.e., Bhagirathi, Mangal Singh and Videshi himself, and the High Court surprisingly considered the said extra judicial confession made by Videshi as an incriminating circumstance against the appellant Chandrapal for convicting him for the offences charged against him. In our opinion if such weak piece of evidence of the co-accused Videshi was not duly proved or found trustworthy for holding the other co-accused guilty of committing murder of the deceased Brinda and Kanhaiya, the High Court could not have used the said evidence against the present appellant for the purpose of holding him guilty for the alleged offence.

68. Thus, it is clear that not only the prosecution has failed to prove that Rekhabai had gone to the house of the witnesses in the morning but has also failed to prove that any information was given by her. Even if the evidence of Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6) to the extent that Rekhabai had informed these witnesses is accepted, still it is clear that no Extra Judicial Confession was made to Dinesh (P.W.1) and Sukmabai (P.W.6) as there is no admission that Hari was administered poison either by Rekhabai or by the appellants. However, the Extra Judicial Confession made to Phoolabai (P.W.2) cannot be made a sole basis for conviction of appellants in absence of substantive piece of evidence. Thus, it is held that the prosecution has failed to prove that any information was given by Rekhabai to the prosecution witness Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6) and even otherwise, the information given by Rekhabai cannot be used against the appellants in absence of any corroborative and substantive evidence against them. Furthermore, the evidence of Phoolabai (P.W.2) with regard to Extra Judicial Confession by Rekha bai is not reliable because the said fact is not

mentioned in her police statement, Ex. D.2 and there is major contradiction in this regard.

69. It is well established principle of law that major contradictions would render the evidence of the witnesses unreliable. However, every minor contradiction cannot be given undue importance. The Supreme Court in the case of **Harbeer Singh v. Sheeshpal,** reported in **(2016) 16 SCC 418** has held as under:

> 15……..Besides, it appears that there have been improvements in the statements of PW 3. The Explanation to Section 162 CrPC provides that an omission to state a fact or circumstance in the statement recorded by a police officer under Section 161 CrPC, may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, while it is true that every improvement is not fatal to the prosecution case, in cases where an improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same. (See *Ashok Vishnu Davare* v. *State of Maharashtra*; *Radha Kumar* v. *State of Bihar*; *Sunil Kumar Sambhudayal Gupta* v. *State of Maharashtra* and *Baldev Singh* v. *State of Punjab*.) In our view, the High Court had rightly considered these omissions as material omissions amounting to contradictions covered by the Explanation to Section 162 CrPC…..

70. The Supreme Court in the case of **A. Shankar v. State of Karnataka,** reported in **(2011) 6 SCC 279** has held as under:

> **22.** In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the

truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

23. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "*Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions*." The omissions which amount to contradictions in material particulars i.e. materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. [Vide *State* v. *Saravanan*, *Arumugam* v. *State*, *Mahendra Pratap Singh* v. *State of U.P*, *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*, *Vijay* v. *State of M.P.*, *State of U.P.* v. *Naresh* and *Brahm Swaroop* v. *State of U.P.*]

24. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide *State of Rajasthan* v. *Rajendra Singh*.)

71. Since, the contradiction which has been found in the evidence of witnesses is of major in nature, therefore, their evidence is not reliable with regard to this circumstance.

(g) Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6) rushed towards the hospital and found that Hari @ Bhaggu was lying in a bullock cart and the compounder declared him dead

72. According to the witnesses, when they reached the hospital, they found that Hari @ Bhaggu was lying on a bullock cart which was parked outside the hospital and a person from hospital was called who examined the deceased and declared him dead.

73. Police has not examined the person, who had attended Hari @ Bhaggu and had declared him dead. Even the police statement of any such person was not recorded. Therefore, the evidence of the witnesses that they went to hospital, where Hari @ Bhaggu was declared dead by a person posted in hospital has remained uncorroborated. Thus, it is clear that whether Hari @ Bhaggu was taken to hospital on a bullock cart or not has remained a mystery.

(h) Who brought Hari @ Bhaggu to the hospital on bullock cart?

74. Suresh (P.W.7) is the only witness who has stated that it was the appellants Surajbai, Bhuribai and Rekhabai, who took Hari @ Bhaggu to hospital on a bullock cart. However, as already pointed out, this fact is not mentioned in his police statement Ex. D.4. Thus, the allegation that appellants Surajbai, Bhuribai and Rekhabai had taken the deceased to hospital is a material contradiction, which cannot be relied upon. Therefore, it is clear that there is nothing on record to suggest that who took the deceased Hari @ Bhaggu to the police station.

75. Furthermore, if the employee posted in hospital had found that the dead body of a person has been brought, then he would have certainly given an information to the police. But, that was not done. Therefore, it is clear that the story developed by prosecution witnesses, that Hari @ Bhaggu was lying in a bullock cart outside the hospital is nothing but a

concocted story to justify dumping of dead body of Hari @ Bhaggu in the house of Surajbai.

(i) Who is the owner of bullock cart?

76. Police has not collected any evidence to show that who is the owner of bullock cart on which it was alleged that the dead body of Hari @ Bhaggu was lying in front of the hospital. Even the bullock cart was not seized. There is no evidence, that where the bullock cart ultimately went? Therefore, it is clear that even that link is missing.

77. On the contrary, the FIR, Ex. P.16 lodged by appellant Surajbai appears to be more plausible. However, FIR is not an encyclopedia and is not a substantive piece of evidence. Therefore, this Court cannot rely on the same, as the evidence which has been led by prosecution, is contrary to the facts mentioned in the FIR. The FIR, Ex. P.16, gives a plausible explanation of presence of piece of rope with a knot, *Darati* which was seized by H.S. Rawat (P.W.10) from the spot. It also gives a plausible explanation that under what circumstances, Hari @ Bhaggu was taken to hospital, but at the same time, the said FIR, Ex. P.16 also points out that it was Sukumabai who noticed that Hari @ Bhaggu was hanging on a Neem Tree, but that aspect has not been clarified and investigated by the police. What Sukmabai was doing in the wee hours has not been investigated by the police. Therefore, in absence of any evidence, this Court is also not in a position to accept the allegations made in the FIR, Ex. P.16 which was lodged by appellant Surajbai herself, but the allegations made in the FIR, Ex. P.16, indicates that the witnesses examined by the prosecution are not reliable witnesses.

(j) The appellant Surajbai lodged the FIR

78. Admittedly, FIR, Ex. P.16 was lodged by appellant Surajbai which was not inculpatory. Surajbai gave an information that “She was sleeping

in her house. At about 3:30 A.M., her mother-in-law namely Sukmabai came to her house and raised an alarm, as a result She woke up. On enquiry She was informed by Sukma bai that deceased Hari @ Bhaggu is hanging on a *Neem* tree. She accordingly rushed to the spot and cut the rope with the help of *Darati*. Chhaya claimed that Hari is still alive. Accordingly She took her younger brother-in-law Hari to hospital where compounder Rajle Babu was called, who informed that the deceased has expired. Accordingly, the dead body was brought back to the house". Unfortunately, the police did not investigate as to whether the version of the appellant Surajbai "that it was on the alarm raised by Sukma bai, She woke up and thereafter, brought down the body of her younger-brother-in-law, namely Hari @ Bhaggu from the tree, is correct or not" and relied on the statements of prosecution witnesses. But one thing is clear that the appellant Surajbai did not try to run away from the spot, but She herself lodged the FIR. Since, the FIR is not self-inculpatory in nature, therefore, it is not hit by provisions of Section 25 and 26 of Evidence Act. The Supreme Court in the case of **Aghnoo Nagesia Vs. State of Bihar** reported in **AIR 1966 SC 119** has held as under :

> **10.** Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant, see *Faddi* v. *State of Madhya Pradesh* explaining *Nisar Ali* v. *State of U.P.* and *Dal Singh* v. *King-Emperor*. But a confessional first information report to a

police officer cannot be used against the accused in view of Section 25 of the Evidence Act.

79. It is made clear that the evidence which has been led by prosecution is contrary to what was alleged by appellant Surajbai in her FIR, Ex. P.16. However, the Trial Court has already acquitted the appellants for the charge punishable under Sections 201 and 203 of IPC. Thus, it is clear that even the Trial Court came to conclusion that no false information was given by Surajbai to police. But at the cost of repetition, it is made clear that in fact the FIR, Ex. P.16 lodged by appellant Surajbai had thrown some light on the recovery of piece of rope, *Darati* and presence of dead body of the deceased in the house of Surajbai, but unfortunately, Police did not investigate the case properly, and this Court cannot rely upon the FIR, Ex. P.16 lodged by appellant Surajbai.

(k) Dead body was brought back to the house of appellant Surajbai by Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6).

80. According to Dinesh (P.W.1), Phoolabai (P.W.2) and Sukmabai (P.W.6), they brought the dead body of Hari @ Bhaggu to the house of appellant Surajbai, whereas Surajbai in her FIR, Ex. P.16 had claimed that after her younger-brother-in-law Hari @ Bhaggu was declared dead by the compounder, then his dead body was brought to her house. Therefore, if the police found the dead body of the deceased in the house of the appellant Surajbai, then the presence of dead body in the house of appellant cannot be said to be an incriminating circumstance, and it has been explained by the prosecution witnesses themselves.

(l) Delayed recording of police statements of Dinesh (P.W.1) and Suresh (P.W.7) and its effect

81. Before considering the effect of delay in recording the police statements of Dinesh (P.W.1) and Suresh (P.W.7), this Court would like to consider the law governing this field.

82. The Supreme Court in the case of **Sheo Shankar Singh v. State of Jharkhand,** reported in **(2011) 3 SCC 654** has held as under :

> **66.** The legal position is well settled that mere delay in the examination of a particular witness does not, as a rule of universal application, render the prosecution case suspect. It depends upon the circumstances of the case and the nature of the offence that is being investigated. It would also depend upon the availability of information by which the investigating officer could reach the witness and examine him. It would also depend upon the explanation, if any, which the investigating officer may offer for the delay. In a case where the investigating officer has reasons to believe that a particular witness is an eyewitness to the occurrence but he does not examine him without any possible explanation for any such omission, the delay may assume importance and require the court to closely scrutinise and evaluate the version of the witness but in a case where the investigating officer had no such information about any particular individual being an eyewitness to the occurrence, mere delay in examining such a witness would not ipso facto render the testimony of the witness suspect or affect the prosecution version.
>
> **67.** We are supported in this view by the decision of this Court in *Ranbir* v. *State of Punjab* where this Court examined the effect of delayed examination of a witness and observed: (SCC pp. 447-48, para 7)
>
> "*7.* … The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the investigating officer should be asked specifically about the delay and the reasons therefor."
>
> **68.** Again in *Satbir Singh* v. *State of U.P.* the delay in the examination of the witness was held to be not fatal to the prosecution case. This Court observed: (SCC p. 800, para 32)

> "*32*. Contention of Mr Sushil Kumar that the investigating officer did not examine some of the witnesses on 27-1-1997 cannot be accepted for more than one reason; firstly, because the delay in the investigation itself may not benefit the accused; secondly, because the investigating officer (PW 8) in his deposition explained the reasons for delayed examination of the witnesses."

83. Thus, it is clear that delay in recording of police statement is not fatal, provided plausible explanation is given by the investigating officer and the witness.

84. Statement of Dinesh (P.W.1) was recorded by police after 4 months of the incident, and no explanation has been given by the investigating officer or the witness for the delayed recording of his police statement. Similarly, the police statement of Suresh (P.W.7) was recorded on 1-2-2009, whereas the incident took place on 21-9-2008. H.S. Rawat (P.W.10) never claimed that he had recorded the statements of Suresh (P.W.7) during *Merg Enquiry*. B.S. Chauhan (P.W.11) has admitted that he recorded the statement of Suresh (P.W.7) after 5 months. No explanation whatsoever was given by B.S. Chauhan (P.W.11) with regard to delayed recording of statement of Suresh (P.W.7). This Court has also come to a conclusion that Suresh (P.W.7) also went to the extent to assassinating the character of his *Bhabi* Rukmani by falsely claiming that he had kept her and was residing with her. That was done with a solitary intention to show his presence near the house of appellant Surajbai in the night of 21-9-2008. If this witness had seen the deceased Hari @ Bhaggu coming back to the house of Surajbai and had also heard the noise that deceased was pleading that medicine may not be administered to him and had also heard the noise of strangulation, then there was no reason for him not to narrate the said fact to the police at the earliest. It appears that FSL report, Ex P. 21 was received by the police sometime in the month of

December, 2008, therefore, the police started creating evidence to show that poison was administered to the deceased. Therefore, the delay recording of police statements of Dinesh (P.W.1) and Suresh (P.W.7) is also fatal to the prosecution case, and thus, the evidence of these witnesses is also not reliable on this ground.

(m) Recovery of bottle of pesticide from the courtyard of house of Surajbai

85. According to the prosecution case, one bottle of pesticide was seized from the courtyard of the house of Surajbai. H.S. Rawat (P.W.10) has admitted that pesticide which was seized is generally used by the agriculturists and is easily available in the market. Furthermore, the bottle of pesticide was seized from the courtyard of the house of Surajbai. The dead body was also brought to the house of Surajbai by the prosecution witnesses. Therefore, there is also a possibility that the bottle of pesticide might have been planted by somebody else. Be that as it may be. One thing is clear that the bottle of pesticide which was recovered from the courtyard of the house of Surajbai was easily available in the market and is generally found in the house of agriculturists. Therefore, recovery of bottle of pesticide from the courtyard of the house of Surajbai cannot be said to be an incriminating circumstance.

(n) Acquittal of Suraj bai for offence under Sections 203 and 201 of IPC and acquittal of Bhuribai for offence under Section 201 of IPC

86. The Trial Court while acquitting the appellants for offence under Sections 203 and 201 of IPC itself has held that the prosecution could not prove its case beyond reasonable doubt. When the prosecution failed to prove the charge under Sections 203 and 201 of IPC, then it is clear that the appellants did not cause disappearance of evidence and the appellant Surajbai also did not give any false information to the police.

(o) Inimical relations of Witnesses with appellant Surajbai

87. The prosecution witnesses have clearly admitted their enmity with Surajbai. It is true that enmity is a double edged weapon. If on one hand, it provides a motive to falsely implicate a person, but at the same time, it provides motive for committing offence. Therefore, the evidence has to be appreciated minutely, so that neither guilty person should be allowed to go scot free, but at the same time, an innocent person may also not get punished.

88. The Supreme Court in the case of **Akalu Ahir v. Ramdeo Ram,** reported in **(1973) 2 SCC 583** has held as under :

> **2.** The occurrence is stated to be an off-shoot of election rivalry arising out of the election for the office of Mukhia of Village Arakpur. Indeed the enmity between the two rival groups was of long standing and is not denied. But enmity as usual is a double-edged weapon, providing motive both for the offence as well as for false implication. The evidence in such a case has, therefore, to be scrutinised with care so that neither the guilty party wrongly escapes on the plea of enmity, nor an innocent person gets wrongly convicted on that basis.

89. The Supreme Court in the case of **Anil Rai v. State of Bihar,** reported in **(2001) 7 SCC 318** has held as under :

> 18…..The admitted position of law is that enmity is a double-edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the courts are required to scrutinise their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity, held to be a double-edged weapon, may be instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such

> possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eyewitnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eyewitnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime, cannot be made a basis to discard or reject the testimony of the eyewitnesses, the deposition of whom is otherwise consistent and convincing.

90. Therefore, this Court has minutely scrutinized the evidence of the witnesses, and has come to a conclusion that the witnesses have falsely implicated the appellants for the offence which was never committed by them.

Who is responsible for causing death of deceased Hari @ Bhaggu?

91. As per the inquest report Ex. P.2, the dead body was found in the courtyard of the house of Appellant Surajbai. As per the spot map, Ex. P.9, *neem* tree is situated near to the house of Appellant Surajbai. However, the dead body was not found hanging by the police. No prosecution witness has claimed that he had seen the appellants hanging the deceased on the *neem* tree. In fact, nobody had seen Hari @ Bhaggu hanging on the *neem* tree. If the FIR lodged by appellant Surajbai is considered, then it is clear that it was Sukmabai (P.W.6) who saw that the deceased Hari @ Bhaggu was hanging on a tree and thereafter, the dead body was brought down from the *neem* tree after cutting the rope with the help of *Darati.* It is not out of place to mention here that as per the seizure memo Ex. P. 22, one

thin rope of sky colour with a knot and one *Darati* were also seized from the spot along with one Sleeper and one bottle containing pesticide. Thus, the presence of piece of rope and *Darati* from the spot, corroborates the FIR, Ex. P.16 lodged by Appellant Surajbai.

92. H.S. Rawat (P.W.10) had seized the aforementioned articles vide seizure memo Ex. P.22. In cross-examination, this witness admitted that generally in the houses of agriculturists, pesticides are found. He further stated that it was not mentioned in the seizure memo Ex. P.22 that exactly from which place, the rope was seized. He also admitted that he has not mentioned that who is the owner of *Darati*. He admitted that the witness Radheshyam is the resident of Pandhana which is 25 km.s away from the place of incident. Furthermore, as per the postmortem report, the ligature mark on the base of neck was not caused on account of hanging. Therefore, it is clear that the deceased was strangulated. However, the police has conducted the investigation in a very slip shot manner and did not try to find out the real culprit. The murder of Hari @ Bhaggu has remained a mystery.

Whether Appellant Bhuribai had come to the house of appellant Surajbai?

93. Appellant Bhuribai and appellant Surajbai, in their statements recorded under Section 313 of Cr.P.C. have admitted that appellant Bhuribai had come to the house of Appellant Surajbai for her delivery. Thus, it is clear that Appellant Bhuribai had come to the house of Appellant Surajbai for her own delivery. Apart from that, the admission made by both the appellants, indicate, that they did not hesitate in narrating the truth before the Trial Court.

Conclusion

94. Therefore, for the reasons mentioned above, this Court is of the considered opinion, that the prosecution has failed to prove that the appellants Surajbai and Bhuribai had killed the deceased Hari @ Bhaggu. Accordingly, their conviction for the charge under Section **302/34** of IPC is hereby **set aside**, and they are **acquitted**.

95. Before parting with this Judgment, this Court would like to observe with regard to the manner in which the investigation was done and the manner in which innocent Surajbai and Bhuribai were falsely implicated.

96. It is not out of place to mention here that according to the post mortem report, the cause of death of Hari @ Bhaggu was asphyxia leading to cardio respiratory arrest. The ligature mark which was found on the base of neck could not have been caused on account of hanging. Thus, it is clear that Hari @ Bhaggu was killed by someone. Although the prosecution tried to develop a story that the deceased Hari @ Bhaggu was hanged on a *Neem* tree, but that got falsified by the postmortem report. Even otherwise, the police did not find any incriminating circumstance which may indicate, that the deceased was hanged on the tree. Further, as the ligature mark on the base of neck could not have been found in the case of hanging as the ligature mark should have been on the upper side of neck, therefore, it is clear that not only the deceased was administered poisonous substance, but he was strangulated also.

97. It appears that because of enmity with appellant Surajbai, the prosecution witnesses have falsely implicated Surajbai. The most unfortunate part is that Bhuribai who is the sister of Surajbai and was pregnant was also roped in without any basis therefor. From the order sheet dated **23/12/2010**, it is clear that Bhuribai, after her conviction was sent to jail along with her one year old girl and three years old boy. Lateron, the custody of boy was handed over to his father. Separation of

children from their mother, only because of the fact that the prosecution witnesses wanted to falsely implicate Surajbai cannot be pardoned. Because of inimical terms of the prosecution witnesses with appellant Surajbai, Bhuribai who had nothing to do with the family affairs of Surajbai and the deceased Hari @ Bhaggu was not only sent to jail but her one year old daughter and three years old boy were also sent to jail. What sin the children of Bhuribai had committed which led them to see such a situation???

98. However, it appears that the police also did not play its role effectively and also implicated the appellants Surajbai and Bhuribai only at the instance of prosecution witnesses.

99. The witnesses have admitted that they brought the dead body of Hari @ Bhaggu and kept in the house of Surajbai. Not only, the prosecution has failed to prove that any poisonous substance was administered to the deceased in the house of Surajbai, but even the prosecution has failed to prove that it was Surajbai or Bhuribai who took the deceased to the hospital. According to Sewantibai (P.W.5), Hari @ Bhaggu was residing with her and went back to village Piplod only on the date of incident. Thus, Hari @ Bhaggu was in the company of Sewantibai (P.W.5). Why the police did not investigate that when and under what circumstances, the dead body of the deceased was taken to the hospital and by whom? When the deceased Hari came back to village Piplod has also not been investigated. Why the compounder or any other person who had allegedly declared the deceased Hari @ Bhaggu as dead was not examined is also a mystery? Why the police did not examine the owner of bullock cart, as it is no body's case that bullock cart belonged to Surajbai or her sister Bhuribai. Therefore, it is clear that the prosecution witnesses, namely, Dinesh (P.W.1), Phoolabai (P.W.2), Sewantibai (P.W.5),

Sukmabai (P.W.6) and Suresh (P.W.7) have deposed falsely before the Court. Even the investigating officer, by leaving important links untouched, have facilitated Dinesh (P.W.1), Phoolabai (P.W.2), Sewantibai (P.W.5), Sukmabai (P.W.6) and Suresh (P.W.7) to create a false case. Furthermore, as admitted by these witnesses, they brought the dead body of Hari @ Bhaggu to the house of Surajbai. The witnesses have stated that when they reached the hospital, appellants were not there. If the appellants had taken the deceased to hospital with an intention to get him treated, then there was no occasion for them to leave the deceased in front of the hospital. Since, the police has not investigated that who was the owner of bullock cart, therefore, it is clear that either the witnesses themselves were the owner of the bullock cart, or they have developed a false theory of finding the deceased in front of the hospital. **Thus, it is clear that the witnesses have deliberately implicated appellants Surajbai and Bhuribai falsely in the case.**

100. The irony is that Surajbai was never granted bail after her conviction and as per the information sent by the office of Superintendent, Central Jail, Indore, the appellant Surajbai had already undergone the actual incarceration of 13 years and 11 months as on 22-8-2024. Nobody would be in a position to return those days back to the appellant Surajbai. Bhuribai has remained in jail for 3 months and 4 days. This Court has already considered the trauma which must have been undergone by Bhuribai, because She was sent to jail along with her 1 year old daughter and three years old son.

101. Under these circumstances, this Court is of the considered opinion, that if the prosecution witnesses and investigating officers are allowed to go scot-free, then it would encourage such unscrupulous persons to falsely implicate the innocent persons.

102. Now the only question for consideration is that whether this Court without issuing notices to the prosecution witnesses, namely, Dinesh (P.W.1), Phoolabai (P.W.2), Sewantibai (P.W.5), Sukmabai (P.W.6) and Suresh (P.W.7), N.K. Suryavanshi (P.W.9), H.S. Rawat (P.W.10) and B.S. Chauhan (P.W.11) can direct for their prosecution or not?

103. A Division Bench of this Court in the case of **Kallu Vs. State of M.P. decided on 25/9/2017 in Criminal Appeal No.840/2004** (Gwalior Bench) has held as under :

> Before parting with this judgment, this Court cannot lose sight of the fact that the appellants have been falsely implicated with an oblique motive to grab their land. They have remained in jail for the last near about 13 long years without there being any fault on their part. In fact the appellants Jaswant, Ramratan, Ramras, Ballu, Kallu and Navla appear to be a member of downtrodden society who not only lost their lands but have also remained in jail for 13 long years, without there being any faulton their part, except that they might have asked Vijay Choudhary (P.W.3) to return their land. The manner in which the allegations were made by the witnesses, and the manner in which the investigation was conducted by the police, it is clear that Vijay Choudhary (P.W.3) had strong motive to falsely implicate the appellants Jaswant, Ramras and Ramratan. This Court is of the view that Shanti Swaroop Sharma (P.W.2), Vijay Choudhary (P.W.3), Ajay Choudhary (P.W.4), Jaishanker @ Vicky (P.W.5), Atal Bihari (P.W.6), Purshottam Bajpai (P.W.7), Vikas @ Vijay (P.W.8) as well as S.S. Sikarwar (P.W.12), S.S. Chouhan (P.W.13), Manoj Sharma (P.W.14) and Ramesh Dande (P.W. 15) have given false evidence before the Court. Therefore, the Trial Court is directed to initiate proceedings against these witnesses for giving false evidence before the Court of law.

104. Thereafter Shanti Swaroop Sharma (P.W.2 in the said appeal) filed a Special Leave to Appeal (Cri) No.s 10103-10107/2017 which was dismissed by Supreme Court by order dated 26-7-2019. The State of Madhya Pradesh, had also filed S.L.P. (Cri) No. 9715-9719 of 2017 which was dismissed by Supreme Court by order dated 26-7-2019. Further a

review petition was filed by the State of Madhya Pradesh, which was registered as Review Petition (Cri) No. 45-49 of 2010 which was dismissed by order dated 21-1-2020. Similarly, Jaishankar @ Vicky (P.W.5 in the said appeal), Vijay Choudhary (P.W.3 in the said appeal), Ajay Choudhary (P.W.4), Atal Bihari (P.W. 6 in the said appeal), Purushottam Bajpai (P.W.7 in the said appeal) and Vikash @ Vijay (P.W.8 in the said appeal) had filed SLP (Cri) No. 10108- 10112/2017 which too was dismissed by order dated 26-7-2019.

105. Further, **M.Cr.C. No. 35271/2019** (Gwalior Bench) was filed for recall of direction to prosecute the witnesses. The said application was dismissed by this Court by order dated **6-3-2020** and it was held as under :

> (33) Now, the only question which requires consideration is that whether it was obligatory on the part of the Court to hold a preliminary enquiry before directing prosecution for giving false evidence before the Court or not and whether an opportunity of hearing was required to be given to the applicant or not?
> (34) By proceeding under Section 340 of Cr.P.C., a Court does not record the guilt of an accused, but it is merely of a prima facie opinion that it is expedient in the interests of justice that an inquiry should be made into the alleged offence. Therefore, where a Court is otherwise in a position to form an opinion regarding making of complaint, then the Court may dispense with the preliminary inquiry. Therefore, mere absence of any preliminary enquiry would not vitiate a prima facie opinion formed by this Court.
> (35) A three Judge Bench of the Supreme Court in the case of **Pritish Vs. State of Maharashtra,** reported in **(2002) 1 SCC 253** has held as under :-
> "18. We are unable to agree with the said view of the learned Single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of his guilt. We have pointed out earlier that the purpose of conducting preliminary inquiry is not for that purpose at all. The would-be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be

held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry (vide M. Muthuswamy v. Special Police Establishment)."

(36) The Supreme Court in the case of **Amarsang Nathaji Vs. Hardik Harshadbhai Patel** repored in **(2017) 1 SCC 113** has held as under :-

"7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See Pritish v. State of 19 Maharashtra.)"

(37) The Supreme Court in the case of **State of Goa vs. Jose Maria Albert Vales**, reported in **(2018) 11 SCC 659** has held as under :

"31. It is no longer res integra that the preliminary enquiry, as comprehended in Section 340, is not obligatory to be undertaken by the court before taking the initiatives as contained in clauses (a) to (e) while invoking its powers thereunder. Section 341 provides for an appeal against an order either refusing to make a complaint or making a complaint under Section 340, whereupon the superior court may direct the making of the complaint or withdrawal thereof, as the case may be. Section 343 delineates the procedure to be adopted by the Magistrate taking cognizance. This provision being of determinative significance is quoted hereinbelow: “343. Procedure of Magistrate taking cognizance. —(1) A Magistrate to whom a complaint is made under Section 340 or Section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred,

that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided." (Underline supplied)

(38) Thus, even without holding a preliminary enquiry, a Court can take initiatives as contained in Clauses (a) to (e) of Section 340(1) of Cr.P.C.

(39) In the present case, this Court after considering each and every aspect of the matter in detail, had formed a prima facie opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195(b)(i) of Cr.P.C. i.e., prosecution of the persons mentioned in para 23 of the judgment, for giving false evidence before the Court. Therefore, this Court is of the considered opinion, that it was not obligatory to conduct a preliminary enquiry after giving an opportunity of hearing to the applicant.

106. The aforesaid order was challenged before Supreme Court by filing **S.L.P. (Cri) 3111 of 2022.** The S.L.P. (Cri) was dismissed by order dated **20-2-2024** by observing as under:

Leave granted.

The appellants before us were prosecution witnesses in Special Sessions Trial No. 30 of 2004 & Sessions Trial No. 15 of 2010.

Vide judgment dated 08.11.2004, passed in Sessions Trial No. 30 of 2004 by the Vth Additional Sessions Judge, Gwalior and vide judgment dated 18.07.2012 passed in Sessions Trial No. 15 of 2010 by the Special Judge (MPDVPK Act1), Gwalior, the accused persons were convicted under various sections of the Indian Penal Code, 1860 and 1 The Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 1 the MPDVPK Act. Assailing the conviction, Criminal Appeals were filed by the accused persons before the Madhya Pradesh High Court, which were decided by a common judgment dated 25.09.2017 and the accused persons were acquitted of all the charges.

The High Court was of the opinion that some of the prosecution witnesses which include the present appellants before this Court had given a false statement before the trial court and therefore, proceedings were to be initiated against them in accordance with law.

> Aggrieved by these observations, the appellants filed miscellaneous petitions u/s 482 of the Cr.P.C, seeking recall of the same. The High Court dismissed these petitions by a common order dated 06.03.2020. This order has been challenged before this Court. The appellant(s) would argue that at least a preliminary inquiry ought to have been done before proceeding under Section 340 of the Criminal Procedure Code. All the same, as it has been already observed by the High Court in its impugned order dated 06.03.2020 that Section 340 of the Criminal Procedure Code does not contemplate any prior inquiry. Moreover, it is not a case where the guilt against the accused persons has been established but the order was only for further inquiry into the matters. The appellant(s) were police officials who as prosecution witnesses gave false evidence before the Court which is an offence under the Indian Penal Code.
> Considering the facts and circumstances of the case, we do not find any reason to interfere in these matters.
> The Appeals are disposed of accordingly. Pending application(s), if any, shall stand(s) disposed of.

107. Thus, it is clear that before initiating proceedings under Section 340 of Cr.P.C. it is not necessary to issue notice to the effected persons, and if the Court is in a position to draw a prima facie opinion, then it is sufficient to initiate the proceedings. The *prima facie* opinion, drawn by the Court is not a finding of guilt, and the effected person would get full opportunity to defend themselves in the trial.

108. Once, this Court has come to a conclusion that the witnesses had **deliberately deposed falsely** before the Trial Court, and even the police deliberately did not investigate the matter properly and left multiple angles unattended thereby facilitating the prosecution witnesses to falsely implicate the appellants, therefore, this Court is of the considered view that it is a fit case, where a direction can be issued for prosecution of Dinesh (P.W.1), Phoolabai (P.W.2), Sewantibai (P.W.5), Sukmabai (P.W.6) and Suresh (P.W.7), N.K. Suryavanshi (P.W.9), H.S. Rawat (P.W.10) and B.S. Chauhan (P.W.11). Therefore, the Trial Court is directed to initiate

proceedings against these witnesses for giving false evidence before the Court of law.

Last but not the least.

109. This Court has gone through the judgment passed by the Trial Court. It is really unfortunate, that the Trial Judge, took the matter in a most casual manner and did not appreciate the evidence in the light of provisions of law. The Trial Court must realize that they are dealing with the life and liberty of a person and no one should be punished without sound principles of law. Blindly accepting the Examination-in-Chief of the prosecution witnesses, without testing the same on the anvil of their cross-examination is not the proper way of appreciation of evidence. The Trial Court should not forget that cross-examination is the only tool in the hand of the accused to dislodge the prosecution case. The admissions made by witnesses in their cross-examination or material contradictions should be given due weightage. If the Court is of the view that the contradiction is not material, then also should point out the same. But, ignoring the cross-examination cannot be said to be the proper method of deciding the Trial. In the present case, one lady has remained in jail for 14 years and another was compelled to live in jail along with her minor kids. **Therefore, the manner in which the Trial Court handled the case is not appreciated.**

110. *Ex consequenti*, the judgment and sentence passed 23-12-2010 passed by 2nd Additional Judge, Khandwa to the Court of IVth Additional Sessions Judge (Fast Track), Khandwa in S.T. No.117/2009 is hereby **set aside.**

111. The appellant Bhuribai is on bail. Her bail bonds are hereby discharged. She is no more required in this case.

112. The appellant Surajbai is in jail. She be released immediately.

113. The office is directed to immediately send a copy of this Judgment along with the record to the Trial Court for necessary information and compliance.

114. The appeal succeeds and is hereby **allowed.**

(G.S. AHLUWALIA)
JUDGE

(VISHAL MISHRA)
JUDGE

Arun*