

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 7 OF 2002.

WITH

CRIMINAL REVISION APPLICATION NO. 6 OF 2003.

CRIMINAL APPEAL NO. 7 OF 2002.

State. ... Appellant.

Versus

1. Sanjay Thakran,
r/o 4-4, Vibhavnagar,
Agra, Uttar Pradesh.
2. Mrs. Anjani Thakran,
r/o 4-4, Vibhavnagar,
Agra, Uttar Pradesh. ... Respondents.

Mr. Sirish Gupte, Senior Counsel as Special Public Prosecutor with Ms. Winnie Coutinho, Additional Public Prosecutor, Mrs. Rabinder Sabarwal, Mr. Subodh Desai, Mr. John Fernandes and Mr. Amol Patankar, Advocates for the Appellant/State.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondent No. 1.

Mr. Satish Manshinde with Mr. Gopal Kanekar, Advocates for the Respondent No. 2.

CRIMINAL REVISION APPLICATION NO. 6 OF 2003.

Shri Subhashchandra Nanda,
residing at A-1/22,
Sector 8 Deepali Rohini,
New Delhi.

Versus

1. Sanjay Thakran,
r/at Plot No. 2,
Ganeshpuri, Housing
Board Colony, Mapusa.
2. Mrs. Anjani Thakran,
r/at Plot No. 2,
Ganeshpuri, Housing

Board Colony, Mapusa.

3. State of Goa. ... Respondents.

Mr. Subodh Dessai and Mr. John Fernandes, Advocates for the Applicant.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondent No. 1.

Mr. Satish Manshinde with Mr. Gopal Kanekar, Advocates for the Respondent No. 2.

Ms. Winnie Coutinho, Additional Government Advocate for the Respondent No. 3/State.

Coram : R.J. KOCHAR AND
P.V. HARDAS, JJ.

Date : 30th September 2003.

J U D G M E N T (PER HARDAS, J.)

The dead body of Priya alias Kavita Nanda was discovered on the Vagator Beach, on 28th February 1999. The dead body of her husband Vikas Nanda was discovered on the Benaullim Beach, also on 28th February 1999. The two places where the dead bodies were discovered are at a distance of nearly 50 to 60 kilometres from each other. Priya and Vikas Nanda were married on 22nd January 1999. After their marriage, they proceeded to Vaishno Devi to seek the blessings of the Goddess. From

Vaishno Devi, after staying at Delhi for some days, the newly married couple proceeded to Mumbai. After staying in Mumbai for two days destiny brought them inexorably to Goa. The hand of fate brought them to Goa but it was the hand of man which snuffed their lives at Goa after a few days. The State, being aggrieved by the Judgment of the IInd Additional Sessions Judge, Panaji, dated 9th January 2002, in Sessions Case No. 24 of 2000, acquitting the respondents/accused for the murder of Vikas and Priya, has filed the present appeal.

2. The facts as are necessary for the decision of this appeal are set out hereunder:-

On 28th February 1999, P.W.38 P.S.I. Sandesh Chodankar, who was attached to the Anjuna Police Station, received information from the Anjuna Police Station that P.W.2 Charles Mills had filed a report at Exhibit 15 that a dead body of an 'unknown female' was found at the Vagator Beach. On the basis of the said information, P.W.38 P.S.I. Chodankar registered UD No. 5 of 1999 under Section 174 of the Criminal Procedure Code and visited the scene. He secured the presence of P.W.3 Satchit Nayak and another panch witness and drew the panchanama of the scene, which is at Exhibit 17. In the presence of two panchas, the inquest panchanama of the dead body of the unidentified female, at Exhibit

107, was drawn. On 1st March 1999, P.W.26 Dr. Silvano Sapeco, who is working in the Department of Forensic Medicine, conducted the postmortem. He found (1) red bruise 20 cms. diameter on left mid upper arm; (2) red bruise 1 1/2 cms. diameter on right inner aspect of upper third region of thigh; (3) red bruise 1 1/2 cms. diameter on left mid thigh at inner aspect; (4) red bruise 1 1/4 cms. diameter on right mid lower leg at calf region and (5) red bruise 1 1/4 cms. diameter on left mid lower leg at calf region. He also found plenty of beach sand particles present within lumen of larynx and trachea and bronchioles. He opined that death was due to asphyxia as a result of drowning in the beach sand waters. The postmortem report of the dead body of Priya is at Exhibit 80. Meanwhile on 5th March 1999 P.W.4 A.C. Duggal, who had retired as General Manager of Union Bank of India, Mumbai, arrived at Goa and lodged a complaint, at Exhibit 21. In the said complaint, it was stated that his nephew Vikas Nanda, aged 26 years, was married to Priya, aged 23 years, on 23rd January 1999. they had left Mumbai to go to Goa on 25th January 1999 by bus and were staying in Seema Guest House, Ribandar. The report further stated that he was informed by the Manager of the Seema Guest House that Priya Nanda had checked out from the hotel on 27th February 1999 at about 11.40 p.m. accompanied by another person having stout built, bald from front, with

a fair complexion. They had come to the Seema Guest House in a white maruti car with Delhi registration. The report also expressed an apprehension that since the dead bodies of the couple had been found at places nearly 60 kilometres away from each other, the newly married couple must have been lured by some disgruntled mischievous element, who had done away with them for their ornaments, as all the ornaments of gold were missing. P.W.38 P.S.I Chodankar, therefore, registered an offence Vide Crime No. 33 of 1999 under Sections 363, 302 read with 34 of the Indian Penal Code.

3. On the next day P.W.38 P.S.I. Chodankar recorded the statement of P.W.5 Kishan Valecha, brother of deceased Priya Nanda and on 7th March 1999, recorded the statement of P.W.6 Amit Banerjee, receptionist of Seema Guest House. Meanwhile, on 28th February 1999, inquest panchanama, at Exhibit 85, in the presence of P.W.27 Valley D'Souza, was drawn regarding the dead body of Vikas Nanda. On 1st March 1999 postmortem examination on the dead body of Vikas Nanda was conducted by P.W.31 Dr. Avinash Pujari, attached to the Hospicio Hospital, Margao. He noticed the following injuries:-

(1) Abrasion red and fresh of size 6 x 4 cms. on right side face over cheek below outer end of lower

eyelid.

(2) Abrasion red and fresh of size 2.5 x 1 cms. on the nose in the mid line below the bridge of nose.

(3) Abrasion red and fresh 5 x 3 cms. on left side face below lower eyelid over maxilla.

(4) Abrasion red and fresh 3 x 2 cms. on back over right side scapula above spine.

4. He opined that all the injuries were caused by hard and rough object and were antemortem in nature. he opined that the cause of death was asphyxial death due to drowning in water. His report is at Exhibit 93. It appears that since viscera had not been preserved, a second inquest panchanama on the dead body of Vikas Nanda, at Exhibit 87, in the presence of P.W.28 Nelson Noronha, was drawn. The second postmortem was conducted, by P.W.32 Dr. E.J. Rodrigues, on 5th March 1999. He noticed the following injures:-

(1) Abrasion reddish and fresh of 6 x 4.5 cms. present on upper outer part on right side face between outer orbital margin, 2 cms. in front of right tragus of ear and extending on outer part of right cheek bone.

(2) Abrasion reddish and fresh of 2.5 x 1 cms. placed vertically on the ridge of nose.

(3) Abrasion reddish and fresh of 5 x 3 cms. on left side upper part of face 2 cms. in front of left tragus of ear extending upto left outer orbital margin and also on outer part of left cheek bone.

(4) Abrasion reddish and fresh of 0.5 x 0.5 cms. one cm. above outer end of right eyebrow.

(5) Abrasion reddish and fresh of 0.5 x 0.5 cms., 1.5 cms. above outer end of left eyebrow.

(6) Abrasion reddish and fresh of 3 x 2 cms. upper middle back of right shoulder.

(7) Abrasion reddish and fresh of 2 x 1.5 cms., upper back of left shoulder at acromial process region.

5. He opined that all these injuries were antemortem in nature and were caused by blunt surface. In respect of the injuries from nos. 8 to 13, noted by him in the report, he opined that they were postmortem in nature. The cause of death, according to him, was asphyxia as a result of drowning in water. Viscera was

preserved for chemical analysis. The report of the second postmortem is at Exhibit 95.

6. A flat belonging to the respondents/accused at Sapana Residency, Colva, was sealed under the Orders of the Civil Court. P.W.38 P.S.I. Chodankar, therefore, on 14th November 1999, vide Exhibit 108 Colly, applied to the Judicial Magistrate, First Class, Margao, for issuance of a search warrant in his name, authorising him to take search of the said flat in the presence of the bailiff of the Court. The Judicial Magistrate, First Class, Margao, by his Order, dated 17th December 1999, at Exhibit 108 Colly, directed that the bailiff of the Court shall accompany P.W.38 P.S.I. Chodankar and, in the presence of two respectable panchas from the locality, the seal of the Court shall be opened and inventory of the movable articles and fixtures found in the flat shall be made in the presence of the panchas. The flat shall, thereafter, be re-sealed/locked and the bailiff shall file a report to the Court. Accordingly, P.W.38 P.S.I. Chodankar, on 17th December 1999, in the presence of P.W.1 Ereckeo Fernandes and one Ibrahim Shaikh, took a search of the flat No. B2 F3 at Sapana Residency, Colva, and attached the passports of the respondents and their two children, two visiting cards of P.W.19 Subrato Padhi, visiting card of Iguana Restaurant and one laminated photograph. A panchanama

of the entire sequence was drawn and is at Exhibit 13. The flat was, accordingly, re-sealed.

7. P.W.38 P.S.I. Chodankar moved another application, on 18th January 2000, for conducting search of the said flat in the presence of the father of the deceased Vikas Nanda. Notices were issued and the matter was pending and, on 30th January 2000, in the morning at about 11.05 a.m., he received a message from P.W.39 Dy.S.P. Arvind Gawas that the respondents/accused, who were suspected in the Nanda murder case, were seen somewhere in Agra. On the same day in the afternoon P.W.38 P.S.I. Chodankar accompanied P.W.29 Dy.S.P. Gawas to Delhi and thence from Delhi to Agra. They reached Agra Sadar Police Station, at about 11.30 p.m.. At Agra they were informed by P.W.15 P.I. Navrang Singh that he had arrested both the accused for an offence punishable under the Arms Act and during the house search, one churidhar set, one ladies purse and some newspapers having connection with the case under investigation were recovered by him. P.W.38 P.S.I. Chodankar and P.W.29 Dy.S.P. Gawas interrogated the respondents/accused and were satisfied about their complicity in the crime. On 31st January 2000, P.W.38 P.S.I. Chodankar moved an application before the Chief Judicial Magistrate, Agra for grant of custody of the respondents/accused. The

said application is at Exhibit 109 Colly. The learned Chief Judicial Magistrate, Agra, granted 5 days transit remand and custody of the respondents/accused. On 1st February 2000, both the accused were brought to Goa and they were formally arrested in Crime No. 33 of 1999. The property recovered by the Sadar Agra Police Station were brought alongwith the accused.

8. P.W.38 P.S.I. Chodankar filed an application, dated 3rd February 2000, before P.W.24 Vinayak Alornekar, Special Judicial Magistrate, for conducting the test identification parade of the respondents/accused. The test identification parade was conducted by P.W.24 Alornekar on 7th February 2000 in Court Hall 'A', Panaji. The request letter and the memorandum of the test identification parade held, on 7th February 2000, is at Exhibit 70 Colly. On 8th February 2000, respondent no. 1/original accused no. 1 is alleged to have made a disclosure statement, in the presence of P.W.8 Sanjay Naik and one Alfonso D'Souza, showing his willingness to point out the belongings like clothes and jewellery of the deceased. The said belongings had been kept in flat B2 F3 at Sapana Residency, Colva. P.W.38 P.S.I. Chodankar, therefore, immediately submitted an application to the IIIrd Additional District and Sessions Judge, Margao, on 9th February 2000. The learned IIIrd Additional District

and Sessions Judge, Margao, granted permission and directed that the flat be opened in the presence of the bailiff on 11th February 2000. On 9th February 2000, P.W.38 P.S.I. Chodankar, also moved P.W.24 Alornekar for holding the test identification parade of the articles seized in the crime. Accordingly, P.W.24 Alornekar conducted the test identification parade on 10th February 2000 in Court Room 'A', at Panaji. The memorandum of the test identification parade is at Exhibit 71 Colly.

9. On 11th February 2000, in the presence of Peter Fernandes, a bailiff of the Court and also in the presence of P.W.8 Sanjay and the other pancha, the seal of the Court affixed to the flat was opened and in the presence of the bailiff and the panch witnesses, original accused no. 1 handed over the jewellery consisting of 8 yellow colour metal bangles, 1 pair of ear top and 1 finger ring. The said articles were sealed, seized and taken in possession. The panchanama of the entire sequence of events is at Exhibit 34. Accused no. 1 had also produced a white colour full sleeve shirt, one saffron colour ladies kameez with creamish colour salvar, one green colour sari with blouse, one light cream colour silkish pyjama kurta, one light green colour shining salwar kameez and one black designed full sleeve shirt. All the clothes were put in

a pillow cover and sealed. The application of P.W.38 P.S.I. Chodankar and the Order of the Court permitting him to open the seal of the Court are at Exhibit 112 Colly.

10. During interrogation, on 13th February 2000, original accused no. 2 disclosed, in the presence of P.W.3 Satchit Nayak and one Richard John Paul, that she would point out the goldsmith at Khareband, Margao, to whom she had sold the gold ornaments. The disclosure statement/panchanama is at Exhibit 77. As per the directions of original accused no. 2, the police party including the panchas reached to the shop of P.W.12 Ulhas Lotlikar. P.W.12 Lotlikar produced two bangles having identification mark "RK 22 KL", weighing 23.5 gms. The seizure is evidenced in the latter part of the panchanama at Exhibit 77.

11. On 14th February 2000, P.W.38 P.S.I. Chodankar sent another letter to P.W.24 Alornekar for holding the identification parade in respect of the gold ornaments and clothes. The identification parade was conducted by P.W.24 Alornekar on 19th February 2000 in 'A' Court, at Mapusa. The memorandum of the identification parade is at Exhibit 72 Colly. The viscera was forwarded for analysis alongwith the covering letter at Exhibit 114. P.W.38 P.S.I.

Chodankar filed the charge-sheet on 29th April 2000. After the filing of the charge-sheet, on 22nd May 2000, vide Exhibit 63, in the presence of P.W.20 Premanand Gad, the register of Hotel Seema came to be attached. The said register is at Exhibit 29. At Exhibit 33 Colly are the bills of telephone, etc.. The investigation was, thereafter, conducted by P.W.36 P.I. Naresh Mhamal, who recorded the statements of P.W.14 Calvert Gonsalves on 24th June 2000 and of P.W.11 Dinesh Adhikari on 27th June 2000. He also recorded the statements of P.W.22 Norbert Fernandes, P.W.23 Rosario Albuquerque and, thereafter, filed the supplementary charge-sheet.

12. On committal of the case to the Court of Sessions, the learned IInd Additional Sessions Judge, Panaji, vide Exhibit 7A, framed a charge against the respondents/accused for offences punishable under Sections 120-B, 364, 302, and 392 read with Section 34 of the Indian Penal Code. The respondents/accused denied their guilt and claimed to be tried. The prosecution in support of its case examined 39 witnesses. The defence of the accused is of denial. The learned trial Court on appreciation of the evidence of the prosecution returned the verdict of not guilty and the State, thus being aggrieved, has filed the present appeal.

13. The entire case of the prosecution rests on circumstantial evidence. The learned trial Court has found the following circumstances against the accused, which are:-

(1) Last seen;

(2) Identification of the accused in the test identification parade;

(3) Recoveries of incriminating articles;

(4) Medical evidence and

(5) Motive.

14. In the appeal before us Special Public Prosecutor Mr. Sirish Gupte, Senior Counsel has represented the State. Respondent no. 1 is represented by Mr. S.D. Lotlikar, learned Senior Counsel and Respondent no. 2 is represented by Mr. Satish Manshinde. At the outset, we record our appreciation for the assistance rendered to this Court by the learned counsel.

15. Before we advert to the evidence relating to the various circumstances, which the prosecution

contends to form a complete chain of circumstantial evidence, we may usefully advert to the evidence of P.W.4 Duggal, P.W.5 Valecha, P.W.6 Banerjee, P.W.13 Adhikari and P.W.20 Gad regarding the visit of the deceased newly wedded couple to Goa.

16. P.W.5 Valecha, the brother of deceased Priya alias Kavita Nanda, states that deceased Kavita was married to deceased Vikas Nanda on 22nd January 1999. After her marriage, the name of Kavita was changed to Priya. After their marriage Vikas and Priya went to Vaishno Devi and after their visit from Vaishno Devi, both of them stayed in Delhi for some days and, thereafter, left for Mumbai for their stay with P.W.4 Duggal. They stayed in Mumbai for one or two days and, thereafter, proceeded to Goa for their honeymoon. Before they left Delhi they were requested to phone regularly and inform their whereabouts. For about 4 to 5 days no telephone call was received from them after they had left Mumbai for Goa. P.W.5 Valecha was worried and began to make inquiries about the couple. P.W.33 Subhash Nanda, father of deceased Vikas Nanda, had received a telephone call from Vikas on 26th February 1999. P.W.33 Subhash had asked Vikas Nanda to meet one Subrant Padhi and Vikas had informed him that he had been to meet Padhi, but could not meet him. Vikas and Priya were scheduled to return to Delhi, on 1st March

1999, for celebrating 'Holi' and since they did not come back, P.W.33 Subhash telephoned P.W.4 Duggal, who is the brother-in-law of P.W.33 Subhash and inquired about Vikas and Priya. P.W.4 Duggal promised that he would make inquiries and find out. P.W.33 Subhash also telephoned Subrant Padhi and has asked him whether Vikas had contacted him, but Padhi had answered in the negative. On 4th March 1999 P.W.33 Subhash received a telephone call from P.W.4 Duggal informing him that Duggal was proceeding to Goa and would inform him about the whereabouts of Vikas and Priya. On the same day, in the evening, P.W.4 Duggal informed P.W.33 Subhash that the dead body of his son Vikas was found and requested that they all should come to Goa. P.W.33 Subhash, accordingly, informed P.W.5 Valecha and requested him to go to Goa. P.W.5 Valecha reached Goa on 5th March 1999 and contacted P.W.4 Duggal, who informed him that a dead body was found. He accompanied P.W.4 Duggal for identification of the body to the Goa Medical College. While P.W.5 Valecha was on his way to Goa, P.W.33 Subhash received information that the dead body of Priya alias Kavita was also found. P.W.5 Valecha, accordingly, identified the dead bodies of Vikas and Priya in the morgue of Goa Medical College. On 6th March 1999, the dead bodies of Vikas and Priya were taken to Delhi for performing the last rites.

17. P.W.6 Banerjee was working as hotel receptionist at Hotel Seema at Ribandar. According to him, on 26th February 1999, Vikas Nanda and his wife had checked-in in their hotel, in a room which was reserved for the Union Bank of India as its holiday home. P.W.4 Duggal had arranged for the stay of Vikas and Priya in the said Hotel Seema. They were allotted room no. 216, located on the second floor of the hotel. He has proved the entries in the check-in register at Serial No. 1570, in the register Exhibit 29. Priya and Vikas had checked-in in the hotel at about 11.30 a.m. and at 1.30 p.m. they went in the car driven by P.W.13 Vicent Dias for sight seeing. They returned between 9.00 to 9.30 p.m.. On the next day, that is, on 27th February 1999, both Vikas and Priya again went in the same car at about 12.00 noon for sight seeing. Thereafter Vikas did not return to the hotel but, at about 11.30 p.m., Priya Nanda returned accompanied by an unknown person and checked-out of the hotel. P.W.13 Vincent states about taking the couple for sight seeing trips on 26th February 1999 and, thereafter, on 27th February 1999. He states that Priya was wearing a blue colour skirt and blouse while Vikas was wearing a pant and shirt. He had taken them to Ozran at Vagator. At about 2.30 p.m. Vikas came wearing only an underwear and told him that they had met friends from Delhi. As the car was required by an Officer named Murari, P.W.13 Vincent

returned to Panaji.

18. P.W.4 Duggal came in search of his nephew Vikas to Goa as on inquiries he had learnt from Mr. Murari that the couple had checked-out on Saturday night. On 3rd March 1999, during the late hours, he had been informed by Murari that a dead body of a male person had been found and, therefore, had to rush to Goa immediately. From the Airport he rushed straight to the morgue of the Goa Medical College, where he identified the dead body of Vikas Nanda. He had requested his friend Mr. Murari to lodge a missing report, which is at Exhibit 20. He made inquiries at Hotel Seema, where he was informed that, on 27th February 1999, at about 11.30 p.m. Priya alias Kavita had checked-out alone from the Hotel accompanied by a tall person with a moustache. She had been driven in a white maruti car with Delhi registration. He, accordingly, informed P.W.33 Subhash and then lodged his report at Exhibit 21.

19. From the evidence of these witnesses, the prosecution has established that the newly married couple Vikas and Priya had come to Goa on 26th February 1999 for their honeymoon.

20. We shall now advert to the various circumstances enumerated by us above. We will examine

the evidence tendered by the prosecution.

A - LAST SEEN.

21. In respect of this circumstance the prosecution has adduced the evidence of P.W.13 Vincent, P.W.6 Banerjee, P.W.7 Ganpat Govekar, P.W.11 Adhikari, P.W.14 Gonsalves and P.W.30 Suhasini Govekar.

22. P.W.13 Vincent states that on 26th February 1999 he had taken the deceased couple in the car for sight seeing. On 27th February 1999, at about 1.00 p.m. he had taken deceased Vikas and Priya to Ozran at Vagator. Deceased Priya was wearing a blue colour skirt and blouse. While the couple went to the beach, he waited where he had parked his car. At about 2.30 p.m. Vikas came wearing an underwear and informed him that they had met friends from Delhi. Since the car was required by Mr. Murari, P.W.13 Vincent returned to Panaji. He had informed Vikas that he would not be able to come before 10.00 a.m. on the next day as he wanted to go to Church and attend Mass.

23. P.W.6 Banerjee states that he was working as receptionist in Hotel Seema at Ribandar. On 26th February 1999, Vikas Nanda and his wife Priya had checked-in in the hotel at about 11.30 a.m. and were

allotted room no. 216. He has identified the entry at Serial No. 1570 in the register at Exhibit 29 depicting the arrival of Vikas and Priya. At about 1.30 p.m. in the afternoon both of them had gone for sight seeing and returned to the hotel at about 9.00 to 9.30 p.m.. On 27th February 1999 both of them had again gone for sight seeing at around 12.00 noon. At about 11.30 p.m. Priya had come alone and asked for the room key and told him that she was checking-out of the hotel. Her husband Vikas did not accompany her. P.W.6 Banerjee then asked her as to why she was checking-out at that odd time and she had informed him that she had met some friends from Delhi and she was going to join them. Priya went to her room. P.W.6 Banerjee went to the reception area where the security guard was on duty and had asked him as to how Priya had come to the hotel. The guard informed him that Priya had come to the hotel in a car alongwith a man who had followed her to the room. P.W.6 Banerjee identified accused no. 1 as the person who had accompanied Priya to the hotel. He also noticed a white colour maruti car parked outside the gate of the hotel and had seen one lady with short hair sitting on the rear seat. He has identified accused no. 2 as the said lady sitting in the car. He further states that Priya returned to the reception from her room within 15 minutes and accused no. 1 was carrying her luggage. Priya settled the food bill, which was Rs. 435/-

approximately. The receipt book regarding payment of the bill is at Exhibit 30. According to him, Hotel Seema is located on the bank of River Mandovi at Ribandar. The National Highway abuts the gate of the hotel. The white maruti car was parked outside the gate and towards the right side. There was sufficient light in front of the hotel as also on the road. He has also stated that there is a halogen light in front of the hotel wing. He has admitted to have identified the two accused in the identification parade.

24. In cross-examination he has admitted that he was the only person on duty in the reception of Hotel Seema. There are two hotels of Hotel Seema in one line separated by a gap of about 15 metres. The reception area is located in one building on the ground floor. He has admitted to have referred to Priya Nanda as Mrs. Nanda in his statement to the police. Certain omissions have been proved in his statement regarding Priya telling him that she had met some friends from Delhi and that she was going to join her friends. Similarly another omission was proved that he had gone to the reception area where he had met the security guard and had asked him as to how Priya had come to the hotel and the guard informing him that she had come in a car alongwith a man who had followed her to the room. He has admitted in the cross-examination that he had seen

accused no. 1 while accused no. 1 was passing by the reception counter alongwith the luggage. He has admitted to have stated before the police that when Priya had come back to the reception to pay her bill, one person had passed in front of the reception with luggage and he was walking "by putting his head down". He has also stated not to have seen the accused prior to the identification parade. In the cross-examination on behalf of accused no. 2, he has admitted that the column in respect of the signature of the guest while departing is blank in Exhibit 29. He has also admitted that the distance between the reception counter and the gate of the hotel would be approximately 5 to 6 metres. He has admitted that he had gone from the reception counter to the gate. He has admitted not to have inquired with Priya as to the whereabouts of Vikas. He has admitted that he had seen the accused no. 2 in the car. He has admitted that the window on the left rear seat where accused no. 2 was sitting was drawn down while the others were closed. He has admitted that there was a street light opposite the gate. He has also admitted that there was another tube light at a distance of about 2 metres from the maruti car. He has admitted that his statement was recorded on 7th March 1999 in the hotel. Prior to that, the police had asked him whether he was in a position to give the description of the two persons whom he had identified as the accused and

whether he was in a position to identify them. According to P.W.6 Banerjee, he had given the description and had stated that he would be in a position to identify the two persons. He has, however, admitted not to have given the description of the accused in his statement, dated 7th March 1999.

25. According to the learned Special Public Prosecutor, the evidence of P.W.6 Banerjee clearly establishes that deceased Priya had checked-out of the hotel and, at that time, was accompanied by accused no. 1. Further, according to the learned Special Public Prosecutor, P.W.6 Banerjee has identified accused no. 2 as the lady who was sitting in the maruti car. It is, thus, submitted by the learned Special Public Prosecutor that the fact that the accused were using the white colour maruti car with Delhi registration has been proved by P.W.11 Adhikari and that establishes a connection with deceased Priya checking-out of the hotel and the identification of accused no. 2 as the lady in the said car.

26. We have adverted to the evidence of P.W.6 Banerjee in detail and we have endeavoured to find out if P.W.6 Banerjee had adequate opportunity of observing accused no. 1. According to him, accused no. 1 had walked past the reception counter while carrying the

luggage of deceased Priya. Apart from the fact whether P.W.6 Banerjee was busy in settling the account of Priya, according to us, P.W.6 Banerjee had only a fleeting glimpse of the person who had carried the luggage of Priya. As per the contradiction brought on record, the person who had walked past the reception counter had put his head down. Thus, according to us, in all probability P.W.6 Banerjee had only a fleeting glimpse of the person who had carried the luggage of Priya. It has to be remembered that P.W.6 Banerjee has identified the accused no. 1 in the test identification parade after more than a year of seeing accused no. 1 walking past the reception counter. Since P.W.6 Banerjee had only a fleeting glimpse, according to us, that would not have allowed P.W.6 Banerjee sufficient time to retain the features of accused no. 1 in his memory so as to enable him to identify accused no. 1 in Court. We are, therefore, not impressed by the identification of accused no. 1, by P.W.6 Banerjee, as the person who had carried the luggage of deceased Priya when she had checked-out of the Seema Hotel.

27. According to P.W.6 Banerjee, he had asked the guard as to how Priya had come and the guard had informed him that deceased Priya had come to the hotel in a car. He had noticed a white colour maruti car parked outside the gate of the hotel and had seen a lady

with short hair sitting on the rear seat. Assuming that there was sufficient light for P.W.6 Banerjee to have seen the person who was sitting in the car, the question is whether he had seen accused no. 2 for a sufficiently long time to enable him to identify accused no. 2 in the Court. There was nothing peculiar in the appearance of accused no. 2 or there was nothing peculiar in the manner in which either the car was parked or accused no. 2 was sitting so as to have the features of accused no. 2 imprinted on the memory of P.W.6 Banerjee. He probably had only an innocuous glance at the lady sitting in the maruti car. According to us, there is infirmity in the identification of accused no. 2, by P.W.6 Banerjee, as the lady who was sitting in the maruti car outside the gate of Seema Hotel. The evidence of P.W.6 Banerjee, therefore, does not inspire confidence regarding the identification of accused nos. 1 and 2.

28. P.W.7 Ganpat states that he was residing at Vagator and was doing business of running a hotel and a guest house. The name of his bar is 'Ganesh Bar and Restaurant'. On 3rd March 1999, while he was sitting in the verandah of his restaurant at about 6.45 to 7.00 p.m. a white colour maruti car had come. There were two persons, one lady and a man in the said maruti car. The man got down from the maruti car and had asked his

wife, Geetanjali, who was standing near the gate, whether any room was available on rent. The wife of P.W.7 Ganpat had informed the said person that all the rooms were occupied. He has identified accused no. 1 to be the same person, who had come in the maruti car. He further states that he noticed that his wife was looking frightened on seeing the two persons and had, therefore, asked the reason. His wife revealed to him that she had seen the said two persons 3 to 4 days earlier on the beach. He has stated that the maruti car was having Delhi registration. He has admitted to have identified accused no. 1 in the test identification parade.

29. P.W.30 Suhasini states that she had a shack at Anjuna Beach in the name of 'Shack Bon Ganesh'. She alongwith her husband were running the shack. On 26th February 1999, between 5.00 and 6.00 p.m., one couple with two children had come to the shack. On the same day the shack was demolished and she alongwith her husband were sitting when this couple with children had come. She had served them four cold drinks and the couple sat with them and they were talking in Hindi. One child was handicapped and was incapable of using his hands and, therefore, she had served peanuts to that child by removing the shells, as the child could not do it. She has identified accused nos. 1 and 2 as the

couple, who had come to her shack. The children and accused no. 2 went to the beach. Accused no. 1, who was alone with her, started saying that she was "looking pretty" and that he would give her work and take her in a ship and give her whatever she wanted. He has also asked her whether the ornaments were real or imitation. He had also asked her how much money she had in the bank. Hearing all this, she just kept quiet and told her husband whatever the accused no. 1 asked her. He also told her that they would come on the next day and to prepare some chicken dish. On the next day, that is, on 27th February 1999, between 1.00 and 2.00 p.m., accused 1 and 2 had come alongwith their children. They kept some clothes on the table and went to have a bath. When they were returning, another couple was seen coming alongwith them. On seeing the new couple, P.W.30 Suhasini inquired whether they were newly married couple on their honeymoon. According to her, she had asked this because the wife was wearing reddish colour bangles. The new couple informed her that they were from Delhi. She served the chicken dish but the new couple told her that they were vegetarian. As she had no dal, she went to the shop to purchase it. One child followed her and this child sat in the car having registration no. 'DL 4'. She got suspicious as to why the child was following her and after buying dal. she returned to the shack and prepared dal. The two couples

and the children, after having lunch, went away. Before going they had told her that they would be returning for dinner but they did not turn up. She has stated that the newly married bride changed her clothes from churidhar to a blue colour skirt and blouse. She has admitted that after about a month, the police had shown her two or three photographs and had asked her to identify the persons in the photographs. She had identified the photographs of Vikas and Priya. She has also identified M.Os. 1 and 2 as the blue colour skirt and blouse, which was worn by Priya. She has identified the photographs, at Exhibit 22, as being the photographs shown to her by the police. She has admitted not to have identified the accused in the identification parade as she was frightened. In the cross-examination on behalf of accused no. 1 she has admitted that alongwith her shack there were about 5 to 6 other shacks, which had been demolished by the Tourist Department. She has also admitted that the distance between her shack and the sea would be about 10 minutes walking distance. She has also admitted that the children of the accused were two boys and they were of the age of 20/21 years. In the cross-examination on behalf of accused no. 2 she has admitted that she did not tell anyone about the fact that she had not identified the accused out of fright. She has stated that till today she is frightened of the accused. She has categorically stated that the

registration of the vehicle was "DL 4" and she had noticed the registration number as she had become suspicious of accused no. 1. Omission was proved regarding accused no. 1 asked her whether the ornaments which she was wearing was real or imitation. She has admitted not to have stated in her statement that accused no. 1 had asked her how much money she had in the bank. She has admitted that on being asked their name, the first couple had shown her an identity card, on which the name was written like 'Rane Singh'.

30. In respect of this witness, Mr. Gupte, the learned senior counsel and Special Public Prosecutor has urged that this witness had not identified the accused in the identification parade as she was frightened. Because of the queries made by accused no. 1, she had got suspicious and this conduct of accused no. 1 enabled her to retain the features of accused no. 1 in her memory. Thus, according to Mr. Gupte, the substantive identification of the accused by this witness should be accepted. The learned counsel appearing on behalf of the accused, on the other hand, have stated that the evidence of this witness is of no assistance to the prosecution at all. According to them, firstly this witness had failed to identify the accused in the identification parade, secondly the statement that she had not identified the accused due to

fright is an improvement as she has admitted not to have informed anyone about the fright and thirdly she has given the wrong ages of the children of the accused.

31. According to us, the contention of P.W.30 Suhasini that she had not identified the accused because she was frightened of them, is obviously an afterthought. She has admitted not to have disclosed this fact to anyone else. The accused are also not alleged to have threatened the witness. She has also given the wrong ages of the children of the accused and, according to her, they were aged 20/21 years. In the absence of her failure to identify the accused in the test identification parade, the identification of the accused in the Court by this witness cannot be relied upon. Therefore, according to us, the evidence of this witness is of no assistance to the prosecution in establishing that the deceased couple were last seen in the company of the accused.

32. P.W.11 Adhikari states that he hails from Nepal and had come to Haryana Gudgaon some time in 1993-94. In Haryana Gudgaon he was working with the two accused in their house as a servant. In the year 1998, he had come down to Goa in search of a job. The accused had come down to Goa from Haryana some time in March 1998. According to him the accused had two children,

one a boy and another a girl. The boy is aged 12 to 13 years and the girl 7 to 8 years. He came to Goa on 13th October 1998 and was working for the accused in the bar and restaurant by name 'Iguana Miraj', which was being run by the accused. The accused were also running a hotel by the name of 'Lalita Beach Resort'. He was in service of the accused till 29th March 1999 and, thereafter, started working for the Madras Rubber Factory at Tisk Usgao. He worked in the Madras Rubber Factory for 10 to 11 months and after leaving his job he used to come some time to Colva. During one such visit to Colva, some person had asked him if he knew the two accused and he had replied in the affirmative. He was shown the photographs of a lady and a gentleman by the police and was asked whether he could identify them. He had told the police that he had seen the two persons before. According to him, he had seen the two persons two or three days prior to Holi of 1999 in the hotel of the accused. The said two persons in the photographs had come to the hotel alongwith the accused at about 6.00 to 7.00 p.m.. Accused no. 1 and the man in the photograph and one Calvert were sitting outside the hotel while accused no. 2 and the lady were sitting inside the hotel. He was shown the photograph of deceased Vikas and Priya and has identified them as the same persons who had come to the hotel of the accused. According to him, accused no. 1 had told him to bring a

bag from a white colour maruti car. He had served soft drinks to accused no. 1, Vikas and Calvert. After serving the drinks, he had gone away and when he had come back to the hotel at about 9.00 to 9.30 p.m. he had seen Vikas and accused no. 1 in the hotel. P.W.14 Calvert had left, whom he met while he was coming to the hotel. After some time accused no. 1 and Vikas started walking in the direction of the beach. After about 30 to 45 minutes he saw accused no. 1 alone while accused no. 2 was with Priya. He saw accused no. 1, accused no. 2 and Priya walking away from the hotel Iguana Miraj. The photographs of Priya and Vikas, which were published by the police, are at Exhibit 43.

33. In the cross-examination on behalf of accused no. 1 he has admitted that he was staying in the hotel. The accused were also staying in the same hotel. The accused were staying in Iguana Miraj while he alongwith his family and the other employees were staying in Lalita Beach Resort, which was behind Iguana Miraj. He has admitted that he used to work in the house and also in the hotel. He has admitted that Iguana Miraj was not open for public, being off-season, and apart from the two accused and the deceased couple, nobody was initially present prior to Holi and on that evening. He has admitted that accused no. 1, Vikas and Calvert were sitting outside the restaurant at a distance of 20 to 30

metres while accused no. 2 and Priya were sitting in the bedroom of the accused in hotel Iguana Miraj. He has admitted that he did not enter inside the bedroom but could see them through the glass fixed to the bedroom door. He has also admitted that he did not see deceased couple any time prior to the evening on which he saw them. He has admitted that he used to attend to the accused and their guests whenever his services were required. Contradiction was brought out in his statement that he had left the job with the accused as his wages were not paid by accused no. 1. He has admitted that P.W.14 Calvert is a friend of accused no. 1 but was not his business partner. He has admitted that the person whom he had met in Colva in June 1999 was a police officer with the name something like Mhamal. The talk between him and the police officer went on for about half an hour or 45 minutes. In the cross-examination on behalf of accused no. 2, he has admitted that he did not notice any handicap in both the children but had only noticed that the daughter of the accused was holding her neck in a peculiar manner while walking. He has also admitted that the accused were possessing a Mercedes car, a Ford car and a Ford Jeep while they were at Haryana Gudgaon. He has also admitted that father of accused no. 1 was in the United States and the mother of accused no. 1 used to go to the States every one year or two years. He has admitted

that he does not know to whom the white maruti car belonged. He has admitted that the accused did not possess any four wheeler in Goa and to his knowledge the accused only possessed a scooter. He has also admitted that he had not seen the white maruti car earlier or subsequent except on the evening, 2 to 3 days prior to Holi. He has also admitted that the bag, which he had brought from the white maruti car, at the instance of accused no. 1, contained the clothes of the children. He has also admitted that accused no. 1 and Vikas had gone towards the beach at about 9.30 to 10.00 p.m. but he had not seen accused no. 1 coming from the beach after 30 to 45 minutes. According to him, he had seen accused no. 1 in the hotel after about 30 to 45 minutes from the time he had gone with Vikas. He states that he cannot say at what time the accused left alongwith Priya from the Iguana Miraj hotel. Contradiction at B to B1 brought out in his statement regarding he having seen accused no. 1 using the white colour maruti some times.

34. In respect of the evidence of this witness, the learned trial Court has come to the conclusion that the prosecution has not been able to establish that the photographs of the deceased had been shown to this witness. The learned trial Court also found that the photographs of the deceased as published by the police, at Exhibit 43, differ from the photographs of the

deceased on the record. The learned trial Court had come to the conclusion that since this witness had left the job of the accused, he was inimically disposed towards the accused "and the possibility of his falsely deposing in order to take revenge against the accused persons cannot be ruled out".

35. Mr. Gupte, the learned senior counsel and Special Public Prosecutor, has submitted that the reasons given by the learned trial Court for rejecting the evidence of this witness are totally perverse. This witness in clear terms has deposed about the presence of the deceased couple in the company of the accused. Thus, according to him, the prosecution has been able to establish that, on 27th February 1999, deceased Vikas Nanda was in the company of accused no. 1 and, thereafter, accused no. 1 and deceased Vikas had gone towards the beach. Deceased Priya was in the company of accused no. 2 and had, thereafter, left in the company of the accused. Thus, according to the learned Special Public Prosecutor, the evidence of this witness read with the evidence of P.W.6 Banerjee clearly establishes that the deceased Vikas and Priya were in the company of the accused. The learned counsel appearing on behalf of the respondents/accused have attacked the veracity of the evidence of this witness. According to them, the statement was recorded on 27th June 2000. The statement

was recorded after filing of the charge-sheet in the Court. The prosecution has not explained the delay in recording the statement of this witness. It is further urged that, according to this witness, he had identified the deceased Vikas and Priya as the persons who were in the company of the accused in the month of June 1999 itself. However, no statement of this witness came to be recorded then. His identification after a lapse of more than a year is unbelievable.

36. It is true that this witness has stated that in the month of June 1999 Mhamal had shown the photographs of the deceased to him and he had identified the deceased to be the persons in the company of the accused. However, if one turns to the evidence of P.I. Mhamal (P.W.36), it would be apparent that he had recorded his statement on 27th June 2000. P.W.38 P.S.I. Chodankar has stated that he had filed a charge-sheet in the Court as the period of 90 days was drawing near. He has further stated that, on the instructions of the Special Public Prosecutor then appointed, he had carried out additional investigation. P.W.38 P.S.I. Chodankar has further stated that from 22nd February 1999 till 15th March 1999 he was the Investigating Officer and, on account of his transfer to Cuncolim Police Station, he handed over the investigation to P.W.34 Wilson D'Souza. On his being transferred back to Anjuna Police Station,

he had taken over the investigation from P.W.34 Wilson D'Souza from 28th October 1999. He has further stated that, on 15th June 2000, he was transferred to the CID, Panaji and had handed over the investigation to P.W.36 P.I. Mhamal then P.S.I. of Anjuna Police Station and the supplementary charge-sheet came to be filed by P.I. Mhamal (P.W.36). P.W.36 P.I. Mhamal states that he had recorded the statement of P.W.11 Dinesh Adhikari and P.W.14 Calvert Gonsalves. He has admitted in the cross-examination that he was instructed by the then Special Public Prosecutor to conduct further investigation and he was showing the photographs of the accused persons and deceased persons to the drivers and other persons. He had shown the photographs to P.W.11 Adhikari also and had recorded his statement on 27th June 2000. On behalf of the accused, it was not put to him that he had shown the photographs of the deceased to P.W.11 Adhikari somewhere in June 1999. Therefore, to us, it appears to be an obvious mistake on the part of P.W.11 Adhikari when he states that Mhamal had shown to him the photographs of the deceased some time in June 1999. He has obviously erroneously referred to the year 1999 instead of the year 2000. In respect of the identification of the deceased couple by P.W.11 Adhikari, the identification has to be tested on the touchstone of the opportunity, which this witness had of seeing the deceased couple and the features being

imprinted on his memory. Accused no. 1, deceased Vikas and P.W. 14 Calvert were sitting together for nearly one and a half hours to two hours. Accused no. 2 was sitting in the bedroom alongwith deceased Priya. According to P.W.11 Adhikari, he used to serve both the accused and their guest whenever his services were required. The place where the accused and the deceased were sitting was well illuminated and, therefore, this witness had an opportunity of seeing the deceased. It is true that he has identified the deceased couple after nearly more than a year of having seen them but, the identification of the deceased, on the basis of the photographs, cannot be brushed aside merely on the ground of delay. There is nothing in the cross-examination which would affect the credibility of the statement of this witness that he had an opportunity of seeing the deceased and was able to identify them. Mere delay by itself is no ground and, particularly so, is no ground in the present case to discard the identification of the deceased by P.W.11 Adhikari. The trial Court also, according to us, was not correct in rejecting the evidence of this witness on the ground that there was a "possibility" of this witness deposing falsely against the accused because he was not paid his wages. It had not been suggested to this witness that, on account of non-payment of wages, he was inimically disposed against the accused and was, therefore,

deposing falsely. The evidence of this witness has a ring of truth and the credibility of this witness cannot be affected by fanciful reasons. Therefore, according to us, the evidence of this witness fully establishes that the deceased couple were seen in the company of the accused on 27th February 1999.

37. The evidence of P.W.11 Adhikari is further corroborated by the evidence of P.W.14 Calvert. P.W.14 Calvert states that he was introduced to the accused persons by his friends, namely, Oliver Fernandes and Ralino George. Accused no. 1 had told him that he wanted to start a seven star resort in Goa. That time the accused were searching for land for the seven star resort. Accused no. 1 had telephoned him and had asked him whether he knew one P.S.I. Harish Madkaikar as accused no. 1 was detained in the resort for not having cleared the bills of the hotel. P.W.14 Calvert had informed accused no. 1 that he did not like to interfere in such matters and was subsequently informed that a person from Delhi had cleared the bills of accused no. 1. The accused had thereafter left the Majorda Beach Resort, where they were staying. Thereafter, he had received some telephone calls from accused no. 2. Before their arrival at Goa, accused no. 2 had informed him on telephone that he should inform Ralino George to pick them up from the airport.

The accused after coming to Goa had stayed at William Resorts at Colva. They also told him that they were going to leave William Resorts as the air-conditioner was not functioning. From William Resorts the accused persons shifted to Colva Beach Resort at Colva and he used to meet them at that place also. From the Colva Beach Resort the accused shifted to Lanita Beach Resort (Lalita Beach Resort) at Sernabatim, Colva. He states that the said Lalita Beach Resort belongs to one Lavin D'Costa and his family and he used to meet the accused at the Iguana Restaurant as well as at the Lalita Beach Resort. He states that he got married on 14th February 1999 and the marriage reception was held at Iguana Restaurant. He also states that he used to go to Senarbatim Beach to play cricket everyday and used to meet the accused, their children and their servants. The accused had a girl and a boy. The boy was tall and aged about 12 years while the girl was small aged 6 years and was partly abnormal. He has further stated that somewhere in February 1999 he was introduced by accused no. 1 to Vikas Nanda, while Vikas Nanda was sitting besides accused no. 1 outside the Iguana Restaurant. Accused no. 1 told him that Vikas Nanda is his friend from Delhi and had come to Goa on his honeymoon. Accused no. 1 had also told him that wife of Vikas was inside the Iguana Restaurant. Vikas had also told him that his wife was in the A/C room in the

company of accused no. 2. The name of the wife of Vikas was disclosed as Priya. According to him, he, Vikas and accused no. 1 talked there for about one and a half hours. At that time accused no. 1 and P.W.14 Calvert had wine while Vikas had some soft drink. After that accused no. 1 told him that he and Vikas were going to attend some disco and, therefore, P.W.14 Calvert left for going home at about 9.30 p.m.. He further states that, on 24th June 2000, one police officer was seen showing photographs to the public and asking them whether they had seen the couple in the photographs. P.W.14 Calvert had informed the police officer that he had seen both of them. He has identified the photograph of Vikas. In the cross-examination on behalf of accused no. 1, he has admitted that he does not remember whether he had stated in his statement that he was introduced to the accused by Oliver Fernandes and Ralino George. Similarly he also does not remember whether he had stated in his statement that accused no. 2 was calling on telephone from Delhi. Similarly an omission is brought out regarding the accused staying in William Resorts after coming back to Goa. An omission was also brought out regarding the accused leaving William Resorts since the air-conditioner was not functioning. An omission is brought out in respect of this witness going to play cricket and meeting the accused and their children. An

omission is also brought out regarding accused no. 1 telling him that wife of Vikas was in the Iguana Restaurant in the A/C room. He has admitted that he was with Vikas and accused no. 1 outside the Iguana Restaurant from 8.30 to 9.30 p.m.. He has also admitted that there were no other persons besides them. He has also admitted that there were waiters but did not give the number but the one who was serving them was a Nepali. He has admitted that a case was registered against him at Colva Police Station regarding the assault on the Sarpanch. He has admitted not to have recognised wife of Vikas from the photograph. He has also admitted that there is one criminal case pending in the Court of the J.M.F.C., Margao, on the basis of one complaint lodged by one Agustinho. He has also admitted that there is a crime registered against him at the Colva Police Station for abusing a woman. He has admitted that he had no business relationship with the accused. He was on good terms with the accused. He has denied the suggestion that he was not on good terms with the accused persons. In the cross-examination, on behalf of accused no. 2, he has admitted that he does not recollect as to when last he saw accused no. 2 in Goa but remembers having seen her in June 1999. He has denied as not true that the accused had filed a complaint against him at the Colva Police Station alleging that he had threatened the accused. He has

also denied the suggestion that he, accused no. 1 and Lavin D'Costa were the partners of Iguana Restaurant and that he was harassing the accused as he wanted to take over Iguana Restaurant. He has also denied the suggestion that he has not settled the bill of Iguana Restaurant in respect of his marriage reception. He has admitted that he did not come across any newsitem about death by drowning. He has volunteered that such newsitem regarding finding of dead bodies were many and, therefore, he used to overlook such newsitem. He does not know if the photographs of the deceased were published in the newspaper. He also does not recall if in the magazine the coloured photographs of the deceased were published. He has admitted that he used to visit Colva Police Station from July 1999 to February 2000 since he was the panch of Colva Panchayat. He has denied the suggestion that he was deposing falsely in order to grab the hotel of the accused.

38. The learned trial Court, in paragraph 45 of the Judgment, in respect of P.W.14 Calvert, has held that since P.W.11 Adhikari had stated that the accused were running the Iguana Restaurant as well as the Lalita Beach Resort, P.W.14 Calvert was not telling the whole truth. The learned trial Court in the same paragraph has further held "in such circumstances, the case of the accused persons as far as partnership, etc., cannot also

be brushed aside lightly. P.W.14 may have his own reasons to see that accused persons remain behind the bars and not come to Iguana Miraj.". The learned trial Court, in paragraph 46 of the Judgment, has held that, according to P.W.34 P.S.I. Wilson D'Souza, photographs of the deceased were published for tracing the accused. The 'Appeal' and the photographs of the deceased persons are at Exhibit 101. Therefore, according to the learned trial Court, since P.W.14 had admitted that he reads newspaper, "he must have certainly read that appeal. But, P.W.14 did not inform the police in 1999 that he had seen the deceased Vikas Nanda alongwith the accused no. 1 and at that time wife of Vikas was with accused no. 2.". The learned trial Court further went on to observe that in February 2000 P.W.14 had read a newsitem regarding the arrest of the accused and had failed to inform the police what he knew. In the background of the pending criminal case against him, therefore, the learned trial Court came to the conclusion that P.W.14 Calvert could not be relied upon.

39. The accused no. 1 stated in his statement under Section 313 of the Code of Criminal Procedure that P.W.14 Calvert, accused no. 1 and Lavin D'Costa were the partners of Iguana Miraj and Lalita Beach Resort. This suggestion has been denied by P.W.14 Calvert. According to P.W.14 Calvert, Iguana Miraj and Lalita

Beach Resort belonged to Lavin D'Costa and his family. According to P.W.11 Adhikari, Iguana Miraj and Lalita Beach Resort were being run by accused. Merely on the say of the accused in his statement under Section 313, the learned trial Court, according to us, ought not to have jumped to the conclusion that P.W.14 Calvert was a partner of Iguana Miraj and Lalita Beach Resort. P.W.14 Calvert undoubtedly had the opportunity of observing the deceased Vikas as he was in his company for nearly one and a half hours. In such circumstances, there was enough time for the features of deceased Vikas to have been imprinted on his memory. It is true that cross-examination is not the only method of discrediting the evidence of a witness. Courts are not bound to accept the evidence of witnesses whose testimonies task human credulity for its acceptance even if there is no cross-examination. In the present case the claim of P.W.14 Calvert regarding the identification of deceased Vikas does not appear to us to be incredulous at all although he has identified the photographs of deceased Vikas after nearly one year from the date of the incident. The evidence of P.W.14 Calvert ought to have been tested on the basis of his examination-in-chief, the cross-examination and the overall effect created. If at the close of the cross-examination the witness emerges without any blemish, the witness can be safely relied upon. According to us, the testimony has a ring

of truth which is not at all shaken in the cross-examination. Moreover the testimony of P.W.14 Calvert stands corroborated by the testimony of P.W.11 Adhikari. The testimony of a witness cannot be brushed aside lightly giving fanciful reasons or on surmises. If at the close of the cross-examination, a witness emerges as a truthful witness, the Courts are bound to accept the evidence of that witness, unless the Court finds that the evidence of the witness to be highly incredible. Unless the evidence is intrinsically unreliable and, if it is not shown in the cross-examination to be so, the Court cannot jettison the evidence of a witness on some fanciful grounds. According to us, no proper foundation has been laid for rejecting the evidence of this witness on the ground of animosity. Therefore, according to us, P.W.14 Calvert can be relied upon unhesitatingly.

B - MEDICAL EVIDENCE.

40. P.W.26 Dr. Sapeco performed the postmortem on the dead body of Priya alias Kavita on 1st March 1999. He had found five injuries, which have been referred to by us earlier. All the five injuries were antemortem in nature. P.W.26 Dr. Sapeco had also found plenty of beach sand particles present within lumen of larynx and trachea as well as within bronchioles. There was plenty

of beach sand particles present within the oral cavity also. P.W.26 Dr. Sapeco had opined that death was as a result of drowning in beach sand waters. The memorandum of autopsy is at Exhibit 80.

41. P.W.31 Dr. Pujari had conducted the postmortem on the dead body of Vikas on 1st March 1999. He had noticed four injuries, which have been referred to by us earlier. According to him, all these injuries were caused by hard and rough object and they were antemortem in nature. He had found white fine froth mixed with fine sand particles upto major bronchioles. The stomach was intact of normal size and shape containing about 200 cc of water mixed with brown yellow sand particles. According to him, the cause of death was asphyxial death due to drowning in water. The memorandum of autopsy is at Exhibit 93. A second postmortem on the dead body of Vikas was conducted by P.W.32 Dr. Rodrigues. He had found in all seven antemortem injuries and six postmortem injuries. He has agreed with the opinion of P.W.31 Dr. Pujari as regards the cause of death being due to drowning in water. He has further stated that at the time of the first postmortem it was possible that during that time only four injuries were obvious but at the time of second postmortem, due to lapse of time, it was possible that few injuries which were not prominent during the first

postmortem became obvious during the second postmortem. In response to a question in the cross-examination P.W.32 Dr. Rodrigues had stated that considering the injuries on the back of both shoulders and two injuries on the forehead, one injury on the nose and one injury each on either side of the face, it was more likely that some blunt force was applied on the back of both shoulders and the injuries in the front could be caused by coming into contact with a blunt object during struggle in water.

42. The learned trial Court has held that if this likelihood was known to P.W.32 Dr. Rodrigues at the time of postmortem examination, he ought to have mentioned it in his memorandum at Exhibit 95. The learned trial Court, therefore, held that "the possibility that the above likelihood stated for the first time by P.W.32 in his deposition, is by way of an afterthought to further the case of prosecution to show that the death of Mr. Vikas Nanda is homicidal, cannot be ruled out." In respect of finding out additional injuries in the postmortem by Dr. Rodrigues, the learned trial Court has not accepted the statement of Dr. Rodrigues that since the body of Vikas Nanda was freshly out of water when the first postmortem was performed, certain other injuries became obvious during the second postmortem. The learned trial Court has

observed "But P.W.32 has not stated as to why it is so. Does this mean that if a third postmortem was done after some more days, some more injuries would have become obvious?" The learned trial Court has further observed "P.W.31 did not state that since the dead body was freshly recovered from water, only 4 injuries were obvious and some more may become obvious after some days.". In the cross-examination there is nothing to discredit the statement of P.W.32 Dr. Rodrigues that because the dead body of Vikas Nanda was freshly out of water when the first postmortem was performed by P.W.31 Dr. Pujari, certain other injuries, which were not obvious, became obvious during the second postmortem. Dr. Rodrigues has expressed this only as a possibility. It is true that the evidence of the expert is not sacrosanct and the Courts are not bound to accept the evidence merely because the expert says so. However, there must be some material either inherent by itself or brought by way of cross-examination to discredit what the expert says. In the present case, there is nothing in the cross-examination of P.W.32 Dr. Rodrigues to discredit his above statement. No malafides have been alleged either against P.W.31 Dr. Pujari or P.W.32 Dr. Rodrigues regarding their respective findings in the postmortem report. In the face of the statement of the expert and in the absence of any material to discredit his version, according to

us, the learned trial Court was in error in disbelieving P.W.32 Dr. Rodrigues. The presence of the sand particles in the stomach of Vikas Nanda and the presence of the sand particles in the oral cavity as well as in the lumen of larynx and trachea and within the bronchioles of Priya coupled with the antemortem injuries are strong indications that they had drowned in shallow waters and the sand particles had entered the oral cavity as a result of the efforts of breathing in shallow waters. The presence of antemortem injuries on both the dead bodies would suggest struggle. The admission of P.W.32 Dr. Rodrigues which has been elicited in the cross-examination regarding the injury found on the dead body of Vikas on the shoulders with the head pressed down in the water would also suggest death as a result of drowning in shallow waters. Apparently both the deceased were on their honeymoon and there is no indication in the evidence of the prosecution that they had ever harboured any remote desire to end their lives. The presence of sand and injuries rules out any possibility of accidental death due to drowning. The finding of the two dead bodies on different beaches at a distance of 60 kilometres from each other would also negative accidental death by drowning. The injuries and sand particles clearly indicate that their death was homicidal. They had been drowned in shallow waters with pressure being applied

specially on the shoulders of Vikas Nanda with his head pressed down in the shallow beach waters. Therefore, according to us, the learned trial Court was in error in holding that there was no evidence to infer that death was homicidal. In our considered opinion, the evidence on record strongly suggests that death was homicidal.

C - RECOVERIES.

43. The respondents/accused came to be arrested at Agra. According to P.W.15 P.I. Navrang Singh, in October 1999, the Superintendent of Police Shri Deepam Seth had conducted a meeting in Agra and he had discussed and explained in detail the case of Goa. He had informed about the nature of the crime that had been committed in Goa and the appearance of the accused. Description of the accused was also given as also the description of the two children of the accused. After receiving the information from the Superintendent of Police, P.W.15 Singh contacted his local informants particularly from the area of Taj Mahal and surrounding area and gave them the description of the accused couple. On 30th January 2000, at about 10.45 a.m., one of his informant came to the police station and informed him that the couple whose description had been given were residing in Vibhavnagar, House No. 4, Sector No. 4 and that the local people were saying that this couple

is spending "exorbitantly" without doing any work and the couple was saying that they had come from Goa. P.W.15 Singh recorded this information in the General Diary and passed on this information to his senior Officers. He, thereafter, proceeded alongwith four Sub-Inspectors, one senior Sub-Inspector and other staff as also the informant in the police jeep to Vibhavnagar, Sector 4. The informant pointed out the house of the accused. Police personnel were placed at strategic places surrounding the house. He had approached two or four local persons to assist the police and act as panchas, however, none of those persons agreed to act as panch witnesses. He went and knocked at the main door, which was opened by accused no. 1. Accused no. 1 became nervous on seeing the police, but he questioned them as to what was the matter. P.W.15 P.I. Singh informed accused no. 1 that he wanted to take search of the house and accused no. 1 should tell him whatever he knows and produce whatever he has. The accused no. 1 was stunned for some time and covered his face with both his hands. In the meantime accused no. 2, who is wife of accused no. 1 came there and accused no. 2 was also stunned on seeing the police. Twice or thrice accused no. 2 asked the police officers as to what was the matter. Accused no. 1 went to his room followed by the police party and removed a double barrel gun, which was kept below the mattress on the bed. Accused no. 1 also

removed a single barrel 12 bore gun from a cupboard, which was in the same room. Both the weapons were handed over to P.W.15 P.I. Singh. When accused no. 1 had removed the double barrel gun from below the mattress, P.W.15 P.I. Singh had seen one newspaper at that place. On removing the said newspaper, P.W.15 P.I. Singh saw that it was from Goa containing the photographs of both the accused persons. The said newspaper was entitled "Goa Weekend". P.W.15 P.I. Singh then refers to a confessional statement allegedly made by accused no. 1, but, since the same is inadmissible in evidence, we refrain from adverting to it. Accused no. 2 produced and handed to P.W.15 P.I. Singh a leather bag and a blue colour ladies salwar suit. P.W.15 P.I. Singh seized the newspaper, leather bag and the salwar suit and sealed them with the seal of the police station. A copy of the panchanama was handed over to the accused and, thereafter, returned to the police station. He registered a crime under Sections 25 and 27 of the Arms Act against the accused, since they had no licence for possession of the firearms. The panchanama is at Exhibit 49 and the extract of the General Diary is at Exhibit 50. He has also produced the certified copy of the charge-sheet filed against the accused under the Arms Act at Exhibit 51 Colly. He, thereafter, gave a message to the Goa Police and, on 30th January 2000, in the evening, P.W.38 P.S.I.

Chodankar alongwith P.W.31 Dy.S.P. Gawas came to Agra and obtained the custody of the accused. He handed over the articles, which had been seized and the specimen seal at Exhibit 52. He has identified both the accused as well as M.O.4 the bag with a golden chain and the blue colour salwar suit.

44. In the cross-examination he has admitted not to have mentioned in the recovery memorandum about the nervousness of accused no. 1 on seeing the police. He has also admitted that when he had gone to the house of the accused, the father of deceased Vikas Nanda was not present with them. He has denied the suggestion that he did not request independent persons to act as panch witnesses. He has also admitted that he does not remember the date of the newspaper. On seeing the dupatta, he has admitted that there is embroidery on the dupatta, which he has described as "saphed chamakla". He has denied the suggestion that he had arrested both the accused on 29th January 2000 near the STD booth at Agra. He has also denied the suggestion regarding the use of any third degree method. In the cross-examination, on behalf of accused no. 2, he has admitted that, when he proceeded to the house of the accused, his intention was only to make inquiries. In the cross-examination he has also stated that about four to five constables were alongwith him when he had gone

to the house. He has also admitted that he told the accused to take his personal search and the search of others, as they had entered the house, but the accused did not take their search. It may be mentioned that the panchanama evidencing the seizure shows the presence of lady constables.

45. P.W.24 Alornekar had held the test identification parade on 10th February 2000 in respect of the identification of the purse and the salwar suit. According to him the P.S.I. had handed over to him three sealed parcels, two of which contained dummy articles and the third contained the articles for identification. He found that the lady purse contained four gold chains and put them inside the purse, since the other purses were not having similar chains. P.W.33 Subhash, father of deceased Vikas Nanda, correctly identified the purse as belonging to his daughter-in-law Priya alias Kavita Nanda. He has also identified the salwar suit. P.W.5 Valecha, brother of Kavita, also identified the purse but however wrongly identified the salwar suit as belonging to his sister Priya alias Kavita Nanda. The memorandum of the identification parade is at Exhibit 71 Colly.

46. According to P.W.33 Subhash, there is no special identification mark either on the salwar suit or

on the purse. He has also admitted that those items are freely available in the market. P.W.5 Valecha has admitted in the cross-examination that he had seen Priya leaving for Vaishno Devi carrying the purse. In the cross-examination he has also admitted that he has identified the purse because he had seen Priya using it on three or four occasions. The identification of the purse and the salwar suit, according to us, is an extremely weak piece of evidence. The witnesses do not claim to identify either the purse or the salwar suit on the basis of any identifying marks. Despite the absence of any special identifying marks, a person who uses the article himself may be in a position to identify it. But, in the absence of any special identifying marks, it is difficult for other persons to identify the articles. Therefore, according to us, the evidence, in respect of the identification of the purse and the salwar suit, is not satisfactory and the said articles cannot be said to be identified as belonging to Priya Nanda.

47. We shall now advert to the evidence in respect of the other discoveries. P.W.38 P.S.I. Chodankar stated that, on 17th December 1999, under the search warrant of Judicial Magistrate, First Class, Margao and in the presence of the bailiff of the Court and two panchas, he had conducted the search of the flat of the accused at Sapana Residency, Colva. As per the report

at Exhibit 108 Colly submitted by P.W.38 P.S.I. Chodankar to the Judicial Magistrate, First Class, Margao, passports of the accused including those of their children, visiting cards and photographs came to be seized. According to P.W.38 P.S.I Chodankar, as he wanted to find out whether the accused were involved in this case and to trace them, therefore, he did not attach any valuables or other articles, which were in the flat. According to him, he was not sure to whom they belonged and also as there was a civil litigation pending in the Court.

48. P.W.39 Mariano Pereira, the bailiff in whose presence the flat was searched, on 17th December 1999, states that he had submitted a report, at Exhibit 112 Colly, in which he had mentioned about the valuables that were in the flat. He, however, states that some valuable were not mentioned by him in the report. During cross-examination he has admitted that he had been directed by the Court to make a list of all the movables found in the flat. He has categorically stated that there were no gold ornaments in the flat but, there were various articles like of gold in one box, which was in a suitcase. The said box was full of articles. He has further stated that he had confirmed by taking out all those articles in the box that there was no gold ornament in that. He has further stated that he had

checked all those articles in the box in the presence of P.W.38 P.S.I. Chodankar and the two panch witnesses. Curiously he does not refer to the presence of any bangles in the said box in the suitcase. P.W.38 P.S.I. Chodankar also in his examination-in-chief does not refer to finding any bangles in the flat. He further admits as correct that in the report of the bailiff (Exhibit 112 Colly) there is no mention of clothes and the jewellery box. Curiously the report of the bailiff in respect of the search carried out on 17th December 1999 is dated 1st December 1999. It is also signed by the panchas. There is no explanation whatsoever forthcoming for this apparent error in mentioning the date. P.W.38 P.S.I. Chodankar states that the bailiff has prepared the report in a casual manner and has forgotten to mention about the jewellery box and the clothes. P.W.38 P.S.I. Chodankar has further admitted in the cross-examination that in the panchanama, at Exhibit 13, in respect of the search of the flat, on 17th December 1999, he has not described any gold ornaments. He has further admitted that the statement of P.W.33 Subhash, father of Vikas Nanda, was recorded in June 1999 by P.W.34 P.S.I Wilson D'Souza and during investigation it was disclosed that the bangles worn by Priya had a distinct identification mark "RK 22 KL". He has further admitted that on 17th December 1999 he did not check the jewellery whether there was the mark "RK

22 KL" on the bangles. P.W.1 Ereckeo is the panch witness in respect of the search of the flat on 17th December 1999. According to him, two police Officers, the two panchas and an Officer of the Court were present. The door of the flat was locked with three locks and there was also a metal chain around the lock. According to him, the locks were cut with the help of a hacksaw blade but, even thereafter, the door could not be opened as there was a latch inside. They noticed a small window with broken glass panes and one of the police, with the help of a screwdriver, removed the screws of the grill of the window. One policeman went inside, opened the latch and, thereafter, they all entered the flat. He then refers to the seizure of the passports, visiting cards and photographs. He then states that clothes and jewellery, which were also found in the flat, were, however, not attached. In the cross-examination he has admitted that the said window/ventilator was wide enough to allow a person to gain entry in the flat. After the search, the flat was then re-sealed by putting new locks. Exhibit 13 is the panchanama. In the said panchanama, there is a reference that there were three big suitcases full of clothes and artificial jewellery in the room. A very curious approach seems to have been adopted by the Investigating Officer as the panchanama discloses that after the search two new locks were put and the new

locks were sealed by using a Re. 1/- coin, as the seal of the Court was not available. Thus, the statement made by P.W.39 Pereira, the bailiff of the Court, that there were no gold ornaments, appears to be borne out from the recitals of the panchanama at Exhibit 13, where it was stated that there were only artificial jewellery. No care seems to have been taken of recording the description of the artificial jewellery, which was found in the suitcases. Admittedly P.W.38 P.S.I. Chodankar was aware that deceased Priya was wearing bangles with a distinctive mark "RK 22 KL". A reference ought to have been made whether there were bangles in the suitcases as ultimately, whether they were artificial jewellery or real jewellery is a matter for the goldsmith to decide. However, neither P.W.38 P.S.I. Chodankar, P.W.1 Ereckeo nor P.W.39 Pereira make any reference to finding bangles either in the suitcases or in the jewellery box.

49. After the arrest of the accused, the flat was again searched, after obtaining the permission from the Court on 11th February 2000. P.W.38 P.S.I. Chodankar states that on that day he had proceeded to the flat accompanied by the panchas and a bailiff of the Court. In the examination-in-chief he does not state as to how the entry was effected in the flat. All that he says is that it was opened in the presence of bailiff and the panchas. The search of the flat on 11th February 2000

was necessitated on account of a disclosure statement alleged to have been made by accused no. 1 expressing his willingness to produce the jewellery and the clothes. The said statement was made on 8th February 2000, in the presence of P.W.8 Sanjay and another panch. Thereafter, P.W.38 P.S.I. Chodankar had applied for permission to the Court, on 9th February 2000 and was granted permission on 11th February 2000. In the cross-examination he has stated that when they went to the flat, on 11th February 2000, there were three locks. According to him, the locks were broken with the help of an iron rod. According to him, as some sealing wax had entered the key hole, the locks could not be opened with the keys. He further corrected himself by saying that the three locks, in fact, did not break but a piece of latch had broken.

50. P.W.8 Sanjay states that, on 8th February 2000, accused no. 1 had disclosed in his presence that he would show the gold bangles and the clothes kept in the flat at Margao. According to him, the bailiff of the Court had also gone alongwith them. He states that there was a lock on the said flat and the bailiff of the Court tried to open the lock after breaking the seal, but, the lock did not open and the key was damaged in the process. According to him, the lock was opened by using a wire. All of them then entered the flat and

accused no. 1 handed over a jewellery box containing a pair of earrings, one ring and eight bangles. He has further stated that in addition to the jewellery, two shirts, two salwar kameez, one blouse and a sari and a blouse were also handed over by accused no. 1. All the clothes were put in a pillow cover and were sealed. In cross-examination he has admitted that accused no. 1 removed the jewellery box from the drawer of a table in the inside room. Accused no. 1 had brought the suitcase from the inside room and, thereafter, had handed over the clothes. The panchanama of the search of the flat on 11th February 2000 is at Exhibit 34. After initially recording the disclosure statement of accused no. 1, the panchanama proceeded to describe the actual seizure. The recitals in the panchanama stated that the bailiff of the Court tried to open the locks with the keys, but the locks did not open and then "one iron rod was inserted to open the locks. But, instead of opening the lock, the piece of latch is broken and then the chain is removed and the latch is also removed. Then it is found that the door contains body lock. Hence as there is no key of the body lock the grills are removed and after removing the broken glasses one person is lowered and the lock is opened.". Thus, it would be seen that the recitals in the panchanama speak about effecting entry in the said flat after removing the grill fixed to the window/ventilator. In fact, as per

the panchanama, at Exhibit 34, on the second occasion also entry was effected in the similar manner as on the first occasion. However, the evidence of P.W.38 P.S.I. Chodankar and P.W.8 Sanjay is completely contradictory to the recitals in the panchanama. The window/ventilator after effecting entry, on the first occasion, was never sealed. Thus, though seals were put, the flat was easily accessible by removing the grills. Even otherwise, the seal of the Court was not put on the locks but what was put was the impression of a Re. 1/- coin. On the second occasion, after the seizure, the impression of Rs. 5/- coin was put. The property that was seized from the flat was also sealed not with the seal of the police but with the impression of Rs. 5/- coin. All this casts a doubt on the evidence of the prosecution in respect of the seizure of the ornaments and the clothes at the instance of accused no. 1. The evidence, to say the least, is wholly unsatisfactory and leaves enough room for an inference of planting to be drawn. A kurta pyjama stated to be belonging to Vikas is said to be identified by P.W.33 Subhash. According to us, since the seizure of the bangles and the clothes have not been proved, the identification of the clothes and the bangles does not merit any consideration.

51. According to P.W.38 P.S.I. Chodankar, on 13th

February 2000, accused no. 2 made a disclosure statement, in the presence of P.W.3 Satchit, that she would point out the goldsmith at Khareband, to whom she had sold the ornaments. The disclosure statement is at Exhibit 77. Accused no. 2 then took the police and the panchas to the shop of P.W.12 Lotlikar, who produced two gold bangles having identification mark "RK 22 KL" weighing 23.5 grams. P.W.3 Satchit, who was re-examined by the Court in respect of this panchanama states that after recording the disclosure statement of accused no. 2, they went in a jeep to Margao to the shop of P.W.12 Lotlikar. The Jeweller produced the bangles and handed over to P.W.38 P.S.I. Chodankar. The panchanama of the entire sequence of events was drawn and is at Exhibit 77. The said two gold bangles are M.O.1. In the cross-examination he has admitted that his wife is a police constable and in February 2000 was working at the Mapusa Police Station. He has admitted to have acted as panch in two drug cases.

52. P.W.12 Lotlikar states that accused no. 2 had told him that she wanted to sell two gold bangles weighing approximately 23.5 grams. There was a mark on both the bangles "RK 22 KL". Accused no. 2 had also brought a necklace of gold and one finger ring for sale. According to him, he had asked accused no. 2 as to why she was selling those jewellery items and she had

informed him that she was in need of money as the restaurant was not doing well. According to him, he had paid accused no. 2 Rs. 12,400/- for the two bangles, Rs. 3,200/- for the necklace and Rs. 1,200/- for the gold finger ring. Since the gold bangles were in good condition, he did not melt the same. He had handed over the two gold bangles to the Police, on 13th June 2000, in the presence of the panchas and accused no. 2. In the cross-examination he has stated that he does not recall if he has maintained record of the purchase of the two gold bangles, necklace and ring. He has stated that he always maintained a record of articles purchased and sold by him. He had volunteered to produce the book where he maintained such records. Despite being given an opportunity, he could not produce any record. In the cross-examination, on behalf of accused no. 2, he has admitted "I had the records and the bill book when the police had brought A2 Anjali to my shop and attached the 2 gold bangles MO property. "It is true that I was shown A2 in the office of Dy.S.P. Mapusa one day prior to A2 being brought to my shop." (Emphasis supplied). He has denied the suggestion that on that day two gold bangles had been handed over to him and was told that the police would come on the next day with accused no. 2 for its attachment. P.W.29 Dy.S.P. Gawas has denied the suggestion that P.W.12 Lotlikar had met him a day previous to the seizure of the bangles from his shop.

In view of the admission of P.W.12 Lotlikar, since the police had already prior information regarding the bangles being sold to P.W.12 Lotlikar, the seizure of the bangles from his shop cannot be said to a seizure at the instance of accused no. 2. The prosecution has not disclosed the purpose as to why P.W.12 Lotlikar was called a day earlier. The fact of visit of P.W.12 Lotlikar is denied by P.W.29 Dy.S.P. Gawas. The visit of P.W.12 Lotlikar a day earlier to the seizure is shrouded in mystery. Since the evidence is not satisfactory, we cannot hold that the information given by accused no. 2 regarding the bangles being sold to P.W.12 Lotlikar would be admissible as her conduct under Section 8 of the Act. The entire evidence is totally unconvincing and, to say the least, is suggestive of manipulation. The trial Court, therefore, according to us, rightly came to the conclusion and rejected the said discovery.

53. The prosecution has examined P.W.9 Hiralal, a goldsmith, who was working for Kanyalal and Sons in Delhi. He speaks about P.W.10 Ravinder Kumar calling him to his shop and giving him old gold ornaments weighing 72 grams for preparing six gold bangles. According to him, he had prepared six gold bangles and had charged Rs. 100/- as his labour charges. He had proved the receipt, at Exhibit 39. He states about

putting the distinctive mark "RK 22 KL" to mean bangles manufactured for P.W.10 Ramlal Kundanlal of 22 carat gold and KL to mean the name of his employer. P.W.10 Ravinder has also deposed about the order placed by P.W.33 Subhash for six gold bangles by producing old gold. He has also identified the said bangles as being sold to P.W.33 Subhash. There are minor contradictions in the evidence of these two witnesses, but, in view of our findings in respect of the seizure of the gold bangles, we do not propose to advert to those contradictions. Suffice it to say, according to us, that the prosecution has proved that the gold bangles bearing the distinctive mark "RK 22 KL" was prepared by P.W.9 Hiralal at the instance of P.W.10 Ravinder for P.W.33 Subhash. The learned trial Court has rightly ordered the return of the three gold bangles to P.W.33 Subhash.

D - TEST IDENTIFICATION PARADE.

54. P.W.24 Alornekar conducted the test identification parade of the accused on 7th February 2000. The memorandum of the test identification parade is at Exhibit 70 Colly. The learned trial Court in paragraph 50 of the Judgment, relying on paragraph 16(h) of the Criminal Manual, has come to the conclusion that since the two accused were not of similar appearance,

they ought not to have been placed in the same identification parade. What was done by P.W.24 Alornekar was to place accused no. 1 alongwith six dummies and place accused no. 2 alongwith six dummies in the same parade. According to the memorandum, at Exhibit 70Colly, five males who were taken as dummies were between the age 23 to 25 while the age of accused no. 1 was 38 years. Five females were taken as dummies. Four female dummies were in the age of 29 to 30 years, one of 34 years, while the other was 36 years. Accused no. 2 on the date of filing of the charge-sheet was 36 years of age. There is no mention in the memorandum that the dummies and the accused were roughly of the same appearance. The learned trial Court also found that two panch witnesses had been procured by P.W.38 P.S.I. Chodankar himself. The police had in their possession the passports of the accused and, therefore, the trial Court felt that the possibility of the photographs on the passports being shown to the identifying witnesses could not be ruled out. For all these infirmities, the learned trial Court rejected the identification of the test identification parade. We agree with the learned trial Court and, according to us, the reasons for rejecting the evidence of the test identification parade by the trial Court cannot be faulted.

E - MOTIVE.

55. The prosecution has alleged that the accused were short of funds. P.W.14 Calvert cites an example where the accused were detained in Majorda Beach Resort for not having cleared their bills, which were cleared subsequently in Delhi. The best evidence in respect of this would have been the employees of the Majorda Beach Resort. Similarly the prosecution has not attempted to trace out as to who was the person who had paid the bills. Prosecution has examined P.W.21 Savio Cruz, who states that a bill for Rs. 10,000/- was pending to be paid by the accused. Again no documents, like bill or a notice issued in respect of the said bill, has been produced by the prosecution. P.W.22 Nobert Fernandes also says that the accused had not paid him the motorcycle hire charges of Rs. 10,000/-. P.W.23 Rosario Albuquerque has deposed that the accused had stayed in his hotel from October to December 1998 and had paid only Rs. 11,000/- as against a total bill of Rs. 30,000/-. In the cross-examination he has admitted that the register of the hotel was attached. However, that has not been referred to during his evidence. He has also not produced any document to show that the said amount of Rs. 19,000/- was outstanding. P.W.25 Abdul Matin has stated that the accused had purchased electrical goods from his shop worth Rs. 45,000/- and

the cheque for the said amount, which was issued by the accused no. 1, bounced. A Civil Suit has also been instituted, which is going on. P.W.37 Major Tom Luis has stated that he had advanced Rs. 1,00,000/- on behalf of the Pepsi Company for the purchase of one computer and air-conditioner in the restaurant at Senarbatim. According to him, the accused have not refunded that amount to the Company, though they had purchased one air-conditioner and a computer. Accused no. 2 has produced certain documents to show that she had regularly received foreign remittances. Thus, the evidence does not overall suggest any motive for the commission of the crime and in particular, it does not suggest that the accused, who were running short of funds, had committed the offence. Even otherwise, if the other evidence in respect of commission of the offence is convincing and credit-worthy, the absence of evidence of motive is not necessarily fatal to the prosecution.

56. The prosecution has also faintly submitted that the accused after commission of the crime were absconding. The presence of the accused in Goa has been deposed to by P.W.7 Ganpat after couple of days of commission of the offence. P.W.14 Calvert has also deposed of the presence of accused no. 1 and his children in Goa in the beginning of June 1999. There is

hardly any evidence in respect of the abscondence of the accused. Even otherwise, flight is no evidence of guilt and even an innocent person, when faced with the accusation of a serious offence of murder, is likely to take to his heels. There is no evidence that after commission of the crime, the accused had hastily fled from Goa in order to evade the process of law.

57. We are, therefore, left with the sole circumstance that the deceased couple were seen in the company of the accused couple on 27th February 1999. This fact is deposed to by P.W.11 Adhikari and P.W.14 Calvert. Both of them have unerringly stated that they had seen the deceased couple in the company of the accused. P.W.11 Adhikari further states that at about 9.30 or 10.00 p.m. accused no. 1 and deceased Vikas went towards the shore and after about 35 to 40 minutes he had seen accused no. 1 alone in the restaurant. Thereafter, the evidence is that deceased Priya, who was in the company of accused no. 2 in the air-conditioned room, left in the company of accused nos. 1 and 2. The accused in their statement under Section 313 of the Code of Criminal Procedure have not offered any explanation whatsoever. Silence of the accused can be used as an additional link in the chain of circumstantial evidence. Conviction can be based solely on circumstantial evidence. The circumstances on which the prosecution

relies on should be proved and the circumstances should be of conclusive nature. The proved circumstances should form a complete chain and the circumstances so proved should exclude every hypothesis of innocence of the accused and should unerringly point to the guilt of the accused. In the present case, there is a missing link in respect of what transpired after accused no. 1 and the deceased left the restaurant. The dead bodies were discovered nearly 60 kilometres apart on two different beaches. Thus, there is a missing link in establishing the connectivity between the accused and the crime. The circumstances at best raise a suspicion against the accused. Suspicion, however strong, cannot displace proof.

58. Mr. Gupte, the learned senior counsel appearing as Special Public Prosecutor on behalf of the State, has urged before us that the Judgment of the learned trial Court is unsupportable on the basis of the evidence. According to the learned counsel for the State, the learned trial Court has rejected cogent and reliable evidence on the bases of conjectures and surmises and the reasons are, therefore, unsustainable. He has urged that in an appeal against acquittal, the High Court is vested with powers, if it finds that the reasons given by the trial Court are perverse and the view taken is not a possible view on the basis of the

evidence, to interfere and set aside the acquittal. The learned counsel appearing on behalf of the respondents have urged before us that there is no perversity in the reasoning of the learned trial Court and even if some of the reasons do not commend to us, if two views are possible and the ultimate view taken by the learned trial Court is a possible view on the basis of the evidence, this Court should not disturb the acquittal.

59. In an appeal against acquittal, this Court has the powers to re-appreciate the evidence and come to its own conclusion. However, the view taken by the trial Court should not be disturbed unless the view of the trial Court is not a possible view on the basis of the evidence on record. Though we do not commend ourselves to some of the reasons advanced by the learned trial Court, we find that overall there is no perversity in the appreciation of the evidence except in the appreciation of evidence in respect of P.W.11 Adhikari and P.W.14 Calvert. We have reproduced the material evidence of these witnesses and have given our reasons as to why we find them reliable. However, we find on re-appreciation of the entire evidence, the view taken by the learned trial Court does not appear to be perverse. The view of the learned trial Court is a possible view which can be taken on the basis of the material on record.

60. Turning to the adequacy of material for convicting the accused, we find that apart from the evidence of last seen and the absence of any explanation by the accused in their statements under Section 313 of the Code of Criminal Procedure, there is no other evidence, which would conclusively establish the offence against the accused beyond reasonable doubt. The missing link in the connectivity between the accused and the crime, and, though unfortunately a young couple on their honeymoon were done to death, we have to dismiss the appeal.

61. In the result, therefore, the appeal is dismissed. The acquittal of the accused for the offences for which they were charged is confirmed.

(R.J. KOCHAR)
JUDGE.

(P.V. HARDAS)
JUDGE.

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