HIGH COURT OF TRIPURA
AGARTALA

CRL.A (J) NO.67 OF 2015

1. **Sri Bijoy Kanta Tripura,**
S/o Sri Dhanti Kishore Tripura.

2. **Sri Durjyadhan Tripura**,
S/o Sri Danti Kishore Tripura.

3. **Sri Swarna Kumar Tripura**,
S/o Sri Birendra Tripura.

All the Village-Choto Shakbari
P.S.-Manubazar, Dist:- South Tripura, Tripura.

---- Convict-Appellants

Versus

The State of Tripura.

---- Respondent

For the Appellant(s)	:	Ms. R. Purkayastha, Adv.
For the Respondent(s)	:	Mr. Ratan Datta, P.P.
Date of hearing	:	**22.11.2019**
Data of delivery of Judgment & Order	:	**29/05/2020**
Whether fit for reporting	:	**YES**

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE ARINDAM LODH

J U D G M E N T & O R D E R

(**Arindam Lodh, J**)

This appeal has been preferred by all the three convicts named above, questioning the judgment and order of conviction, dated 18.11.2015 and sentence dated 20.11.2015, in case No.S.T.34(ST/S)/2014, passed by the learned Sessions Judge, South Tripura, Belonia whereby and whereunder, the appellants had

been convicted under Sections 302, 201 and 120B read with Section 34 of IPC and sentenced them to suffer R.I. for life and to pay a fine of Rs.5,000/- each, in default to suffer R.I for one year more for the offence punishable under Section 302 read with Section 34 of IPC, and also sentenced them to suffer R.I. for three years and to pay a fine of Rs.2,000/- each, in default to suffer R.I. for three months for the offence punishable under Section 201 read with Section 34 of IPC, and again, sentenced them to suffer R.I. for life and to pay a fine of Rs.5,000/- each, in default to suffer R.I. for one year for the offence punishable under Section 120B of IPC. It was ordered that all the sentences shall run concurrently.

2. The background facts of the case, may be noted in brief, at the outset, are as under:

3. The deceased-Ankiajoy Mog, the husband of the complainant-Smt. Maching Mog, went to Sabroom on 13.02.2014 to lift one SPO driver with his motor bike, bearing number TR-03-4777(Suzuki). While returning on the same day from Sabroom, her husband while reached at Satchand, at about 2015 hours she received information through the mobile phone of her husband bearing number 9615792795 that the headlight of his motor cycle was disturbing and she had been informed that he would be reaching soon. On the same night, at about 2215 hours, while the

husband of the complainant reached near Kalachhara, he again informed her over mobile phone that he would reach after sometime, but, the husband of the complainant did not return home at that night. On the following day, i.e. on 14.02.2014, in the morning, the complainant tried to communicate with her husband over mobile phone, but, the same was found to be switched off. Then the complainant along with other villagers searched the Shakbari and nearby area. During the search, local people and police on 16.02.2014 recovered one pair of *hawai chappal*(white colour) identified to be of her husband in the jungle of Shakbari near NH-44. The complainant suspected that her husband might have been kidnapped with the intention to kill and also to take away the motor bike. Thereafter, she lodged the *ejahar* before the Officer-in-Charge of Manubazar Police Station, narrating the above facts.

4. Accordingly, the case was registered as Manubazar P.S. Case No.19/14 dated 18.02.2014 under Section 364 of IPC. Being entrusted with the case, S.I. Sri Sahadev Das of Manubazar P.S. took up the investigation and as per his prayer, Sub Divisional Judicial Magistrate, Belonia, later on, added Sections 302, 392, 201 and 120B of IPC.

5. The body of the deceased-Ankiajoy Mog was recovered. The motor bike and mobile set of the deceased were also seized on the basis of the disclosure statement made by the accused-persons. Post-mortem was conducted, report of the post-mortem examination, SFSL report, report of analysis of CDR & SDR and IMEI and tower location of the mobile phone of the deceased were collected and the accused-persons were arrested and the weapon of offence used in the crime was also recovered.

6. On completion of the investigation, police report was submitted. On the basis of the police report, the learned Sessions Judge had framed charges under Sections 302, 201 and 120B read with Section 34 of IPC against the accused-Rajyaram Tripura, Swarna Kr. Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura. It was found that the accused-Rajyaram Tripura was juvenile and he was directed to appear before the Juvenile Court, Belonia by the learned Sessions Judge.

7. Accordingly, the case was proceeded against the three accused-persons, namely Swarna Kr. Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura.

To bring home the charges as stated above, as many as 42 witnesses were examined and 53 documents were introduced

along with some material objects. The accused-persons denied all the charges levelled against them and claimed to be tried.

8. After completion of recording of evidence, the accused-appellants were examined under Section 313 of CrPC, where they denied the incriminating materials appeared against them and they pleaded their innocence.

After hearing the arguments of both the sides, the learned Sessions Judge declared the sentence as aforestated.

9. Being aggrieved by and dissatisfied with the conviction and sentence, the appellants preferred the instant appeal before this Court.

10. We have heard Ms. R. Purkayastha, learned counsel appearing for the appellants as well as Mr. Ratan Datta, learned P.P. appearing for the State and scaled the judgment as relied upon by the parties to the *lis*.

11. Supporting the appeal, Ms. Purkayastha, learned counsel submitted that the entire prosecution case depended upon the acceptability of evidence relating to recovery purportedly on the basis of disclosure statements given by the appellants while in custody. Her submission is that the day the accused-persons were arrested, their disclosure statements could have been recorded,

but, that was not done intentionally only to improve and exaggerate prosecution story phase-wise. She argued that there were several circumstances which would show that the prosecution had tried to create evidence. The crux of her submission is that the prosecution has failed to establish its case and has presented a fabricated and concocted case to falsely implicate the appellants.

The prosecution story is that after taking up the charge of investigation, the investigating officer consulted the CDR & SDR department in respect of the mobile phone of the missing person. Investigating agency was able to detect one Rajyaram Tripura linked with the mobile of the missing person. Being asked, the said Rajyaram Tripura disclosed the names of the other appellants. Thereafter, all the four persons were detained and they were interrogated at the police station. They confessed that they committed the crime killing Ankiajoy Mog. The police arrested the four accused-persons on 19.02.2015 at 1.35 am at night. The accused-persons led the investigating team towards the place of occurrence and thereafter, they led the police towards Abhang para jungle, where they had hidden the dead body in a *lunga* class of land. After discovery of the dead body, they further led the police to recover the mobile, bike and *lathi*(the weapon of offence) and other articles of the deceased person.

12. Mr. Ratan Datta, learned P.P. submitted that there was no eyewitness to the incident, but, there is strong circumstantial evidence against the appellants. During investigation, all the four accused-persons had made disclosure statements regarding the concealment of the dead body as well as the bike, mobile phone and weapon of the offence. The disclosure statements were recorded by the investigating officer in presence of the responsible witnesses. Consequently, the dead body, mobile phone, bike and *lathi* were recovered. Learned P.P. further submitted that the articles were recovered as per the leading to discovery statements, which clearly suggested that the accused-persons committed the offence and the case had been proved beyond doubt.

13. Ms. Purkayastha, learned counsel for the appellants in her counter reply completely denied all the allegations brought against them and submitted that the deceased was missing from 13.02.2014, but, the missing diary was lodged on 15.02.2014 and the written *ejahar* was made on 18.02.2014. There is no satisfactory explanation regarding delay to lodge the missing diary as well as *ejahar*.

14. In response, learned P.P. submitted that the trial Court had considered all the materials on record and found the evidence cogent and credible. The disclosure statements and pointing out

memorandum and other circumstances aptly proved the guilt of the accused-appellants beyond doubt.

15. Indisputably, the prosecution case was set in motion on the basis of GD Entry dated 15.02.2014 which was transmitted to Manubazar PS on 16.02.2014 disclosing that one Ankiyajoy Mog was missing. Vide Manubazar GDE No.515 dt. 16.02.2014, SI Sahadev Das(PW-41) started searching and found one *hawai chappal* lying near Chota Sakhbari jungle. On his call, Maching Mog, the wife of Ankiyajoy Mog came to the spot and indentified the said *chappal* as that of her husband, which was seized by a seizure list(*Ext.-P/2)* in presence of Apha Mog(PW-1) and Neo Mog(PW-4). On 18.02.2014., Maching Mog lodged a written *ejahar* alleging that her husband Ankiyajoy Mog might have been kidnapped. After registration, PW-41 being endorsed took up investigation. After CDR & SDR analysis in respect of mobile number of the missing person the name of one Rajyaram was detected to be linked with the said mobile. On that night itself PW-41 went to the house of Rajyaram Tripura and on being asked he disclosed the names of Swarna Kumar Tripura, Bijoy Kumar Tripura and Durjyadhan Tripura. He detained all the four persons for interrogation. During interrogation they confessed that they committed the crime. They were arrested at night at 1.35 am on 19.2.14. Four mobiles belonging to the said

accused persons were seized(*Ext.-26 series*). On identification in course of trial those mobiles were marked *Exts.M.O.(iv) series*. In the morning on requisition, PW-39, Subrata Banik, the Executive Magistrate came to Police station when in his presence and in the presence of other witnesses including the officer-in-charge of the PS, the investigating officer i.e. PW-41 recorded the disclosure statements(*Exts.-27 series*) of all the four accused persons wherein they disclosed as to why, where and how they committed the murder; where they hid the dead body; how it was carried on and the whereabouts of weapons of murder and other related articles like bike, mobile, etc. of the deceased. Thereafter, the accused persons led the police officials and other persons including a videographer(PW-12), firstly, towards the place of occurrence. Sketch map of the PO as PO-1 along with index were prepared (*Exts.28 and 29* respectively). Blood stained mud was seized from PO-1(Ext.-30). Thereafter, the accused-appellants led the team towards Abhangpara jungle and showed the dead body in a *lunga* class of land which was hidden and covered by a gunny bag and grasses. The police seized the gunny bag and also some blood stained grass and muddy soil from that place by preparing a seizure list(Ext.-31). After recovery of the dead body inquest(*surathal*) over the body was conducted and a report thereby was prepared(Ext.-32). Site map was prepared and identified as PO-2(Ext.-33) along

with the index thereof(*Ext.-34*). On that spot itself IO had examined and recorded the statements of four witnesses. Thereafter, the team along with the accused persons returned back to PS when the IO had prepared the pointing out Memorandums(*Exts.-35 Series*) in respect of recovery of the dead body of Ankiyajoy Mog in presence of the witnesses where they put their signatures. Body was sent to the hospital for post-mortem examination. At 1330 hours IO had seized CDR & SDR of mobile No.-8413876327 containing 20 numbers of pages along with details of IMEI numbers(*Ext.-36),* which were kept in the judicial docket. Being identified, said CDR & SDR are marked as Ext.- MO(v) Series.

16. The accused persons were forwarded to the Court of SDJM with a prayer for six days police remand and for adding Section 302/392/201 and 120B of IPC which were allowed. After post-mortem examination, wearing apparels and viscera of the deceased were sent through a constable which were seized by preparing a seizure list(*Ext.-37*). CD cassette from the videographer who videographed the leading to discovery was also seized and being identified during trial it was marked as *Ext.-M.O.(iii).* The seizure list was marked as *Ext.-P/2/2(A).* Witnesses were examined.

17. In the similar manner, on 20.2.2014 being interrogated on the basis disclosure statements bike and mobile phone of the deceased were recovered from the place where those were concealed.

18. PW-42, Krishnadhan Sarkar took over the charge of investigation from PW-41 being endorsed by the O/C of the PS. He engaged secret source. He interrogated the accused on 26.2.2014 when they disclosed about the weapon of offence and it was a "*lathi*"(hard stick) by which they killed the deceased Ankiyajoy. The accused persons led the team to those hidden places wherefrom PW-42 recovered the *lathi*(weapon of offence) and a branch of tree by which they had carried away the body of the victim to conceal in a jungle.

19. The disclosure statements(*Exts.-27 series*); the pointing out memorandums(Exts.-35 Series); the papers relating to mobile no.8413876327(Ext.-36), mobile no.- 9615792795 belonging to the deceased Ankiyajoy Mog inserted and used by Rajyaram Tripura, one of the accused persons and conversation with other co-accused through the same mobile of the deceased; are of relevance for they gave the leads that solved the murder mystery discerningly connect the accused persons, the appellants herein with the crime in question.

20. It is at this juncture, reminded us the submission of the learned counsel for the appellants that the information by way of disclosure statements having been made under police custody tantamount to confessional statements, therefore hit by Section 162 of CrPC as well as Sections 24, 25 and 26 of the Evidence Act and inadmissible in evidence. According to the learned counsel, only the discovery part may be admitted to evidence under section 27 of the Evidence Act. She further submitted that the learned trial Court committed serious error to convict the appellants on the information supplied by the accused in police custody.

21. Before we elucidate and elude the evidence on record in detail we would like to examine the legal position on relevance and admissibility of this evidence.

22. Criminal cases are set in motion on the basis of report of commission of offence committed by person or persons. In some cases there is direct evidence and some are based on circumstantial evidence. Investigation agencies undertake investigation and arrest the offenders, collect the relevant incriminating evidence. When there is no clue the Police after bringing the suspects in their custody interrogate them to unearth the truth. During interrogation if they commit any offence they inform the police about the details of the crime and on their inputs the investigation agency proceed,

make arrest, nab the culprit/culprits involved in the crime, recover the victim and other articles or weapon/s used in the crime as the case may be.

23. Here, in our opinion, if the information supplied by the accused in custody of the police of committing the offence is summarily rejected in the guise that those are statements amount to confessions within the meaning of section 24 of Evidence Act being made in police custody, then, perhaps the entire scheme of investigation would be meaningless. This leads the court to do the most arduous and complex task of evaluation which part would be legally admissible*. In a case based on circumstantial evidence and discovery of facts the information furnished by the accused should be split up- that part of the information which leads distinctly or immediately to the discovery of facts and that part of it which does not in itself lead to any discovery. The former is admissible under the scheme of section 27 of Evidence Act being that finding or discovery of facts having confirmed the accused's statements relating to those facts, that portion at least cannot have been false. As to the rest, it is strictly excluded as coming within the purview of Sections 24, 25 and 26 of the Evidence Act which suffers the rigour of statements being self-incriminatory or confessional nature made to the police.* For instance, we can remember an observation of

Beaumont, CJ in ***Bhika vs. R, AIR 1943 BOM 458*** wherein he explained the law in the following manner:

> *"This court has pointed out over and over again that a statement that the accused has committed a murder does not fall within the category S. 27 because it is statement not required to lead up to the production of the property. It is quite enough to say that he would show the property belonging to the deceased".*

24. Now, if we look into the entire scheme of Chapter XII of the Code of Criminal Procedure, then, we may notice that Section 162 of CrPC of 1898 has been redrafted in the CrPC 1973 without any change in meaning except the addition of Explanations which is reproduced here-in-below, for convenience:-

> *"**162. Statements to police not to be signed— Use of statements in evidence.—**(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*
>
> *Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict*

such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub- section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

25. A plain reading of the language of the said provision clearly crystallizes that a statement made to a police officer under section 162 is excluded *but would not exclude incriminatory conduct on an accused decrypted and discerned. The section debars the court from relying on such statement made to police officer in custody, but, not the evidence relating to the conduct of the accused prior to the commission of offence, at the time of occurrence and thereafter, divulged and disseminated by the accused when confronted or questioned by the police officers. Thus, the conduct of the accused plays a very vital and significant role in*

criminal trial, particularly, when the prosecution as well as the court to proceed with the veracity of circumstantial evidence.

Section 8 of the Evidence Act reads:

> *"**8. Motive, preparation and previous or subsequent conduct.—**Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.*
>
> *The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.*
>
> *Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.*
>
> *Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.*
>
> *Illustrations*
>
> *(a) A is tried for the murder of B.*
>
> *The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.*

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the Will of A.

The facts that, not long before the date of the alleged Will, A made inquiry into matters to which the provisions of the alleged Will relate, that he consulted vakils in reference to making the Will, and that he caused drafts or other Wills to be prepared of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 Rupees", and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157."

Here, we find the relevance of Section 8 of the Evidence Act. The conduct or act of the accused are not dealt with Section 27 of the Evidence Act and does not deal with the conduct or any act of the accused which are relevant under Section 8 irrespective of the fact whether such conduct was or was not the result or inducement by the police(***Emperor vs. Nanua, AIR 1941 Allahabad 145***).

The word "*conduct"* was explained by the Court as under:-

"Conduct" may in certain circumstances include statements as well as acts, but in doing so it still retains the difference between an act and a statement. The difference between a statement and an act is in our opinion clear. A statement must consist of words, be they spoken, be they written, or be they spelled out, as would be done by a mute person who spells out words on his fingers, and we are inclined to think that even words would not always be statements, as for instance, if a person recited the numbers from 1 to 10, if one considers a statement in the sense used in S.162, Criminal P.C. Acts however exclude words and in our opinion cannot be

translated into words. For instance, if a person points out a place it is impossible to say whether had he spoken he would have said "look there" or "dig there" or "you will find there…" or "I have buried there…" or "I have committed such and such a crime". We are unable to hold therefore that the fact that in the present case the appellant, by taking in his hands certain articles and handing them over, made a statement much less can we find that he made a statement which amounts to a confession. If he also stated anything whatsoever we do not know what he stated, for none of the witnesses who have given evidence about this say that the appellant made any statement whatsoever. We come to the conclusion therefore that the Full Bench decision of this Court which refers to statements only has no application in the present case and that S.8, Evidence Act, applies. From the fact that the appellant went to two different places and that from each of those he took into his possession property that was with the deceased at the time of her murder and handed it over we infer that he knew that those articles were in those two places."

26. Further, a careful reading of the said provision along with the illustrations appended thereto articulates that conduct of a party, both antecedent and subsequent in reference to a proceeding or reference to any issue or relevant fact, is relevant, if such conduct or act influences or is influenced by the same related fact in issue or relevant fact[***Ratilal Mogabhai Vasava vs. State of Gujarat, 2008 CRI. L.J. 4016(4020)(Guj-DB)***; ***A. N. Venkatesh vs. State of Karnataka, AIR 2005 SC 3809***]. Further, unless any act or statement forms part of same transaction, it will not be admissible in evidence[***Gagan Kanojia vs. State of Punjab, (2006) 13 SCC 516(524)***]. Thus, where

inculpatory information or other clues are revealed by the accused, evidence of the investigation officer to this effect would be admissible under Section 8 of the Evidence Act, when the said fact is corroborated by a third person for the facts testified by the public witnesses would relate to the conduct of the accused. Further, the information in regard to that unravel facts would relate to the conduct of the accused, which were till then unknown to the investigation officer and which could not have been known, but for such information coming from the accused when adequately corroborated and proved by the public witnesses, then only it would come within the ambit of section 8 and can be relied to prove the accused's complicity. However, evidence of conduct when led would carry credence depending on the facts including the nature of confirmation and background facts, as is the case of Section 27 of the Evidence Act. Probative value and weight are to be measured depending on the factual matrix of each case.

27. *Sarkar on Law of Evidence, 18 the Edition, 2014, Vol.-1, at p. 311*, has explained the distinction between Sections 8 and 27 of the Evidence Act by way of an illustration in the following manner:

Where an accused takes the investigating officer and the Panchas to the dealer from whom he purchased weapon of murder

the information is inadmissible under Section 27 but the evidence of the investigation officer and the Panchas that the accused had taken them to the dealer as corroborated by the dealer is admissible under Section 8 as conduct of the accused. The evidence of the circumstance, that an accused led the police officer and pointed out the place where stolen articles or weapons which might have been used for the commission of offence were found hidden, would be admissible as conduct under S.8 of the Evidence Act. In our discussion in the preceding paragraphs we have already excluded the entire disclosure statement except the portion which we feel would be admissible under Section 27 of the Evidence Act or conduct which would be admissible under Section 8 of the Evidence Act. We would like to travel and examine more elaborately about the legal position regarding admissibility with reference to the two Sections of the Evidence Act for the reason that the application of the said two provisions keeping in mind the bar under Section 162 of CrPC sometimes creates enough space to confuse the mind of the court.

28. Firstly, we would like to remember the observation made in the judgement of the Privy Council in ***Pulukuri Kottaya v. Emperor, AIR 1947 PC 67*** which was followed in ***K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788*** and

re-iterated in the case of ***Anter Singh v. State of Rajasthan, (2004) 10 SCC 657***[scc. p.665, para. 17] that it can seldom happen that information leading to discovery of a fact forms the foundation of the prosecution case. It was one link in the chain of proof and the other links must be forged in a manner allowed by law.

29. The judgement of ***Pulukuri Kottaya***(supra) is still regarded as *locus classicus* for interpretation of Section 27 of the Evidence Act in several cases. It will therefore be worthwhile at the outset, to have a swift glance at the section in brief and be reminded of its requirements. It speaks:

> *"27. How much of information received from accused may be proved.—*
>
> > *Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."*

The object of making a provision in Section 27 is to permit a certain portion of the statement by an accused to a police officer admissible in evidence whether or not such Statement is confessional or non-confessional. It is now well-settled that Section 27 qualifies not only Section 26 but cuts down the operation of sections 24 and 25 as well. In ***State of Uttar Pradesh v. Deoman***

Upadhyaya, AIR 1960 SC 1125, Hidayatullah J., observed that S.27 "*has rightly been held as an exception to ss. 24-26 and not only s.26*". While dealing with the application of Section 27, the Supreme Court in ***Anter Singh***(supra), had analysed the provision in the following manner:[scc. pp.663, 664 and 665 para 11,12, 13, 14, 15, 16].

> *"11. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 74 IA 65 : 48 Cri LJ 533] in the following words, which have become locus classicus: (AIR p. 70, para 10)*
>
> > *"[I]t is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."*

12. The aforesaid position was again highlighted in Prabhoo v. State of U.P. [AIR 1963 SC 1113 : (1963) 2 Cri LJ 182]

13. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases in the background events proved therein is not always free from difficulty. It will, therefore, be worthwhile at the outset, to have a short and swift glance at Section 27 and be reminded of its requirements. The section says:

> *"27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

14. The expression "provided that" together with the phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered

is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483] .)

15. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kottaya case [AIR 1947 PC 67 : 74 IA 65 : 48 Cri LJ 533] and in Udai Bhan v. State of U.P. [AIR 1962 SC 1116 : (1962) 2 Cri LJ 251]

16. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

30. Thus, Section 27 does not operate to make admissible a confession which would be irrelevant under S. 24. It would make admissible only that part of the confession in consequence of which a fact deposed to was discovered. For example- "*I have kept the said spade concealed in a one roofed hut. If I am taken to that place, I would be able to bring out the aforesaid spade*" was held to be admissible under S. 27[***Tapa Shil v. State of Tripura, 2006***

CRI. L.J. 3984(3986) : 2006 (3) GLT 614(Gau-DB)]. But a confession of murder made to a constable is not all confirmed an accused's saying *'that is the place where I killed the deceased' or when a man says "you will find a stick at such and such a place, I killed Rama with it"*. A police man in such a case may be allowed to say, he went to that place indicated and found the stick, but any statement as to the confession of murder would be inadmissible. Information furnished by the accused must relate distinctly to that fact. Admissibility would obviously not include in its ambit, a fact already known.

31. There was a time when the expression "*fact discovered*" in the section is restricted to a physical or mental fact which can be perceived by senses, and that it does not include a mental fact (***Sukhen v. Crown, 1929 SCC OnLine Lah 141; Rex v. Ganee, Ed. Ganu Chandra Kashid v. Emperor, 1931 SCC OnLine Bom 50***). After the celebrated judgement of ***Pulukuri*** supra, the Supreme Court in ***Udai Bhan v. State of U.P., AIR 1962 SC 1116*** has settled the issue quite fairly that "*fact discovered*" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this. Information furnished by the accused must relate distinctly to

that fact. Admissibility would obviously not include in its ambit, a fact already known.

32. In ***Vasanta Sampat Dupare vs. State of Maharashtra, (2015) 1 SCC 253***, the said provision stood scanned exhaustively and it was held that recovery of the dead body of the deceased at the instance of the accused would be a fact within special knowledge of the accused, and therefore, the said recovery including the recovery of clothes in the said case, were admissible and are relevant evidences as per Section 27 and Section 8 of the Evidence Act relying upon the decision of ***Prakash Chand v. State(Delhi Admin.), (1979) 3 SCC 90***(para 8).

33. In ***A. N. Venkatesh vs. State of Karnataka, AIR 2005 SC 3809***, the Apex Court while interpreting both the Sections had observed [scc. p.3813, para 9]:

> *"**9.** By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand Vs. State*

(AIR 1979 SC 400). Even if we hold that the disclosure statement made by the accused appellants(Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW4 the spot mazhar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act."

34. In ***State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600***, the two provisions i.e. Section 8 and Section 27 of the Evidence Act were elucidated in detail with reference to the case-law on the subject and apropos to Section 8 wherein it was held:

*"**205.** Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous or subsequent conduct. There are two Explanations to the section, which explain the ambit of the word "conduct". They are:*

"Explanation 1.—The word 'conduct' in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. Explanation 1 makes it clear that the mere

statements as distinguished from acts do not constitute "conduct" unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Section 8 deserve special mention:

"(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence — 'the police are coming to look for the man who robbed B', and that immediately afterwards A ran away, are relevant.

***

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant."

206. *We have already noticed the distinction highlighted in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 CrPC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as "conduct" under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . In Om Prakash case [H.P. Admn. v. Om Prakash, (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] this Court held that: (SCC p. 262, para 14)*

"(E)ven apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused."

35. Here, it would be apposite to refer the judgement in ***Ranjeet Kumar Ram v. State of Bihar, 2015 SCC OnLine SC 500***. In this case, on recovery of the dead body of an unknown a F.I.R. was registered at the Fakuli police station. On a missing complaint, a F.I.R. was registered at the Vaishali police station. An accused was arrested in connection with the FIR registered at Vaishali police station and he made a disclosure statement. The leads and clues, led the investigating agency from the Vaishali PS to the Fakuli PS and thereupon the identity of the dead body found prior to the arrest of the accused was ascertained. On the said facts, the Apex Court opined:

> *"19. So far as the recovery of dead body of boy under the culvert between Bhagwanpur and Bahadarpur road is concerned, as noticed earlier, a F.I.R. was registered in (Fakuli OP) P.S. Case No.128/2006 dated 22.4.2006 under Sections 302, 201 IPC read with Section 34 IPC. Though the statement recorded from the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) did not lead to any recovery as admissible under Section 27 of the Evidence Act, their statement led to the disclosure of the details of the dead body and registration of F.I.R. in (Fakuli OP) P.S. Case No.128/2006. If no statement was recorded from the accused, place of the dead body of deceased boy would have remained unknown."*

36. In ***State of Punjab vs. Gurnam Kaur, (2009) 11 SCC 225(228),*** it was held that if by reason of statements made by an accused some facts have been discovered, the same would be

admissible against the person who had made the statement in terms of S. 27 of the Evidence Act.

37. In ***State of Maharashtra vs. Damu, (2000) 6 SCC 269***, wherein the accused had told the police, '*Dipak's dead body was carried by me and Guruji (A-2) on his motor cycle and thrown in the canal,"* the Apex Court treated the statement as admissible because of the recovery of broken pieces of the tail lamp of the motor cycle of the accused holding that the police had thereby discovered that the accused had carried the dead body on that motor cycle to the spot.

38. Here, it will equally be pertinent to note the observations of the Apex Court in the case of ***Mehboob Ali vs. State of Rajasthan, (2016) 14 SCC 640***. In the said case a plea was raised by the accused Mehboob and Firoz that no portion of the disclosure statement was admissible for currency notes were not recovered from them or their possession. In connection with case one Puranmal was arrested and from his possession fake currency notes were recovered. He had implicated and stated that these currency notes were handed over to him by the accused Mehboob and Firoz, who in turn implicated the third accused Anju Ali. Fake currency notes were recovered from said Anju Ali and she identified yet another co-accused Majhar from whose possession fake

currency notes were recovered. Information supplied by Majhar ultimately led to the arrest of Liyakat Ali from whom again fake currency notes were recovered along with some equipments and instruments. Question arose whether the disclosure statement of Mehbood and Firoz leading to the arrest of Anju Ali could be relied, and in that circumstance, it was observed as under:[scc. pp.646, 650 para-15, 20]

> ***"15.*** *It is apparent that on the basis of the information furnished by accused Mehboob Ali and Firoz and other accused, Anju Ali was arrested. The fact that Anju Ali was dealing with forged currency notes was not to the knowledge of the police. The statement of both the accused has led to discovery of fact and arrest of co-accused not known to police. They identified him and ultimately statements have led to unearthing the racket of use of fake currency notes. Thus the information furnished by the aforesaid accused persons vide information memos is clearly admissible which has led to the identification and arrest of accused Anju Ali and as already stated from possession of Anju Ali fake currency notes had been recovered. As per information furnished by accused Mehboob and Firoz vide memos Exts. P-41 and P-42, the fact has been discovered by police as to the involvement of accused Anju Ali which was not to the knowledge of the police. Police was not aware of accused Anju Ali as well as the fact that he was dealing with fake currency notes which were recovered from him. Thus the statement of the aforesaid accused Mehboob and Firoz is clearly saved by Section 27 of the Evidence Act. The embargo put by Section 27 of the Evidence Act was clearly lifted in the instant case. The statement of the accused persons has led to the discovery of fact proving complicity of the other accused persons and the entire chain of*

circumstances clearly makes out that the accused acted in conspiracy as found by the trial court as well as the High Court.

20. *Considering the aforesaid dictums, it is apparent that there was discovery of a fact as per the statement of Mehmood Ali and Mohd. Firoz. Co-accused was nabbed on the basis of identification made by accused Mehboob and Firoz. That he was dealing with fake currency notes came to the knowledge of police through them. Recovery of forged currency notes was also made from Anju Ali. Thus the aforesaid accused had the knowledge about co-accused Anju Ali who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the police hence the statements of the accused persons leading to discovery of fact are clearly admissible as per the provisions contained in Section 27 of the Evidence Act which carves out an exception to the general provisions about inadmissibility of confession made under police custody contained in Sections 25 and 26 of the Evidence Act."*

39. The above lucid ratio is squarely and affirmatively applicable to Section 8 of the Evidence Act, which, we would prefer to rely.

Further, we must remember that where in confession before the investigation officer the accused pointed out the place which was dug out and the dead body of the deceased was recovered, only that part of the confession which led to the discovery under S.27 of the dead body of the deceased was found admissible(***Swamy Shraddananda v. State of Karnataka, [(2007) 12 SCC 288(310)].***

40. It is now well-settled that in a case of circumstantial evidence the prosecution is to link all the circumstances together which leads to one and only one conclusion i.e. the guilt of the accused and to establish it there should not be any break to the link.

A Division Bench of this Court in Case No. ***Crl.A(J) 15 of 2014*** titled as ***Sri Nirmal Deb v. State of*** Tripura(authored by Justice Deepak Gupta Chief Justice, as he then was) had observed that "*This is a case based on circumstantial evidence. The law is well settled that in case of circumstantial evidence the prosecution is to link all the circumstances together to form a chain which leads to only one conclusion i.e. the guilt of the accused. In case there is any break in the link or if there is any chance of somebody else having committed the offence, then the accused cannot be convicted. ....."*.

41. In the instant case, according to us, chain of circumstances starts from when Ankiyajoy the deceased started from his working place after receipt of command certificate from PW-31, S.I. of Police in the M.T. Section, South Tripura. This circumstance has been confirmed by PW-30 and PW-36. PW-36, a guard of UBI, Sabroom deposed that on 13.02.2014 he came to Belonia branch of UBI where he met with Ankiyajoy and told him to

go with his bike to Sabroom. On their Ankiyajoy received the command certificate from Belonia police line and they reached at Sabroom at 2.30 p.m. and got gown near UBI Sabroom on that date, took lunch and Ankiyajoy left. After two days he heard Ankiyajoy was missing. PW-28, a driver of the same police department also confirmed the fact that on 13.02.14 Ankiyajoy came to Sabroom, met with and left at about 2.30/3 pm. After 4/5 days he came to learn Ankiyajoy was killed.

41.1. PW-25, Smt. Machim Mog, the wife of Ankiyajoy in her examination-in-chief confirmed what she stated in the FIR that 13.02.14 Ankiyajoy went to Sabroom and at night at about 10 pm he rang her and informed from his mobile that he reached Kalachara and would be reaching home but on that he did reach. On the following morning she tried to get connected with the mobile of Ankiyajoy but found to be switched off. Thereafter she searched but having found no clue she lodged an FIR on 18.02.14. On 19.02.14 she received the information that the dead body of her husband was found. On 20.02.14 she identified the bike in the Manubazar P.S. She further deposed that 16.04.14 darogababu seized her SIM card by a seizure list where she identified her signature(Ext.6). Thus, till now what we find that after Sabroom, Ankiyajoy on the way to his house had conversed with her wife, PW-25 at about 10

pm on 13.02.14 for the last time. Further, from the depositions of PW-2 PW-3(both are neighbours), PW-4 (brother) and PW-5, a relative–all of them have corroborated the version of PW-25, the wife that they searched for Ankiyajoy to various places. Cross was declined to PW-25. Needles to say, the evidence of PW-25 remains unshaken.

41.2. PW-37, being Officer-in-charge of Baikhora PS deposed that on 15.02.14 the wife Machima Mog, PW-25 informed about missing of Ankiyajoy and accordingly the General Entry no.464 was made in the police station. This circumstance gets link from the statement of SI Sahadev Das(PW-41) when he deposed that while he was posted at Manubazar PS on 16.02.14 they received a radiogram(for short, RG) vide Baikhora PS No.-1917-85 dt. 15.2.14 which was entered into the GD Book vide Manubazar PS No.-515 dt.16.2.14. Thereafter, being undertaken search operation he found one *hawai chappal*. Maching Mog, the wife (PW-25) on call to the spot at Chota Shakabari identified that it was her husband's (Ankiyajoy) chappal. PW-41 seized the same(Ext.P/2 Series/1 (as we said earlier during discussion of evidence of PW-41, first IO, Sahadev Das). PW-1, Apha Mog and Neo Mog(PW-2) have corroborated such seizure during their depositions. The *chappal* of Ankiyajoy being detected led PW-1 to lodge a formal complain on

18.02.14 stating that Ankiyajoy might have been kidnapped by some persons. Based on the said complaint, FIR was registered under Section 464 IPC. During investigation, after consultation with CDR and SDR, the name of one Rajyaram Tripura was detected to be linked with mobile of Ankiyajoy. Being instructed to detain, PW-41 went to the house of Rajyaram who disclosed the names of his associates–Swarna Kumar Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura. All the four persons were detained for interrogation at PS. During interrogation all the four persons confessed that committed the crime and killed Ankiyajoy. This part of confession is not admissible because it does not have any relevance to discovery or recovery of any fact being hit by section 24 of IPC read with section 27 of the IPC. Then, they were arrested at 19.02.14 at 1.35 am. at night. Four mobiles belonging to the said four accused persons were seized by separate seizure lists(*Ext-26 series).*

41.3. In course of trial all the four mobile phones recovered from them have been taken into evidence. The Seizure witnesses, namely Arjun Das(PW-7) and Suman Das(PW-8) have identified their signatures in the seizure lists. Rajyaram Tripura was having the Samsung mobile set(Model–R5) in which Airtel SIM was inserted being no.89911603000020908599 and phone no. was

8413876327(Ext.2 Series and Ext.26 series). Similarly, mobile set bearing phone no.-8974814904 was recovered from Bijoy Kanta Tripura. The mobile set bearing phone no.-9862245049 was recovered from Swarna Kanta Tripura(Ext.26 series and Ext. P-2 series) and Nokia mobile set having phone no. 9862616739 was recovered from Durjyadhan Tripura. The mobile set of the wife of Ankiya joy i.e. Maching Mog(PW-25) was also seized which bears the phone no.-8974091563(Ext.-P/6).

41.4. As we said earlier, the two successive investigating officers, PW-41 and 42 deposed that all articles, belongings, motor bike, weapon of offence including the recovery of the dead body of the victim were made at the behest and on disclosure statement of the accused persons. The leads and clues given by the accused persons by way of making disclosure statements, in our considered view, would be protected and covered under Section 27 of the Evidence Act, for these facts relating to conduct stand independently corroborated and proved, thus confirmed by the deposition of public witnesses as well as official witnesses.

41.5. Let us first see different features emanated in the disclosure statements as well as pointing out memorandums recorded by the investigating officers(PW-41 and PW-42).

Firstly, we have noticed an important feature that the investigating officer recorded the disclosure statements of the four accused persons, separately, after certain intervals where there was a gap of 10 to 15 minutes. In our opinion, this is a correct approach adopted by the investigating officer in recording the disclosure statement in the process of investigation.

Swarna Kumar Tripura, appellant no.3, voluntarily disclosed on 19.02.14 at 0720 hrs that on 13.02.14 at 9-9.30 pm at night he along with Durjyadhan Tripura, Rajyaram Tripura, and Bijoy Kanta Tripura had assembled at Chota Sakabari village near National Highway and made plan that if some bike rider was found to come alone, they would kill him and snatch away the bike and all other goods as well. They were waiting and keeping watch from a turn in the middle of a slope. At about 10.30 pm seeing one bike they came out and when the bike came close to them Bijoy Kanta gave a heavy blow with a lathi in his hand made of a branch of a tree. As a result the bike rider was flung off and tried to resist Bijoy. Then, Dujyadhan, Rajyaram and he himself caught hold of the bike rider and beat him and with repeated blows of lathi by Bijoy he died on the spot. Thereafter, the body was fastened with long branch of tree and they unitedly carried away the dead body and had kept in the lunga of Angapara forest covering body by rotten grass and

sack. He further said that they some blood at place of occurrence which was washed out by sand and water. Thereafter, most important fact Swarna Kumar disclosed that "*If I am taken at Sakabari then I can particularly show the occurrence place of incident and if I am to be taken in the place of that jungle where we had hidden the dead body of the bike rider then I can show the dead body of the bike rider*."

41.6. In the above disclosure statement, we find that information supplied that the appellants—

(i) met at Chota Sakabari village on National Highway;

(ii) conspired to kill any bike rider and snatched away the bike and other articles and belongings;

(iii) beat the bike rider with '*lathi*' and unitedly beat him to death;

(iv) taken away the dead body fastening the same with a branch of tree;

(v) hidden it to *lunga* covering the body with rotten grasses and sack;

though are hit by Section 162 CrPC since the statements are made to the police officer in course of investigation, but, those statements are the evidence of circumstance which carry enough credence to the "*conduct*" of the accused-appellants and would be admissible in evidence under Section 8 of the Evidence Act. And this

"*conduct*" of the accused persons would be relevant if such confession/statement distinctly relate to the fact discovered i.e. if the dead body, weapon of offence used in the crime and all other articles possessed by the victim are recovered from the place or places as per their disclosure statement as stated above. Further, such discovery and recovery must be confirmed and proved by the witnesses. However, it is made clear that as to the words made in the statement in respect of the fact that '*Bijoy Kanta gave heavy blow'* and '*Then Dujyadhan, Rajyaram and I came running and caught the bike rider and started to beat him*', and further the words '*At that time Bijoy Kanta gave him blows repeatedly, and resultantly the bike rider died on the spot'* these words are inadmissible since they do not relate to the discovery of the dead body from the jungle. But this portion of the statement '*If I am taken at Shakabari then I can particularly show the occurrence place of incident and if I am to be taken in the place of incident and if I am taken in the place of that jungle where we had hidden the dead body of the bike rider then I can show the dead body of the bike rider*', these words would be admissible in evidence as saved under Section 27 of the Evidence Act irrespective of restrictions under Sections 24, 25 and 26 of the Evidence Act since now it is fairly settled that the expression "*fact discovered*" includes not only the physical object, but also the place from which it is produced and

the exclusive knowledge of the accused as to this fact, following the principle enunciated in Pulukuri Kottaya case supra and in Udai Bhan supra and the decision of the Apex court in Anter singh Supra. Similar disclosure statements(Ext.-12 series, Ext.27 Series) were made by all the accused persons, including the three appellants herein.

41.7. In the case in hand, PW-41 deposed that disclosure statement of the accused Swarna Kumar was recorded in presence of Executive Magistrate, Lakshabir Jamatia and other witnesses. The said disclosure statement was made by the accused persons for the first time in police custody and it would be evident when PW-41 during his cross-examination denied the suggestion put forth to him that "*It is not a fact that I had definite information from witnesses I examined on 18.02.14 and subsequently I have cooked up the story of leading to discovery and accused persons were shown involved with the proceeding of leading to discovery*". PW-41 deposed that the accused persons took them to place of occurrence. Thereafter, the accused persons led them towards the jungle where they hid the dead body and proceeding further pointed a *lunga* land where actually the dead body was hidden covered with gunny bag and grasses. As per their pointing out, the investigation team discovered the body in the pointed *lunga* and recovered the dead body from

that *lunga* itself. Seizure memo of gunny bag and blood stained grass with mud were prepared(Ext.31). Thereafter, inquest was made(Ext.32). Site map from where dead body was recovered was prepared which is referred to as 2nd PO by the IO(Ext.33) with index (Ext.34). PW-41 at the spot itself examined witnesses present at the spot. PW-41 further deposed that they all returned back to PS and he prepared the pointing out memorandum four in numbers (Ext.35 Series) in respect of recovery of dead body of Ankiyajoy Mog at PS in presence of witnesses and they also put their signatures.

41.8. PW-41 in his deposition further stated that on 20.02.14 in the morning he interrogated the accused persons when they disclosed the place where the bike of the victim was concealed. Their statements(Ext.20 Series/1 series) were recorded in presence of witnesses. All the four accused persons led PW-41 and others towards a lake at Surjyabari and as per their pointing out the investigating team discovered the bike and recovered the same. Seizure memo of the bike(Ext.38) and sketch map(Ext.39) of the place(Ext.-P.O.-III) with index(Ext.40) were prepared. Returning back to PS PW-41 prepared 4 nos. of Pointing out Memorandum (Ext.41 Series). On further interrogation at PS the four accused persons disclosed the place where they concealed the mobile of the deceased. Durjyodhan Tripura, one of the appellants made

statement- *"And I had kept the mobile belonging to the bike-rider concealed inside the straw of the roof in the broken hut belonging to Shyamacherra Tripura of the resident of village- Chota Shakbari, I would be able to take out the said mobile set if I percept going to the spot"*(Ext.14 Series). Accordingly, the accused persons led the team towards the place as Durjyadhan disclosed and on their pointing the police team discovered the place and it was an abandoned hut the roof of which was made of *chhan*(straw) grass and on their further pointing out by finger, the mobile set [Ext.(vi)] was recovered from inside the roof of the abandoned hut as stated above. Seizure memo was prepared (Ext.43). It was also noted in the pointing out memorandum (Ext.15). The seized bike and the mobile were identified by the wife PW-25. The entire operation was videographed. Seizure list (Ext.P/2/3) and 2 nos. Of CD cassettes were brought on record as Ext.MO(vii). Witnesses identified the bike and the mobile in course of trial.

41.9. PW-41 further interrogated the accused persons on 22.02.14. On 24.2.14 they were forwarded to the court after expiry of remand with a fresh prayer for further 5(five) days which was allowed. On 25.2.14 the case docket was handed over to another SI Sri Krishnadhan Sarkar. During cross-examination to a question posed by accused persons, PW-41 had explained that on 19.2.14

after recovery of the dead body he did not proceed for recovery of the bike as the accused persons had to be produced before the court.

41.10. SI Krishnadhan Sarkar deposed as PW-42. He stated that on 26.2.14 he recorded disclosure statement wherein the accused persons disclosed about the weapon of offence and the branch of tree by which the body of Ankiyajoy was carried away to the *lunga* and further said if they were taken to those places they would be able to find out the same. One of such disclosure statement(Ext.46 Series) may be reproduced here-in-below, in verbatim:

> *" Ref: MNB PS Case No. 19/14 dt 18-02-14 u/s 364 IPC and added section 302/201/392/120 B IPC.*
>
> *Date and time on 26-02-14 from 1225 hrs to 1245 hrs*
>
> *Place: Manubazar PS*
>
> *I, Sri Bijoykanta Tripura(21), age- 21 years, S/O- Sri Danti Kishore Tripura alias Sindrai, residence- Chita Sakbari, PS- Manubazar, am stating without any fear and without any pressure on me that 13-02-14 AD last, Thursday at about ten thirty or quarter to eleven at night, I alongwith my accomplices Rajyaram Tripura, Swarnakumar Tripura and brother Durjyadhan Tripura was in standing position on turn over National Highway at Chota Sakbari which I know very well and there, we were under a Krishnachura tree. In that place I along with the said accomplices caused one bike rider to fall on the ground striking his running bike by one thick*

wooden staff and killed him collectively and (.....) and had thrown the said wooden staff in a bush in the vicinity of the said place. I can show that wooden staff if I am taken there. Beside, the long wooden lathi/staff by which the dead body was taken about 3 km from the National Highway towards in the Eastern direction and which was left (by us), if I am taken towards that jungle I can show that."

41.11. Here, again we would have the opportunity to recapitulate the authoritative principle that was encrypted in the earlier part of the judgement about the admissibility of the aforestated information supplied by the accused persons in terms Sections 8 and 27 of the Evidence Act. The first part of the statement upto *"..... by one thick wooden staff and killed him collectively"* are not admissible in evidence in view of the bar under Sections 162 CrPC read with Sections 24, 25 and 26 of the Evidence Act because the information is not related to the discovery of the *lathi/staff*, the weapon of offence. But, the subsequent portion "*had thrown the said wooden staff in a bush in the vicinity of the said place. I can show that wooden staff if I am taken there. Beside, the long wooden lathi/staff by which the dead body was taken about 3 km from National Highway towards in the Eastern direction and which was left (by us), if I am taken towards the said jungle I can show that."* is admissible in Evidence as saved by Section 27 of the Evidence Act. Similar information was supplied by other accused

persons in regard to the place of discovery where the *lathi/staff* were hidden and they together pointed out the place to the police, particularly PW-42.

41.12. PW-42, the second IO deposed that "*The accused persons led us towards the West from National Highway at a distance of about 8 meter where they have kept the weapon of offence i.e. lathi. As per their showing I have recovered the lathi from that place and seized the said lathi in presence of witnesses meter occurrence....*". Similarly, he deposed that "*The accused persons have shown the place where they had kept the branch of tree by which the dead body being carried by them*." Seizure memo (Ext.50) was prepared at the place itself. Site map and Index of the PO were taken into evidence as Ext. 51 and Ext. 52 respectively. Later on, after returning to PS four numbers of pointing out memorandums were prepared (Ext. 53 series).

41.13. Thus, from the aforesaid evidence what we have gathered:

From the deposition of PW-41(the first IO) it has come to the fore that on 18.02.14 at night the police department after CDR & SDR analysis in respect of mobile number of the missing person i.e. the deceased, the name of Rajyaram was detected to link with the mobile of the deceased. PW-42(the second IO) has

deposed that on 04.03.14 on further analysis/consultation of CDR, SDR and IMEI number he detected that the SIM card belonged to Rajyaram Tripura was inserted to the mobile set of deceased Ankiyajoy Mog, and further revealed that Rajyaram made contact with his associates, namely, Swarna Kumar Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura through the mobile of the deceased using his own SIM card. The relevant entries of the calls as made by the accused persons and the use of the mobile of the deceased Ankiyajoy as referred to by PW-41 and PW-42 in their respective testimonies are reproduced as under in a tabular form:

CALLING NO	**CALLED NO**	**CALL DATE AND TIME**	**DAY**	**EMEI NUMBER**	**IMSI NUMBER**
9615792795(Cell Phone of deceased **Ankiyajoy Mog**)	**8974091563**(Cell phone of **Mahing Mog**-wife of deceased)	13-02-14 20:58	Thursday	356422022622680 (**EMEI of deceased Ankiyajoy)**	404331170441235
do	do	13-02-14 21:10	do	do	404331170441235
do	do	13-02-14 21:19	do	do	do
do	do	13-02-14 21:40	do	do	do
do	do	13-02-14 22:04	do	do	do
do	do	13-02-14 22:14	do	do	do
do	do	13-02-14 22:22	do	do	do

Calling No	**Called No**	**Date**	**Time**	**Dur (s)**	**Cell1**	**Cell 2**	**Call Type**	**EMEI**	**EMSI No**	**Type**
9862245049 (cell no. of accused **Swarna Kumar Tripura**)	**8413876327** (cell No. of accused **Rajyaram Tripura**)	11-Feb-14	16:10:33	32	48_19213	48_19213	IN	353565056074 20 (**original EMEI No. of accused Rajyaram Tripura**)	404160302090859	PRE

9862245049 (cell no. of accused **Swarna Kumar Tripura**)	**8413876327** (cell No. of accused **Rajyaram Tripura**)	14-Feb-14	8:15:24	32	48_20372	48_20372	IN	356422022622680(**EMEI of deceased used by accused Rajyaram Tripura after incident**)	404160302090859	PRE
9862245049	8413876327	14-Feb-14	17:11:51	0	48_20372	-	SMT	356422022622680	404160302090859	PRE
8413876327	9862245049	14-Feb-14	20:17:53	38	48_20372	48_20372	OUT	356422022622680	404160302090859	PRE
9862245049	8413876327	14-Feb-14	21:35:30	16	48_20372	48_20372	IN	356422022622680	404160302090859	PRE
9862245049	8413876327	14-Feb-14	21:40:07	18	48_20372	48_20372	IN	356422022622680	404160302090859	PRE
8413876327	9862245049	15-Feb-14	08:29:31	28	48_20372	48_20372	OUT	356422022622680	404160302090859	PRE
8413876327	9862245049	15-Feb-14	17:55:11	21	48_20372	48_20372	OUT	356422022622680	404160302090859	PRE
9862245049	8413876327	16-Feb-14	16:05:11	0	48_20372	-	SMT	356422022622680	404160302090859	PRE
8413876327	8974814904	17-Feb-14	13:41:05	17	48_20373	48_20373	OUT	353565056074 20	404160302090859	PRE
9862245049	8413876327	17-Feb-14	15:41:54	58	48_20373	48_20373	IN	353565056074 20	404160302090859	PRE
9862245049	8413876327	17-Feb-14	19:52:52	14	48_29962	48_29962	IN	353565056074 20	404160302090859	PRE

Mobile No.9615792795—Deceased Ankiyajoy Mog

Mobile No.8413876327—Accused Rajyaram Tripura

Mobile No.8974814904—Accused Bijoy Kanta Tripura

Mobile No.9862245049—Accused Swarna Kumar Tripura

Mobile No.8974091563—Maching Mog, Wife of deceased

41.14. The above call details conclusively establish that as stated by PW-25, Maching Mog(wife of deceased) that she received last call at her mobile(number-8974091563) from her deceased husband(mobile no.-9615792795) around 22.22 hrs. Another circumstance has been proved in respect of the fact that Rajyaram had inserted his SIM card to the mobile set of Ankiyajoy having

EMEI No.356422022622680 and conversed with another accused Swarna Kumar Tripura time and again after committing the crime.

41.15. Now, it is to be seen whether disclosure statements are supported by other evidence. PW41 and PW-42 in their depositions have said that the accused persons led the places where the dead body, wearing apparels, bike, mobile, the lathi(staff) i.e. the weapon of offence, the branch of tree i.e. the carrier of the dead body were hidden. As per their leads PW-41 and PW-42 have discovered the hidden places. As we said earlier, so long as discovery/recovery is pursuant to statement made by accused the said statement would be admissible in view of Section 27 of the Evidence Act. It is to be noted herein that the dead body and the articles as stated above were recovered only after the places were pointed out by the accused-appellants. The articles and the dead body were found at such places where public cannot have free access. Police personnel, particularly PW-41 and PW-42, have gathered knowledge about these places of hiding of these articles and the body of Ankiyajoy for the first time from the accused persons. There is no scope or any sort of materials brought on record for drawing any reasonable apprehension that the dead body and other articles being planted to rope in the accused-appellants in the crime. Recovery in consequence of information are fortified and

confirmed by discovery of wearing apparels of the deceased, the dead body and other articles used in the crime leads to believe that information and statements are reliable and cannot be false. In this regard, reliance is placed upon the judgement of the Apex Court in Golakonda ***Venkateswara Rao v. State of A.P., (2003) 9 SCC 277***. Furthermore, the hidden places of the dead body and the materials as well connected to the crime are found to be within the exclusive knowledge of the accused-appellants.

41.16. A Division of the Gauhati High Court in the case of ***Narayan Debnath v. State of Assam, 2010 CRI. L.J. 275*** had held that when the accused had himself told the police, on being questioned, that he(accused) had buried deceased's dead body on the bank of his pond, and pursuant to this statement the dead body was recovered, this statement, though amounted to confession, is admissible in evidence inasmuch as the statement, on being acted upon, led to the recovery of deceased's dead body. Presumption was drawn that the accused had buried the dead body of the deceased on the pond of the bank. It would be apposite to refer herein the decision of the Supreme Court in ***Ningappa Yallappa Hosamani v. State of Karnataka, (2009) 14 SCC 582(587)*** had observed that since the dead body of the deceased was recovered in furtherance of the voluntary information furnished by the two

accused persons, the natural presumption, in the absence of explanation by them would be that it was those two persons, who had murdered the deceased and had buried the dead body.

42. In the instant case, the disclosure statements made by the accused persons in consequence of which the dead body and other articles and belongings of the deceased were discovered and recovered are corroborated by prosecution witnesses. PW-1, Apha Mog has deposed that on 16.2.14 the IO has seized the hawai chappal of the deceased. PW-2, Nishi kanta Malla, PW-3 Saifru Mog are the witnesses of the statement the accused persons made and told that they had murdered for robbing bike, money and they showed the place where they had murdered him. The said two witnesses have further said that darogababu seized blood stain soil from the P.O. They identified their signature in the seizure list marked as Ext, 2/1. Thereafter, after crossing the road they went towards eastern side towards Abhangcharra and further went towards a lunga and showed the dead body of the Angajoy (Ankiyajoy Mog). The dead body was inside a jute bag, which, along with blood stained grasses were seized in their presence. They identified their signatures in the seizure list marked as Ext.2 Series/1. The accused were identified in the dock. In cross-examination they denied the suggestion that the accused persons

did not show the place of occurrence. PW-3 is also a witness to the inquest report prepared by IO. PW-4, Neo Mog who is the brother of deceased has deposed that on 13.2.14 his brother was missing and they searched for him. On 16.2.14 one chappal was recovered at Shakbari which was identified by his sister-in-law as the chappal of his brother. On being seized, he put his signature in the seizure list (Ext.P.2 Series/1. He has further deposed that on 19.2.14 the dead body was recovered from the place as was shown by the accused persons who had disclosed their names as Bijoy Kanta Tripura, Durjyadhan Tripura, Rajyaram Tripura and Swarna kumar Tripura. Inquest was prepared where he put his signature which was identified in course of trial(Ext.P4/2). The accused persons were also identified in the dock. In cross-examination, the said witness denied the suggestion that the accused persons did not lead them to show the dead body. He has stated that along with him there were Lafru Mog, Apa Mog and others. PW-5 has also deposed in the similar terms and put his signature(Ext.P.4/3) in the inquest report. PW-6 is the seizure witness of the wearing apparels of the deceased which were shown to him during his deposition and marked Ext. M.O.-1. His signature in the seizure list being identified is marked as Ext.2/1.

43. PW-8, a constable of police has deposed that on 19.2.14 Darogababu has seized a call list from Airtel and also seized four mobiles o from the four accused persons. His signature is marked as Ext.P.2 Series/2. He has further deposed that on 26.2.14 the accused persons took them to Chota Shakabari jungle and showed the lathi used by them for killing Ankiyajoy. He identified his signature in the seizure list as a witness which is marked as Ext.P.2 Series/2. He has further deposed that all the accused persons except Rajyaram Tripura were present on the day of his examination and identified them. PW-24 also is a witness of the recovery of the dead body based on the leads of the accused persons. PW-7, a constable has deposed that 19.2.14 SI Sahadeb Das(IO) seized four mobiles through four separate seizure list where he put his signatures as witness which is marked as Ext. P.2 Series/1. One CD of Sony company produced by the videographer was also seized and his signature is marked as Ext.P.2/1. PW-9 is posted at Sabroom hospital as Dom who acted as helper of post mortem examination. In his presence, wearing apparels of the deceased was seized. His signature is marked as Ext.P.2/1.

44. PW-10, 11, 13 and 14, 22 are the witnesses of discovery and recovery of the bike of the deceased from the lake in consequence of the information and leads of the accused persons

and their joint pointing out. PW-13 and 14 had brought out the bike.

45. PW-15 and PW-17 are the witnesses of the discovery of the place and recovery of mobile set of the deceased from the thatched hut of the abandoned house of one Shymacharan Tripura. The said witnesses also has put their respective signatures in the seizure list(Ext.P.2/1 and Ext.P.2/2). PW-29, the Videographer has deposed that on20.02.14 he videographed the entire episode of discovery of the motor bike and the mobile set of the deceased as per version and leads of the accused persons. He handed over the C.D. Disc to the I/O. He identified two nos. of cassettes(Ext. M.O.-iii Series). PW-29 has identified his signature in the seizure list which is marked as Ext.P.2/2.

46. PW18, PW-19 and PW-20 have deposed that on 26.2.14 in their presence the accused persons have told the police that they murdered Ankiyajoy with the lathi and the dead body was being carried by them by a branch of tree on their shoulders and based on their information and leads the places where the "*lathi*"(Ext. M.O.-2) and the branch of tree were concealed were discovered and recovered. Those articles were seized and they signed the seizure list(Ext.P.2/1 and Ext.P 2/2). PW-19 has deposed that the four accused persons were previously known to him. PW-20 has

identified the *lathi* which measures 3 feet & 8 inches in length. The said *lathi* is marked as Ext. M.O.(II) though it was marked as Ext. M.O.(i) earlier by learned Sessions Judge, Gomati Judicial District inadvertently.

47. PW-32 has deposed that he collected the tower location data of two mobile nos. 8413876327 & 9615792795.

48. PW-39, Sri Subrata Banik, the Dy. Collector & Magistrate posted at Sabroom is one of the most important witnesses who has deposed that on being instructed by SDM, on 19.02.14 he went to the Manubazar P.S. and in presence of him and others the I.O. recorded the disclosure statements of the four accused persons separately and he put his signatures (Ext.12 Series). He has further deposed that "*Accordingly, we proceeded towards Shakabari as per direction of the accused persons by the vehicle of the police. After getting down from the vehicle we went to the spot on foot as per direction of the accused persons and thereafter, all the four accused persons identified a place in a jungle where a dead body was found in a hidden position and thereafter it was recovered as per the place was shown by them"*. He has further deposed that IO has prepared Pointing out Memorandum after recovery of the dead body to which he put his signatures(Ext.13 Series). On 20.02.14 again on the basis of the disclosure statements and as per their leads the mobile

set and bike were recovered. Pointing out Memorandums were prepared separately and his signature being identified are marked as Ext. 14 Series and Ext 15 Series. PW-39 has further deposed that on 26.02.14 again the I.O. has recorded the disclosure statements of the accused persons separately where he put his signatures(Ext.16 Series). As per their statement, they proceeded to the places where they discovered the lath i.e. the weapon of offence and another *lathi* like a branch of tree. Accordingly those were recovered. IO had prepared the Pointing out Memorandums where he put his signatures(Ext.16 Series). In course of trial PW-39 identified the *lathi* which is marked as[Ext.M.O.-(2)]. In cross-examination he denied the suggestion of the defence that the accused persons did not show the dead body, bike, mobile set and lathi as leading to discovery.

49. *A survey of the above evidence brought on record, brings to light that the disclosure statements were made in front of many independent witnesses including in presence of a executive magistrate. The evidence of the investigating officers is well corroborated by their depositions. Keeping consistency with the information, the accused-appellants along with the juvenile accused led the investigating team and other witnesses to the places where they concealed the dead body, weapon of offence and other articles*

and belongings of the deceased. Recoveries were made on their pointing out to those places. The places of concealment are not visited by public. Further, there is no such evidence that the police or any of the witnesses had any knowledge of those places before the leads and clues as provided by the accused persons. It can safely be said that there was none but only the accused persons who had the exclusive knowledge of those places. These are the essential conditions which are required to be fulfilled and in this case, the prosecution has been successfully able to fulfil the essential ingredients to admit and believe the disclosure statements in consequence to which discovery of places and recoveries are made.

50. However, we want to make it clear that Section 27 of the Evidence Act does not lay down any rule or law that the statement made to a police officer should always be in the presence of independent witnesses. Normally where the evidence led by the prosecution as to a fact depends solely on the police witnesses, the courts seek corroboration as a matter of caution and not as a matter of rule. Thus, it is only a rule of prudence which makes the Court to seek corroboration from independent source, in such cases while assessing the evidence of police. *But in absence of any evidence from independent source if the Court is satisfied that the*

evidence of the Police so far and so much so it relates distinctly to leading to discovery is so consistent that it can independently be relied upon then in such cases there is no prohibition in law that the same cannot be accepted without independent corroboration. Our aforesaid view is fortified by the judgement of the Apex Court in ***Praveen Kumar v. State of Karnataka, (2003) 12 SCC 199*** *where it was held as under[scc.p.210, para 21]:*

> ***"21.*** *Section 27 does not lay down that the statement made to a police officer should always be in the presence of independent witnesses. Normally, in cases where the evidence led by the prosecution as to a fact depends solely on the police witnesses, the courts seek corroboration as a matter of caution and not as a matter of rule. Thus, it is only a rule of prudence which makes the court to seek corroboration from an independent source, in such cases while assessing the evidence of the police. But in cases where the court is satisfied that the evidence of the police can be independently relied upon then in such cases there is no prohibition in law that the same cannot be accepted without independent corroboration. In the instant case nothing is brought on record to show why the evidence of PW 33 IO should be disbelieved in regard to the statement made by the accused as per Ext. P-35. Therefore, the argument that the statement of the appellant as per Ext. P-35 should be rejected because the same is not made in the presence of an independent witness has to be rejected."*

51. Here, it would be necessary to further clarify that there may be a circumstance that investigating agency has failed to record the statements made by the accused in writing, in that event

it should be kept in mind that the fact that the accused leads the police to the place or places where the dead body in case of murder, or weapon of offence, or other articles or belongings of the victim/complainant are concealed and brought out are relevant and by that way the discovery statement made by the accused is relevant and admissible both under Sections 8 and 27 of the Evidence Act.

52. Now, coming back to find out the link to the chain of circumstances, it has come to the fore that in course of investigation out of the missing Diary(GDE No.-515) *hawai chappal* of the missing person(Ankiyajoy Mog as identified by his wife,PW-25). After registration of FIR under Section 364 IPC in consultation with CDR and SDR analysis of the mobile phone of Ankiyajoy, the name of Rajyaram Tripura, the juvenile accused was detected, he was arrested, divulged the names of his associates, the appellants herein, all were detained and arrested. On their interrogation, they admitted they murdered Ankiyajoy with the intention to articles from his possession, though, not admissible in evidence, but the conduct has relevance to get the link to the circumstance to the nature and mode of commission of crime as well as the place of murder of the Ankiyajoy under Section 8 of the Evidence Act. They supplied valuable information as enumerated in the preceding

paragraphs. In consequence to the information discovery of the places where the dead body, etc. were concealed and recoveries were made. As we said earlier, the places of concealments were within the exclusive knowledge of the accused persons which points towards the guilt of the accused persons only and none else. The post mortem examination report and the evidence laid in that regard by the Doctors and other witnesses confirm the time of death is before 3 am on 14.02.14. It is pertinent to mention herein that from the call details as stated above the last conversation between the deceased Ankiyajoy and his wife, PW-25 was found to be detected at 10.22 hrs at night on 13.02.14. If we compare the time of last conversation between the deceased and PW-25 with that of the evidence of the doctor in regard to the time of death of the victim, then, the conduct of the accused appellants disclosing the time of assault upon the deceased with the lathi and the carrying of the dead body with a branch of tree like lathi by the accused persons is relevant under Section 8 of the Evidence Act which inferably indicates the complicity of the appellants to the murder of Ankiyajoy by them.

53. Further, the statements made by the accused persons to the police that they met together on the National Highway and chalked out a plan that if any bike rider was found coming alone on

that night, then, they would kill him and rob his bike and belongings, albeit, are inadmissible in evidence in view of Section 162 CrPC read with Section 24 and 25 of the Evidence Act. But when it is found that the act was actually done by the accused persons as per their plan, then, such statements are relevant as part of their conduct and thereby admissible in evidence in view of *Explanation 1* under Section 8 of the Evidence Act because it constitutes both motive and preparation towards the commission of the crime i.e. to murder of Ankiyajojy, the bike rider. In the instant case, PW-2 and PW-3 has categorically deposed that the accused persons told in front of them that they murdered Ankiyajoy for robbing the bike and money. So, the statements made by the accused persons to the police in this regard are corroborated by the evidence of PWs 2 and 3 and such corroborative evidence lends assurance to the evidence with regard to the actual occurrence.

54. Here, we would turn to the post mortem report(Ext. P/10) and the evidence of the doctors to find out the time of death of the victim. PW-34, Dr. Sanjoy Debbarma who conducted post mortem examination along with Dr. Abhishek Barman has deposed that "*Time of death is before 120 hrs from our post mortem examination time*." From the report it is revealed that after receipt of the dead body at 11.30 am they started examination at 1 pm.

and concluded at 3 pm. In the report it is opined that *"time of death is before 12 hrs of the end of post mortem time (3.00 pm of 19/2/14)*". So, the time of death is undoubtedly is before 3.00 am of 14/02/14. From the disclosure statements of the accused persons it has come to light that they saw the deceased bike rider at 10.30 pm on 13.02.14 and gave a blow with the *lathi*. Though, this statement is not admissible in evidence for the reason as aforestated, but, this statement is relevant to the "conduct" of the accused-appellants under Section 8 of the Evidence Act in regard to the timing of the commission of the crime and in this circumstance, we find enough relevance between statement of the accused-appellants and the post mortem doctor, which is quite indicative of the involvement of the accused persons in the commission of the crime where Ankiyajoy Mog, the husband of the complainant(PW-25) was murdered. It would be apposite to refer case of ***Navjot Sandhu*** supra where the Apex Court while interpreting Section 27 of the Evidence Act had observed:

> *"The application of the section is not contingent on the recovery of a physical object. Section 27 embodies the doctrine of confirmation by subsequent events. The fact investigated and found by the police in consequent to the information disclosed by the accused amounts to confirmation of that piece of information, which is distinctly supported by confirmation, is rendered relevant and admissible under section 27".*

55. Further, as we said earlier, in consequence of the information provided by the accused the weapon of offence, the "*lathi*"(Stick) and the carrier of the dead body i.e. branch of tree (bigger of size of wooden stick) had been recovered. According to the accused persons it was that "*lathi*" used by them to assault and murder Ankiyajoy. This information gets support from the medical evidence and the post mortem report. The detailed description of injury is as under:

> *"1. Swelling all over Head.*
>
> *2. Swelling of face loss of upper & lower incisions(4) teeth.*
>
> *3. Nasal Septum Broken.*
>
> *4. Abrasion over (L) side of neck around 7"x2"*
>
> *5. Congestion of Brain bleeding from Both ears & nose & mouth."*

Doctor opined that the cause of death was due to severe head injury following trauma to the face and head by blunt object which is homicidal in nature.

56. Another important feature is that in recovery of weapon of offence at the instance/pointing out of the accused what is important is the knowledge of the accused that the weapon is lying at such place. When the weapon is found from the place shown by the accused his guilty knowledge is established unless he offers an

explanation as to any other source of his knowledge.[Ref: ***State of West Bengal v. Nikhil Chandra Mondal, 2009 Cri.LJ 2744 (2751)(Cal- DB).*** In the instant case, the accused-appellants have failed to disclose any other source of their knowledge of the places of concealment. Hence, their guilty knowledge has been established.

57. Another striking feature, in the instant case, in all the disclosure statements and the pointing out memorandums recorded by the IOs, the accused persons put their signatures which further give an impression of genuinty of the said disclosure statements and pointing out memos.

Question raised before many High Courts and even Supreme Court as to whether absence of signature or thumb-impression on the disclosure statements makes such statements doubtful or creates suspicious circumstances leading the court to discard such statements. Hon'ble Supreme Court in the case of ***Jackaram Singh v. State of Punjab, 1995 Cri.LJ 3992 : 1997 SCC (Cri) 651 : AIR 1995 SC 2345 : 1995 SCW 3485*** initially observed that "*The absence of the signature or the thumb-impression of an accused on the disclosure statement recorded under Section 27 of the Evidence Act detracts materially from the authenticity and reliability of the disclosure statement.*" Relying

upon this judgement a Division Bench of the Karnataka High Court in ***Fellix Joannas v. State of Karnataka, 1998 Cri.LJ 2479*** and the Division Bench of the Madras High Court in the judgement reported in ***(2002) 1 Mad LW (Crl) 145, John David v. Inspector of Police, Annamalai Nagar*** acquitted the accused. Both the Courts faced criticism from Supreme Court. The reason is that the Supreme Court has reviewed its above observation in a *suo moto* review petition and the very same of the Supreme Court has held that the said observation is erroneous. Even though the corrigendum was issued by the Supreme Court by order dated 25.4.1996 indicating that the view of the Supreme Court with reference to the failure to obtain signature of the accused on the confessional statement, has been reviewed and held to be erroneous, the Publishers of the Criminal Law Journal and All India Reporter never published the said corrigendum. The said order dated 25.4.1996 passed in the *suo moto* review petition, unfortunately, was not brought to the notice of the Karnataka High Court and the Madras High Court. As such, the decision of the Karnataka High Court and the Madras High Court as stated supra that the failure to obtain signature of the accused in the confession statement would affect its authenticity and the reliability, cannot be held to be good law, as held by the Supreme Court, while taking the *suo moto* review by the order dated 25.4.1996. A Division Bench of

the Bombay High Court in ***Sunil Namdeo Mane v. State of Maharashtra, 2008 All MR (Cri) 809*** had observed that the wooden logs and iron bars used for beating the deceased were recovered. In the context of the case, the evidence of the home guard posted at police station, as panch witness was believed as there was no enmity between the panch witness and the accused. Conviction of the accused under Section 302 IPC was upheld. However, in our conscious view, in such a case, considering the facts of a case, as a matter of caution, the Courts should look for other reliable evidence.

58. *After careful consideration of the judgement of* ***Jackaram Singh*** *supra, we hold that absence of signature or thumb-impression as the case may be alone cannot be the ground to throw out the evidence laid in regard to the disclosure statement of an accused. If police witness is credible and trustworthy and appears to be consistent to other related evidence leading to 'fact discovered' and recovery of the disclosed facts, then, the authenticity and reliability of such statement should not be doubted for the reason that such disclosure statement has relevance to the fact discovered under Section 8 of the Evidence Act and is admissible in evidence as covered by Section 27 of the Evidence Act. We re-iterate that even in absence of recorded disclosure*

statement, if, for example, stolen articles are recovered at the instance/pointing out of the accused from the place within knowledge, then, such oral information/statement supplied by an accused is relevant to his conduct and is admissible in evidence.

(emphasis supplied)

59. For more clarity, we again emphasise that the statement which is admissible under section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved. In other words the exact information given by the accused while in custody which led to the discovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be produced through evidence. The basic idea embedded in section 27 of the Evidence Act is the doctrine of confirmation by subsequent events[Ref: ***State of Karnataka v. David Razaria, (2002)7 SCC 728 : 2002 Cri.LJ 4127; Bodh Raj v. State of J & K, (2000)8 SCC 45 : 2002 Cri.LJ 4664.***].

60. Here, it would not be irrelevant to again remember that *a 'fact discovered', according to the decision of Pulukuri Kottaya supra, is not equivalent of the physical object recovered/produced,*

and that the fact discovered embraces the place from which the object was produced and the knowledge of the accused as to this fact. Information furnished by the accused must relate distinctly to that fact. Admissibility would obviously not include in its ambit, a fact already known.

61. In the case in hand, we have noticed that in the confessional statement made by Swarna Kumar Tripura and other three accused that while Ankiyajoy was coming as per their collective plan Bijoy Kanta Tripura had given a heavy blow by the lathi he was possessing as a result of which said victim fell down and tried to resist Bijoy Kanta. At the time the three accused persons caught hold of victim-Ankiyajoy when Bijoy kanta made series of severe blows by the said lathi in his hand and Ankiyajoy died at the spot. The said information/statement though inadmissible in evidence but when this statement connects to the nature of injury or injuries suffered by the victim and supported by medical evidence, then, it would be relevant as part of conduct of the accused, their complicity to the murder of the deceased including their guilty knowledge. In the instant case, the statement of the accused in custody if juxtaposed with the medical evidence, then, it would be revealed that the doctor found that there was swelling all over the face and head of the deceased and nasal

septum was broken. Ultimately, Doctor opined that that the cause of death was due to severe head injury following trauma to the face and head by blunt object which was homicidal in nature. In furtherance thereof, as a subsequent event, the said "lathi" i.e. the weapon offence was recovered from the hidden place at the instance /pointing out of the accused persons. The recovery of "lathi" has been proved by witnesses as also seizure witnesses. In the case of ***Mukhtiar Singh . State of Punjab, (2009) 11 SCC 257(262)***, the Apex Court has held that where kirpan and takua, weapons of offence were discovered on the disclosure statements made by the accused, the doctor opined that the injuries to the deceased could be caused by these weapons, conviction of the accused in the charge under section 302 IPC is proper.

62. The prosecution, firstly, has been able to prove the fact through CDR and SDR analysis that Rajyaram Tripura had been possessed the mobile set of the missing person Ankiyajoy Mog as the SIM card no.8413876327 of Rajyaram was inserted in the mobile set having IMEI No.356422022622680 belonging to Ankiyajoy. The prosecution having proved the recovery of the above mobile phone from the place as showed by them confirms that they collectively robbed the mobile from the deceased Ankiyajoy. In this circumstance the onus of disproving or contradicting the same

shifted upon the accused persons which onus they failed to discharge. In their examination under Section 313 CrPC the entire material was put to the appellants and they simply denied the same as false and abstained from leading any evidence in their defence on this aspect.

Mobile SIM having no.8413876327 and the instrument with IMEI No.356422022622680 recovered on the search of the accused persons of their own and none else on 19.02.14, would substantially corroborate and affirms the prosecution case. It was used by Rajyaram Tripura who had also conversed with the other accused through this mobile instrument of Ankiyajoy by installing his SIM therein. Thus, call records affirms the charge against accused persons. How the mobile set of the deceased came into the possession of the accused persons and the SIM card of Rajyaram Tripura was installed in the mobile set of the deceased? These are the facts which would have been in the special knowledge of the accused persons but they themselves having failed to offer any reasonable and valid explanation, we hold that there is no reason doubt the above evidence brought on record by the prosecution which conclusively links the accused persons with the crime.

63. The evidence in regard to leads and clues given by the accused persons to the police which was completely unknown,

would be protected and covered under Section 8 of the Evidence Act, for these facts relating to conduct stand independently corroborated and proved by deposition of public witnesses and incriminating material.

64. Now, proceeding towards the chain of circumstances, we find that after registration of FIR and getting the link of accused, Rajyaram Tripura through CDR and SDR analysis, as per his version, the police arrested all the three other accused. They made the disclosure statements supplying necessary information as to the place where the dead body was lying as well as the places of concealment of other articles and belongings as discussed above, Recovery was made as per their pointing out. We find no flaw in the process of leading to discovery and recovery of the same. Such recoveries are supported and confirmed by cogent and credible evidence as adduced by police as well as other witnesses as subsequent events. The insertion of SIM of Rajyaram to the mobile set of the deceased as would be evident from the CDR, SDR and IMEI analysis by the police during investigation and conversation with his associates are relevant in chain of events in support of the prosecution case.

65. On culmination of all the episodes in the chain, we hold that the prosecution has proved all the circumstances beyond

reasonable doubt and if we apply the golden rule laid down by the Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra [1984 (4) SCC 116]*** the inescapable inference we come to is, that Bijoy Kanta Tripura, Swarna Kumar Tripura, Durjyadhan Tripura and Rajyaram Tripura all hatched a conspiracy to kill a bike rider, to rob everything under his possession, on reaching to the spot where they were waiting gave a huge blow with the "*lathi*", the weapon of offence, the bike rider fell down, tried to resist the assault, but, being overpowered by the accused persons was assaulted severely and died on the spot. The police got link of Rajyaram in the manner as narrated here-in-above, on detention he disclosed the names of other assailants-accused. The police arrested them. On interrogation in custody the accused persons made disclosure statements, gave leads and clues which were reduced into writing.

66. The accused led the investigating team and others to the place where the dead body of the bike rider was concealed and on their pointing out the dead body was recovered and identified as Ankiyajoy Mog, the husband of the Machima Mog(PW-25). Subsequently, in consequence to the information as provided by the accused persons, the blood-stained soil and grasses, the wearing apparels, the mobile phone, the bike, the "*lathi*" by which the

accused persons inflicted series of severe blows at the face and head as are evident in the post mortem report(Ext.P.10) concretising close nexus to the cause of death of the deceased only draws the hypothesis of guilt of the accused-appellants and the juvenile-accused(Rajyaram Tripura) who is not before us and no other inference can be made out other than the hypothesis of guilt of the accused persons. The chain of circumstances starting from recovery of *hawai chappal* on 16.2.14, being identified as of Ankiyajoy, registration of FIR on 18.2.14, detection of Rajyaram Tripura from CDR and SDR analysis, the immediate arrest of Rajyaram and his accomplices, the accused persons have made disclosure statements including detailed description how the crime is committed; as subsequent events, based on information and leads the dead body and other articles and belongings are recovered from the places as they pointed out which are encrypted in the preceding paragraphs in detail of this judgement. So, in between the starting point and information supplied by the accused persons being confirmed subsequently with the recoveries as aforestated and other cogent corroborative evidence completes the chain of circumstances, and in the entire chronological events, none of the link is found to be missed.

67. We have made reference to Sections 8 and 27 of the Evidence Act and its contours in the earlier portion of the judgement. What we gather from authoritative discussion in the above-noted citations that recovery of the dead body of the victim and other articles related to the crime at the behest and on the basis of disclosure statement of the accused persons generally carries enough weight and incriminating materials of considerable probative value, especially, when victim is missing and his whereabouts are unknown. We may profitably take note of the decision of the Supreme Court in ***State of Maharashtra v. Suresh, (2000) 1 SCC 471***, it was observed:

> *"There are three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that he concealed it. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that another person would have told him that it was concealed there. But if he declines to tell the criminal court that his knowledge about the concealment was on account of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of it, the presumption is well-justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle of Section 27 of the Evidence Act."*

68. As we have already referred earlier, the same principle was relied upon in ***Ningappa Yallappa Hosamani****(supra).*

69. At last, the argument raised by learned Counsel for the appellants which needs mention is that there was a delayed FIR without any explanation. In the instant case, we find that the incident took place after 10.30 pm at night on 13.2.14. Her husband did not reach to his house. She is a tribal lady. In the next morning i.e. on 14.2.14 she informed the matter to her neighbours. They all searched for her husband. Having not found, she recorded a missing diary with Baikhora P.S. on 15.2.14. The reference of the GD Entry was transmitted to Natunbazar police station 16.2.14. On receipt, a fresh GD number was recorded under Natunbazar P.S. Being endorsed, PW-41 started investigation and a hawai chappal was recovered from the National Highway. It was later identified as that of Ankiyajoy by his wife, PW-25. While the search operation was going on by the police, PW-25(wife) lodged FIR on 18.02.14 stating that her husband might be kidnapped by some miscreants. The above noted circumstances have got support and corroborated by witnesses of the village of PW-25 during trial. According to us, the circumstances are not unnatural. This would be the normal conduct of a housewife belonging to a tribal community living in a rural area. More so, we have noticed that she did not implicate any

of the accused persons in connection with the crime. She lodged complain only on apprehension that her husband might have been kidnapped by miscreants. We repel the submission of the learned Counsel for the appellants that the delay, as caused above is fatal to the prosecution case, moreso, when after registration of FIR police department detected Rajyaram Tripura on 18.2.14 itself through CDR and SDR analysis and arrested all accused persons related to the crime as we discussed in the preceding paragraphs.

70. In the present case, the leads and clues given by the accused persons and the evidence collected in course of investigation leading to discovery/recovery of the dead body and other related articles of Ankiyajoy Mog, recovery of weapon of offence used in the crime, which has been established, are relevant facts and a pronounced pointer as to the involvement of the appellants in the offence of murder, conspiracy and destruction of evidence. The cumulative effect of the conduct emerging from the testimonies of the police and public witnesses and post mortem report are of great probative value and weight. They are highly incriminating evidence implicating Bijoy Kanta Tripura, Swarnakumar Tripura and Durjyadhan Tripura as well as Juvenile accused Rajyaram Tripura. The prosecution has proved the chain of circumstances to hold the appellants guilty of the offences charged.

71. While returning the judgement of conviction and sentence the learned Sessions has declared that:

"HEARING ON SENTENCE, DATED, 20.11.2015

20. Heard the convicts namely, Swarna Kumar Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura regarding sentence. They submit that they are innocent and they beg the mercy of the Court considering their age.

Heard Learned Public Prosecutor as well as Learned Amicuscuriae on the question of sentence.

21. I have considered all the facts and circumstances of the case.

22. Convicts persons namely, Swarna Kumar Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura have been found guilty for the offence punishable under section 302, 201 and 120B read with section 34 of IPC. The prescribed punishment by law under section 302 of IPC is death or imprisonment for life and shall also be liable to fine.

It is settled law that the death sentence can be awarded in a "rarest of the rare cases". In my opinion, the facts and circumstances of the case do not fall within the category of "rarest of the rare cases". Accordingly, the instant case does not warrant death penalty.

23. Hence, convict persons namely, Swarna Kumar Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura are hereby sentenced to suffer rigorous imprisonment for life and also to pay a fine of Rs.5,000/- (Rupees five thousand) each, in default to payment of fine, they shall suffer rigorous imprisonment for 1(one) year more for the offence punishable under section 302 read with section 34 of IPC.

Again convict persons namely, Swarna Kumar Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura are further sentenced to suffer rigorous imprisonment for 3(three) years and also to pay a fine of Rs.2,000/- (Rupees two thousand) each, in default to payment of fine, they shall suffer rigorous imprisonment for 3(three) months for the commission of offence punishable under section 201 read with section 34 of IPC.

Again convict persons namely, Swarna Kumar Tripura, Bijoy Kanta Tripura and Durjyadhan Tripura are further sentenced to suffer rigorous imprisonment for life and also to pay a fine of Rs.5,000/- (Rupees five thousand) each, in default to payment of fine, they shall suffer rigorous imprisonment for 1(one) year for the offence punishable under section 120B of IPC.

24. All the sentences shall run concurrently.

25. The convicts are entitled to get the benefit of set off under Section 428 of Cr.P.C. for the period of detention undergone by them during investigation and trial.

Issue conviction warrant accordingly.

26. Fine money, if realized, be deposited to the Govt. Treasury by way of challan.

27. Seized bike may be handed over to the genuine claimant if approaches to the Court and other seized materials may be destroyed after the expiry of the appeal period.

28. Let a copy of this judgment be delivered to each convict free of cost.

29. Send a copy of the judgment to the District Magistrate & Collector, South Tripura, Belonia as per section 365 of Cr.P.C.

30. Enter the result in the relevant Trial Register."

72. In view of the evidence led on as encrypted here-in-above and the findings returned by the learned Trial judge, we do not find any merit in the present appeal. Accordingly, the appeal preferred by the appellants is dismissed. The conviction and sentences as declared by the Ld. Sessions Judge delineated above are affirmed and upheld.

JUDGE **JUDGE**