

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 904 OF 2018**

Ashok Dhondiram Dhavale } Appellant

**Versus**

The State of Maharashtra } Respondent

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Mr. Nitin Jadhav, for the Appellant.

Ms. P.P. Shinde, APP for the State.

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**CORAM : SMT. SADHANA S. JADHAV &  
N.R. BORKAR, JJ.**

**RESERVED ON : FEBRUARY 24, 2021.**

**PRONOUNCED ON : APRIL 30, 2021.**

**JUDGMENT :- (PER SADHANA S. JADHAV, J.)**

1. The Appellant herein is convicted of the offence punishable under section 302 and 201 of Indian Penal Code and is sentenced to suffer for life and fine of Rs.5000/-, in default, simple imprisonment for six months passed by the learned Sessions Judge, Raigad-Alibag vide judgment and order dated 8<sup>th</sup> June 2018 in Sessions Case No. 96 of 2015. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows:-

a) Deepali Shinde (PW.1) daughter of Leelabai and the elder sister of Manisha and Poonam, called upon her mother, Leelabai on 12<sup>th</sup> February 2015. Her cellphone was switched off and therefore, she called upon her younger sister Manisha. Her mother was residing at Maldev Shedashi, Tal-Pen along with Manisha and Poonam.

b) Upon enquiry, with Manisha she learnt that her mother had gone to visit her brother house 5 days ago. Deepali frantically kept on calling her mother but, to her utter dismay, found her phone switched off and therefore, she called upon her maternal aunt at Kudgiri. Upon enquiry, she learnt that her mother had not visited their house and therefore, she was constrained to enquire with her relatives. The whereabouts of her mother could not be traced and her cellphone was switched off. She then started calling Manisha and found that the cellphone of Manisha was also switched off. She learnt from her relative Anil Sawant that Leelabai was not in the village for the preceding 3 days. She then visited her maternal home at Maldev and met her

cousin Sachin (PW.2). She learnt from Sachin that Manisha was having a love affair with Ashok Dhavale who was residing with his uncle Dhondiba at village Maldev. The villagers had opposed the love affair and therefore, there was a quarrel, with the villagers due to which he had to leave the village.

c) On 27<sup>th</sup> March 2015, she suddenly received a phone call from the cellphone of her mother by some unknown person who informed her that her mother was critical and her sister was on oxygen. He even told her that he would call upon her after half an hour but she had received no call. She had no knowledge as to where her mother was hospitalized or the place from where she had received the call.

d) On 1<sup>st</sup> April 2015, she received a call from the same person from the cellphone of her mother asking her to come alone to a place if she wanted to meet her mother. The caller did not allow PW.1 to speak to her mother

subsequently, the caller had asked her to come to village Akalpe, where she would be picked up by some person. She disclosed about the said facts to her in-laws who asked her to promptly lodge a missing report. Accordingly, she lodged a missing report at the police station on 16<sup>th</sup> April 2015. On 19<sup>th</sup> April 2015 she had lodged a report against unknown persons. On the basis of which, Crime No. 70/2015 was registered at Pen Police Station for the offences punishable under section 363 and 365 and investigation was set in motion but since she had expressed suspicion against the accused Ashok Dhavale, he was apprehended by the police on 19<sup>th</sup> April 2015 itself. After completion of investigation, the charge-sheet was filed. At the trial, the prosecution has examined as many as 13 witnesses to bring home the guilt of the accused.

e) The prosecution has placed implicit reliance upon the substantive evidence of PW.1-Deepali Shinde (the complainant). PW.2-Sachin Sawant, the cousin of PW.1. PW.3 Shailesh Joshi, the panch for discovery of dead bodies

and cellphone of the deceased at the instance of the accused/appellant. PW.4-Shalaka (inquest panch), PW.5-Pramod Salvi, the panch for recovery of letters between Manisha and the accused and a chain with a Swastik Pendant, 4 photos, out of which one photo was of Manisha and the accused Ashok. PW.6, Circle Inspector who has drawn the sketch of the place from where the dead bodies were discovered. PW.9-Dhananjay, the nodal officer of Tata Telly Services. PW.10-Dr. Rohan Thorat who conducted autopsy on the dead bodies of deceased Leelabai, Manisha and Poonam. PW.11-Ravi Pardeshi, the Nodal Officer from Vodaphone. PW.12-Jitendra Vankoti, police officer who was attached to Pen Police and was assigned the investigation of Crime No. 70/2015, PW.13-Muneshwar Sarang who was also a part of the investigation in Crime No. 70/2015 at the time of recovery of articles at the behest of accused – Ashok.

3. PW.1-Deepali Shinde has deposed before the Court the incident from 12<sup>th</sup> February 2015, she had disclosed about the facts divulged to her by Sachin Sawant and identification of the dead bodies

and the articles seized at the behest of the accused. She has proved the missing complaint which is at Exhibit-16, filing of the F.I.R., which is at Exhibit-18. She has deposed in consonance with the F.I.R. (which are narrated in the facts of the case). She has admitted in her cross-examination that on 16<sup>th</sup> April 2015, she had not disclosed about the missing of her sisters to the police as she had spoken to her sister Manisha, her cousin Sachin and other relatives after her mother went missing. According to her, Sachin had divulged to her about the love affair between Manisha and the accused only when she visited Maldev. Her mother had never informed her that Manisha had a love affair with the accused. Subsequent to the quarreling with the villagers the accused was driven out of the village. She has also admitted that her second visit to the Pen Police Station was on 19<sup>th</sup> April 2015 and on that day she had not received any information from the police at least till 1.00 p.m.

4. According to her, the accused was in the knowledge that she was married and was residing with her husband. She has also identified article (3) and article (4) which happened to be the photos of her mother and sister respectively. She has also proved the letter

dated 26<sup>th</sup> October 2012 to be in the hand writing of her sister Manisha, which is marked at Article '34/2' and has categorically stated that the letter dated 30<sup>th</sup> October 2012 is not in the hand writing of her sister Manisha. Despite a lengthy cross-examination, the evidence of PW.1 could not be shattered by the defence.

5. PW.2-Sachin Sawant happens to be the cousin of PW.1 and the deceased Manisha and Poonam. He has substantiated that he had disclosed to PW.1 about the love affair between Manisha and the accused and as a consequence of the quarrel with the villagers the accused was driven out of the village. He has affirmed the suggestion that Manisha and the accused–appellant were in love with each other for almost a year before her mother learnt about it. That he had seen deceased Leelabai on 9<sup>th</sup> February 2015 as he had accompanied her to Taloja Pimpri for a naming ceremony. He had also seen deceased Manisha and Poonam on 9<sup>th</sup> February 2015 itself, but he had not informed PW.1 that they were missing from the village.

6. It is admitted in the cross-examination that PW.1 was not aware of love affair between deceased Manisha and the accused no.1.

According to him, the villagers had seen Leelabai leaving the house alone. However, none of the villagers knew about the disappearance of the sisters. He has deposed that it was within his knowledge that the accused no.1 was working in Khalapur positive company.

7. PW.3–Shailesh Joshi is the panch for discovery of the dead bodies of the deceased and recovery of the cellphone of dual sim-card of Karbonn company and another cellphone of Tata Docomo company, the production of the Photographs- Article 3 and 4, Aadhar Card- Article 6, Sim card- Article 10, Pan card- Article-7, ATM Card- Article 9, 4 currency notes of denomination of Rs. 100 and of Rs. 10, one Green card-Article 8. The panchnama is at 'Exhibit-27'. He has also proved the Memorandum Panchnama of the accused for disclosure of the dead bodies which is at 'Exhibit-28-A' and the discovery panchnama at 'Exhibit-29'. He has further deposed that there was seizure of the simple oily earth, simple earth, sandal and the inner wear of the victim. They had also seized a Wallet containing election card, a security bank card, a card of one political party and 7 photographs of male and females which was seized and sealed and marked at 'Exhibit-30'. The panchnama of the clothes of the deceased is at 'Exhibit-31'.



The scene of offence was shown by the accused no.2 and the panchnama is at 'Exhibit-32'. It is suggested in the cross-examination that he happened to be a habitual panch of the police. However, according to him he had visited the Tehsil office at Pen on 19<sup>th</sup> April 2015. That the police station and Tehsil Office are in the same compound and at the request of the police, he had agreed to act as a panch. To a Court question, as to whether the two cellphones were switched on. He has replied that said cellphones were sealed at the place of seizure and therefore, there was no question of switching them on. He had visited the police station on more than 2 to 3 occasions to act as a panch in the present case. He has denied the suggestion that on 24<sup>th</sup> April 2015 itself the police had informed him about the place from where the dead bodies were to be seized. He has denied the suggestion that the foul smell emanating from the dead bodies was emanating upto the main road and has further stated that in fact dead bodies were lying at a distance of more than 2 kms. from the road and the other two dead bodies were at the distance of 200 feet from the place where the first dead body was found. According to him, the accused no.2 had led the police to Raghuvir Hill on 1<sup>st</sup> May 2015. It was the same place which was already shown by the accused –

appellant and that a bag was found at the said place containing Article No2. 49 to 51 and that a panchnama was drawn.

8. PW.4-Shalaka Patane, is the panch for inquest panchnama, which is at 'Exhibits 36 to 38'. She is the member of Mahila Dakshata Samitee. The inquest panchnama at Exhibit-36, shows that the panchnama was conducted at the scene of offence itself.

9. PW.5-Pramod Salvi has proved the seizure of golden colour chain and locket from house of accused-appellant at village Shirgaon and the chits exchanged between Manisha and Ashok. He was also a panch for the identification of the said articles by PW.1.

10. PW.6-Neminath Bambarkar was working as a Circle Inspector at Kolawandi, Tal-Khed. He has drawn the sketch of the spot. The sketch mark is at Exhibit-46.

11. Upon perusal of Exhibit-46, it appears that there is forest area behind the Raghuvir Hill. In the forest area the dead body of Leelabai was found and in the location of the dam two dead bodies

were found. It is clear from the sketch that the foul smell of the dead bodies could not have emanated up to the main road from the ghat. There is internal unpaved road (kaccha road).

12. PW.9-Dhananjay Yadav was working as a Chief-Nodal Officer in Tata Services. He has filed a call details record. The cellphone no. of Manisha is '7030086313'. The cellphone no. of Leelabai is '8007519583' and cellphone no. of PW.1-Deepali Shinde is '7208843385'. All these numbers are mentioned in the missing complaint dated 16<sup>th</sup> April 2015. The cellphone of PW.1 is registered in the name of Prashant Shinde, the husband of PW.1 and which is marked at 'Exhibit-36'. He has proved the contents of the CDR, which is at 'Exhibit-58'. The CDR shows that PW.1 was trying to call her mother on cellphone no. '8007519583' from 27<sup>th</sup> March 2015 to 18<sup>th</sup> April 2015. The CDR proves the contention of PW.1 that she had made calls to her mother and her sister from 12<sup>th</sup> February 2015.

13. PW.11-Ravi Pardeshi was working as a nodal officer from Vodaphone. He has proved that cellphone no. '7030086313' and '8007519583' were registered in the name of Leelabai Sawant, a

resident of Maldev. He has also given the CDR along with the certificate under section 65(b) of the Indian Evidence Act. The CDR clearly shows that there are several calls made by PW.1 to her mother ever since 12<sup>th</sup> February 2015.

14. PW.10-Dr. Rohan Thorat had performed Autopsy on dead bodies of all three deceased. According to him, they were in advance stage of de-composition which is mentioned in column no. 12 of the postmortem notes. It is admitted that since the dead bodies were in an advance stage of decomposition cause of death could not be determined. The postmortem notes are at 'Exhibit-64 , 65 and 66'. He had also noticed the maggots at certain places on the basis of which he has determined that the death of the deceased might have been caused prior to three weeks to three months of the postmortem. He has ruled out sexual assault, on the basis of vaginal swab and anal swab. The DNA reports were positive. It is admitted that the death of all the three deceased had occurred almost at the same time.

15. PW.12-Jitendra Vankoti was entrusted with the investigation of Crime No. 70 of 2015 from 25<sup>th</sup> April 2015.

16. PW.13- Munishwar Sarang was assigned the work of investigation from 19<sup>th</sup> April 2015. According to him, he had perused the copy of FIR in Crime No. 70 of 2015 and in the course of investigation, he has proved the memorandum and recovery of the photos, a wallet containing Aadhar Card, Sim card, Pan card, ATM Card-4 currency notes of denomination of Rs. 100 and of Rs. 10, one Green card and the recovery of the cellphone of Leelabai.

17. He has deposed before the Court that it had transpired in the course of investigation that Leelabai and her two daughters had come to village Malshed on 9<sup>th</sup> February 2015 for attending naming ceremony and thereafter their whereabouts were not known, nor anyone had seen them. He had recorded the statement of the witnesses. He has also proved the memorandum and discovery of dead bodies and described the place from where the bodies were discovered. He was investigating the said offence till the noon of 24<sup>th</sup> April 2015 and thereafter the investigation was handed over to PW.12 P.I. Vankoti. It is admitted that Manisha and Poonam had not lodged missing report about their mother Leelabai at Pen Police Station.

18. It is admitted in the cross-examination that the accused–appellant was brought to the police station on 19<sup>th</sup> April 2015. It is clarified that the accused was taken into custody pursuant to the suspicion expressed by PW.1.

19. It is admitted that the name of the accused was not there in the missing report and the missing report was only in respect of Leelabai. It is also admitted that the deceased was living in Maldev itself and were lastly seen on 9<sup>th</sup> February 2015.

20. PW.12-Jitendra Vankoti was assigned the work of investigation in crime no. 70 of 2015 from 25<sup>th</sup> April 2015. He was also a part of the investigating agency. He has deposed about the steps taken by him in the course of investigation which, in fact, is proved through PW.3.-Shailesh Joshi.

21. After a detailed enquiry Dipali lodged a missing report about missing of her sister on 19<sup>th</sup> April 2015. On 19<sup>th</sup> April 2015, she had expressed her suspicion against Ashok Dhawale, she continued to search for her mother and her sister and enquiring about them at all possible places.

22. On 25<sup>th</sup> April 2015, she received a phone call from Pen Police Station and she learnt from the police that on the basis of her suspicion they had arrested the accused Ashok Dhavale (the present appellant). That, he had voluntarily confessed that he had killed her mother and sisters in Raghuvir Hill. The police had also disclosed that they had arrested the accused Avinash Bhosale (the acquitted accused) as there was material to show that he was also involved in causing the death of Leelabai and her daughters.

23. On 26<sup>th</sup> April 2015 at the request of the police she visited municipal hospital Khed and identified the dead bodies of her mother and sisters. The dead bodies were completely decomposed and beyond identification as a foul smell was emanating from that place.

24. The learned counsel for the appellant submits that in fact the whole case rests on suspicion and suspicion cannot take the place of proof. It is submitted that besides the bare words of PW.2- Sachin there is no evidence that Manisha was in love with the appellant and that the villagers, after a quarrel had driven him out of the village. The prosecution is relying upon a letter purportedly written by Manisha to

the appellant however the said letter was not sent to the hand writing expert. That there is no material to show the mode of transportation taken by the deceased to travel to Raghuvir Hill range. Neither there is material on record to show as to when, how and in whose presence the accused met all the three deceased in a remote place like the Raghuvir Hill. In any case, PW.1 had spoken to Manisha even after Leelabai went missing and the two sisters had not informed PW.1 or any other relatives about missing of Leelabai. Lastly, the learned counsel submits that the doctor who performed autopsy had not sent the bodies to anatomy expert. That the cause of death of the deceased could not be ascertained and therefore, there is no proof that the deceased had died a homicidal death.

25. The learned counsel has placed reliance on the judgment of the Apex Court in the case of **State of Punjab V/s. Bhajan Singh**<sup>1</sup> has held as follows :-

‘....Although it may be that it would have been more appropriate on the part of the doctor to have sent the dead bodies to an anatomy expert, the fact that the doctor did not do so cannot be a ground for drawing an inference adverse to the accused. The accused cannot be made to suffer because of that omission of the doctor: It would indeed be contrary to all accepted principles to give the benefit of that omission to the prosecution. The onus in a criminal trial is upon the prosecution to prove the guilt of the accused. If there be any gap or

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1 (1975) AIR 258



lacuna in the prosecution evidence, the accused and not the prosecution would be entitled to get the benefit of that...'

26. The learned counsel has also placed reliance on the judgment of the Apex Court in the case of **Kishore Chand v/s. State of Himachal Pradesh**<sup>2</sup> has held as follows :-

'In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. It is not necessary that each circumstances by itself be conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can be explained by any of the reasonable hypothesis then the accused must have the benefit of that hypothesis.

In assessing the evidence imaginary possibilities have no role to play. What is to be considered are ordinary human probabilities. In other words when there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established. The chain of events furnished by the circumstances should be so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. If any of the circumstances proved in a case are consistent with the innocence of the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt'.

27. Per contra, the learned APP submits that implicit reliance can be placed on the evidence of PW.1, PW.2, PW.3, PW.12 and PW.13. That the bodies were discovered at the instance of the accused

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<sup>2</sup> (1990) AIR 2140

appellant and that is sufficient to hold that he is the perpetrator of the Crime. That the accused had also misled PW.1 and had called her to a remote village with a further caution that she shall come alone. Fortunately she had contacted the police. The belongings of the deceased were recovered from the custody of the accused. That the deceased had no enmity with any person. It is also submitted that the accused cannot claim benefit from the lacunas in the course of investigation and finally that the prosecution had proved its case beyond reasonable doubt.

28. Upon meticulous appreciation of the evidence adduced by the prosecution and upon hearing the respective counsel, the facts that emerge for consideration can be summed up as follows:-

Firstly, that PW.1 was trying to contact her mother Leelabai from 9<sup>th</sup> April 2015. That she had also called upon her sister Manisha and had learnt that Leelabai was missing since 9<sup>th</sup> April 2015. It is therefore clear that Manisha and Poonam had died subsequently. The CDR clearly establishes the calls made by PW.1 as well as the calls received by PW.1.

Secondly, it is true that the accused was arrested on 18<sup>th</sup> April 2015. On 19<sup>th</sup> April 2015 the cellphone and photos of Leelabai were recovered from his house and on 24<sup>th</sup> April 2015 he finally led the police to the place, where all the 3 dead bodies were discovered at the behest of the accused. On the same day, PW.1 was informed by the police and on 26<sup>th</sup> April 2015 the bodies were identified by PW.1. The golden chain with Swastik Pendant, normally adorned by Manisha was recovered from the custody of the accused i.e. it was found in a bag from his house, at his behest, the same was identified by PW.1. The information given by the accused led to the discovery of a fact that the missing persons had died a few days ago and their decomposed bodies were traced at the behest of none other than the accused.

29. At this stage, it would be apposite to place reliance on the land mark judgment of the Privy Council in the case of **Pulukuri Kottaya v/s. King-Emperor**<sup>3</sup> has held as follows:-

“9... [Section 27](#), which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be

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3 (1947) AIR 67

deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of [Section 27](#), little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to [Section 26](#), added by [Section 27](#), should not be held to nullify the substance of the section. In their Lordships' view it 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'.

30. The prosecution has relied upon so much of information which was given to the accused. The submission of the learned counsel, that at the most it can be said that the accused had knowledge of the place where the dead body was found and does not prove that the accused had caused homicidal death cannot be taken into consideration for the simple reason 1) That the bodies were decomposed and beyond identification. 2) The bodies were found in the forest area far from the main road. The accused is not a resident of that locality and neither it is a road commonly used by passers by and if so he ought to have disclosed the source of his knowledge. 3) There is no explanation as to why his wallet was found on the spot close to the dead body.

31. Thirdly, PW.3 has proved that at the scene of offence a wallet containing the driving license of the accused, affixed with his Photograph, a card of Royal Twinkle, Star Club belonging to the accused, the election card of the accused, the visiting card of a political leader, a passport size photo of the accused, the passport size photo of a woman and other photographs. This would by itself show that he is the perpetrator of the offence.

32. Fourthly, the photograph of deceased Leelabai, her cellphone from which he had purportedly called PW.1 were recovered from his house. The tower location establishes that the calls were made by none other than the accused. The photograph of Manisha and the letter dated 26<sup>th</sup> October 2012 addressed by her to the accused were also recovered from his custody PW.1 has identified the hand writing of the deceased Manisha who happens to be her sister and therefore, it was not necessary to send the same to the hand writing expert. The contents of the letter as is reflected in Para 26 of the judgment of the trial Court also needs to be taken into consideration as the contents would prove there was rather a love affair between Manisha and the accused.

33. Witnesses may lie but circumstances speak for themselves. In a case of circumstantial evidence, if the material collected in the course of investigation are interlinked the same has to be considered accordingly. A logical inference has to be drawn. What needs to be appreciated and considered is the cumulative effect of the circumstances which must be such as to negate the innocence of the accused and the said circumstances lead to the only conclusion that the

accused is the perpetrator of the Crime. Moreover, there is no material on record to show that prior to the information given by the accused there was any possibility for the police to know the site where the dead bodies were lying. The material on record is otherwise. The station diary at 'Exhibit-113' would show that the police had gone for patrolling on the road on 23<sup>rd</sup> April 2015, but it was only on the main highway, the place where the bodies were discovered, at the behest of the accused is not visible from the main road.

34. At this juncture, it would be apt to refer to the judgment of the Apex Court, in the case of **Ram Avtaar v/s. State (Delhi Administration)**<sup>4</sup> has held as follows:-

'At the very outset we might mention that circumstantial evidence must be complete and conclusive before an accused can be convicted thereon. This, however, does not mean that there is any particular or special method of proof of circumstantial evidence. We must, however, guard against the danger of not considering circumstantial evidence in its proper perspective, e.g. where there is a chain of circumstances linked up with one another, it is not possible for the court to truncate and break the chain of circumstances. In other words where a series of circumstances are dependent on one another they should be read as one integrated whole and not considered separately, otherwise the very concept of proof of circumstantial evidence would be defeated.'

35. Lastly, the contention of the counsel that cause of death is not ascertained and therefore the accused being entitled to benefit of

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4 (1985) AIR 1692

doubt, is without any relevance. The accused cannot take the benefit of the admission of the Doctor (PW.10) that the bodies were not referred to anatomy expert. A suggestion that the dead bodies were not of the missing person is falsified and set at rest by the DNA report which is at 'Exhibit-69' and reads as follows:-

1. For all the 15 different genetic systems analyzed with the PCR, DNA of nail clippings of Leelabai Babu Sawant **matched** the obligate maternal alleles present in the DNA of Deepali Prashant Shinde in F.S.I.M.L. Case No. DNA-614/15 at all loci.
2. For all the 15 different genetic systems analyzed with the PCR, DNA of nail clippings of Leelabai Babu Sawant **matched** the obligate maternal alleles present in the DNA of nail clippings of Manisha Babu Sawant at all loci.
3. For all the 15 different genetic systems analyzed with the PCR, DNA of nail clippings of Leelabai Babu Sawant **matched** the obligate maternal alleles present in the DNA of nail clippings of Poonam Babu Sawant at all loci.

36. Immaterial and irrelevant lacunas in investigation would not entitle an accused to benefit of doubt. A misplaced leniency would result in miscarriage of justice especially in cases like the present one where a mother and her two daughters have died a homicidal death at the hands of the accused. The Apex Court in the case of **C. Muniappan v/s. State of T.N.**<sup>5</sup> has held as follows:-

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5 (2010) 9 SCC 567



‘There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation’.

37. In view of the above discussion, we do not find any reason to interfere with the judgment of the Trial Court. The appeal deserves to be dismissed. Hence, we pass the following order:-

### **ORDER**

- a) The appeal is dismissed.
- b) In the eventuality, that the appellant is on emergency bail/parole he shall surrender before the Sessions Court Raigad-Alibag within eight weeks.

c) The conviction of the accused for the offence punishable under section 302 and 201 of Indian Penal Code is upheld.

d) The sentence of fine is maintained.

38. The appeal is accordingly disposed of.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)