* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 08.04.2026
Pronounced on: 13.05.2026

\+ **CRL.A. 96/2003**

HEERA LAL .....Appellant

Through: Mr.Ashesh Lal, Mr.Apurb Lal, Ms.Rachna Lal Mr.Raghav Parwatiyar, Ms.Shikha Walia, Mr.Heemanshu Singh and Mr.S.N. Gautam, Advs.

versus

THE STATE [NCT OF DELHI] .....Respondent

Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. and Insp. Mahesh Kr., PS Dabri

\+ **CRL.A. 256/2003**

SURENDER .....Appellant

Through: Mr.Ashesh Lal, Mr.Apurb Lal, Ms.Rachna Lal Mr.Raghav Parwatiyar, Ms.Shikha Walia, Mr.Heemanshu Singh and Mr.S.N. Gautam, Advs.

versus

THE STATE .....Respondent

Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. and Insp. Mahesh Kr., PS Dabri

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The instant appeal has been preferred by the appellants,

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challenging the judgment dated 14.11.2002 passed by the learned Additional Sessions Judge, Tis Hazari District Court, Delhi in Sessions Case No. 114/2001, arising out of FIR No. 164/2001, Police Station Dabri, New Delhi, *vide* which the appellants have been convicted for the offences punishable under Sections 450/397/302/34 of the Indian Penal Code, 1860 (hereinafter referred to as '***IPC***').

2. The appellants further challenge the Order on Sentence dated 15.11.2002 passed by the learned Trial Court, whereby the appellants have been sentenced as under:

S. No.	Offence Committed	Sentence Awarded
1.	Section 450/34 IPC	Rigorous Imprisonment for five (5) years with a fine of Rs. 500/- (in default, simple imprisonment for one month)
2.	Section 397/34 IPC	Rigorous Imprisonment for seven (7) years with a fine of Rs. 500/- (in default, simple imprisonment for one month)
3.	Section 302/34 IPC	Rigorous Imprisonment for Life with a fine of Rs. 500/- (in default, simple imprisonment for two months)

3. During the pendency of these appeals, the sentence imposed by the learned Trial Court on the appellants had been suspended by this Court, *vide* orders dated 27.09.2005.

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CASE OF THE PROSECUTION:

4. It is the case of the prosecution that on 05.03.2001, at around 09:20 A.M., information was received by PP Palam that a murder had taken place in House No. 65-A, DDA Flats, Mangla Puri, New Delhi. On the basis of the said information, SI Avtar Singh was sent to the place of incident. When he reached at the spot, he found Lal Singh (hereinafter referred to as '***deceased***') lying lifeless in a pool of blood having deep injuries on his neck. FIR No. 164/2001, P.S. Dabri was recorded. The identity of the assailants could not be ascertained. On investigation, it was also revealed that at the time of the alleged murder, the entire house of the deceased was found ransacked and a sum of Rs. 17,000/- along with other articles was found missing from the almirahs of the deceased.

5. Till then unconnected with the above incident, Inspector Lakhinder Singh, Additional SHO (PW-18) was investigating FIR No. 912/2000 registered under Sections 363/366/368/376/120B of the IPC for the alleged kidnapping and rape of PW-9/Pxx. He arrested both the appellants and recovered from their custody the prosecutrix in the said FIR, PW-9/Pxx. During interrogation, PW-9/Pxx told the police that she had been introduced to the accused Surender by one Santosh, where-after, they took her to their village Bhagipur Umrav, District Farrukhabad. Santosh went away, while Surender applied sindoor on her forehead and had sexual intercourse with her against her will and without her consent and under intimidation. During her stay at the house of the appellants, the appellants are alleged to have inquired from her as to who was the wealthiest person under whom she was

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employed as a maid servant, to which she disclosed the name of the deceased. She informed that she was then brought to Delhi and kept in different houses in the area of Palam over a period of three to four weeks, following which, she was shifted to the house of a relative of the appellants situated in Ghaziabad. On 05.03.2001, the appellants left the said house at about 6:00 A.M. after confining her in a locked room, and returned back at about 10:30/11:00 P.M.. Upon their return, they washed their clothes in the bathroom, and on the following day, she noticed blood stains in the bathroom. Thereafter, the appellants took PW-9/Pxx to their village, where they are alleged to have instructed their mother that PW-9/Pxx should not be allowed to leave the house as they have committed a criminal act in Delhi. This conversation is stated to have been overheard by PW-9/Pxx. Out of curiosity, when she inquired from the appellants regarding the said criminal act, in response, appellant Heera Lal allegedly disclosed that he and appellant Surender had committed the murder of the husband of PW-1/Smt. Santosh Devi, that is, the deceased Lal Singh. He is further alleged to have threatened PW-9/Pxx that in the event she disclosed this information to anyone, her father and brother would be killed.

6. Based on the above, the appellants were then arrested on 27.03.2001 in FIR No. 161/2001, where-after they were interrogated and they allegedly made disclosure statements (Ex. PW-18/C and Ex. PW-18/D). The appellant Heera Lal then led the police party to a house in Ghaziabad which was under construction and where he was allegedly employed. From the said premises, he allegedly produced a

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rexine bag containing blood-stained clothes and a button-actuated knife, which were seized. No recovery was effected at the instance of accused Surender.

7. Statements of witnesses were recorded, and a scaled site plan was prepared during the course of investigation.

8. Upon completion of the investigation, a charge-sheet was filed against the appellants for the offences punishable under Sections 302/397/34 IPC.

9. The learned Trial Court, *vide* order dated 21.08.2001, framed the following charges against the appellants:-

> *"That on 5.3.2001 at about 9 am in flat no. 65A DDA Flat, Mangla Puri, New Delhi you both in furtherance of common intention committed house trespass with intention to commit murder of Lal Singh to wit you entered the abovesaid house with intention to cause Lal Singh's death and thereby you committed an offence u/s 450/34 IPC and within my cognizance.*
>
> *Secondly, on the abovesaid date, time and place you both in furtherance of your common intention committed robbery in the aforesaid house and in committing robbery you used deadly weapon and caused hurt to Lal Singh to wit in committing robbery in the abovesaid house you used knives with intention to cause hurts to the complainant Lal Singh and committed an offence u/s 397/34 IPC.*
>
> *Thirdly, on the abovesaid date, time and place you both in furtherance of common intention of you both caused murder of Lal Singh owner of the abovesaid office to wit with intention to commit robbery in the abovesaid house you stabbed Lal Singh on his neck and with knives cause injuries on his person with intention to*

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cause his death and cause his death and thereby you committed an offence u/s 302/34IPC and within my cognizance."

10. The appellants pleaded not guilty to the aforesaid charges and claimed trial.

11. In order to prove its case, the prosecution examined 18 witnesses. The learned Trial Court, placing reliance on the statement of PW-9/Pxx, held that it stands proved that from 07.10.2000 till 05.03.2001, PW-9/Pxx had been residing in the house of the appellants and that they had been inquiring from her about the financial status of her employers. From her they got information about the financial status of the deceased. Fifteen days prior to Holi, the appellants proceeded for Delhi. On return to the village, the appellant-Heera Lal gave an extra-judicial confession to PW-9/Pxx of him, along with the other appellant-Surender, having killed the deceased. The learned Trial Court opined that as PW-9/Pxx is the wife of appellant-Surender, therefore, it does not appeal to reason that she would tell a lie to falsely implicate her own husband. The learned Trial Court also drew an adverse inference against the appellants due to non-examination of their mother as a witness before whom the extra-judicial confession was allegedly made.

12. On the other hand, the learned Trial Court disbelieved PW-9/Pxx on her statement that she was also witness to the appellants leaving the house on 05.03.2001 and on returning, washing their clothes and on the next day, she found blood in the bathroom. To this part, the learned Trial Court holds PW-9/Pxx to be unreliable,

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observing as under:

> *".....Though, PW-9 Pxx has tried to project herself as a witness to the effect that on 5.3.01 both the accused persons had left house at 6/7a.m. after locking her in a room and returned back at 10/11 p.m. and both the accused persons had washed their cloths in the bathroom. She even went to the extent of saying that she had seen blood in the bathroom on the next morning. But this version does not seem to be reliable."*

13. The learned Trial Court further observed that the recovery of blood stained clothes at the instance of appellant Heera Lal stands proved, and that no explanation was forthcoming from the appellant Heera Lal as to how he came in possession of the same.

14. The learned Trial Court also held that there was no inconsistency between the medical evidence and the confessional statements of the appellants, inasmuch as though there could have been another weapon of offence also, injury no.3 to 7 could possibly be caused by the knife recovered.

15. On a cumulative assessment of the aforesaid circumstances, the learned Trial Court concluded that the prosecution had successfully established that the accused persons had entered the house of the deceased Lal Singh and committed his murder. The relevant extract from the impugned judgment of the learned Trial Court is, as under:

> *"19. xxx*
> *I am satisfied that on the basis of evidence on record, it clearly stands proved on record that in the month of October, 2000, PW-9 Pxx had gone to the house of accused persons in U.P. where accused Surender allegedly contacted marriage with her. Document, Ex. PW1/DX is the most important document which bears*

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thumb impression of accused Surender and it is dated 4.11.00. Thus, the version of PW-9 Pxx that she had been staying with accused in their village stands corroborated by this document. It also stands proved on record that both the accused persons made inquiries from PW-9 Pxx about the financial status of her employers in Delhi and she specifically mentioned the name of Lal Singh as the most affluent person. It also stands proved on record that about 15 days prior to Holi, both the accused persons came to Delhi, on 5.3.01 at about 9 a.m. they were spotted near the place of incident by PW-4 Sunder Bhan and on that very date, murder of Lal Singh was committed. Both the accused persons returned back to their village and told their mother about the criminal incident they have committed in Delhi. PW-9 Pxx has specifically inquired from accused persons as to what was that criminal incident, they were talking about and they frankly came out with version that they had committed murder of Lal Singh in Delhi, Subsequently, blood stained shirt was recovered from the possession of accused Heera Lal. All the circumstances as mentioned above taken cumulatively go to prove the case of the prosecution that accused persons entered the house of Lal Singh and committed his murder. According to PW-1 Smt Santosh Devi, wife of the deceased, when soon after the incident, reached her house, two gold necklaces and two pairs of earrings and Rs.17000/- in cash v/ere found missing from the house. Even the version of PW-3 Smt Ombati is that when she reached the house of Lal Singh at about 9 a.m., she observed that the had been murdered, almirahs. were found lying open and things were lying scattered. When accused persons committed murder of the deceased, i am of the view that their motive was to commit robbery and accused persons took away with them Rs.17000/- and other gold jewellery articles as deposed by PW-1 Smt Santosh Devi.

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20. In view of the reasons given above, I accordingly hold case of the prosecution u/s 450/397/302/34 IPC stands proved against accused persons beyond reasonable doubt. Accordingly, I hold accused Heeralal and Surender guilty u/s 450/397/302/34 IPC and convict them."

16. Aggrieved by the conviction and the Order on Sentence passed by the learned Trial Court, the appellants have preferred the present appeals before this Court.

SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR THE APPELLANTS:

17. The learned counsel for the appellants, submits that the testimony of PW-9/Pxx is highly unreliable. He submits that, as per the timeline established through her statement, it appears that the murder took place when she and the appellants were in the village and not in Delhi. He submits that if her statement is to be believed, then the appellants travelled to Delhi around 24.02.2001, which was fifteen days prior to the Holi festival on 09.03.2001; whereafter, as per PW-9/Pxx, the appellants returned to their village on the 18.03.2001, which is eight to nine days after Holi; they then brought PW-9/Pxx with them to Delhi on the next day, presumably, on 19/20.03.2001; she stayed in Palam for three to four days, that would be till 25.03.2001; whereafter she was taken to Anand Vihar by the appellants; on the next day, presumably on 26.03.2001, the appellants locked her inside a room and left the house around 06:00 A.M. and returned around 10 P.M.; on the next day, presumably on 27.03.2001,

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PW-9/Pxx noticed blood stains in the washroom; and thereafter she was taken back to the village which is, in all probability after 27.03.2001, whereafter the appellants made the alleged extra-judicial confession. He submits that this statement of PW-9/Pxx could not have been believed as the appellants were arrested by the police on 27.03.2001.

18. He places reliance on decisions in ***Chandrabhan Sudam Sanap v. State of Maharashtra,*** (2025) 7 SCC 401, ***Kalinga v. State of Maharshtra,*** (2024) 4 SCC 735, ***State of Punjab v. Kewal Kishan,*** (2023) 13 SCC 695, ***Pawan Kumar Chourasiya v. State of Bihar,*** (2023) 18 SCC 414 and ***Subramanya v. State of Karnataka,*** (2023) 11 SCC 255 to submit that in the above circumstances, conviction of the appellants could not have been based solely on the alleged extra-judicial confession.

19. As far as the alleged disclosure and recovery are concerned, he submits that the statement of the owner of the house from where the recovery was allegedly made, was not recorded. Nor was any independent witness involved in the recovery. He submits that no labourers were also examined. He submits that therefore, the alleged recovery cannot be relied upon.

20. He submits that the recovered materials were sent to FSL for a forensic examination. The FSL report dated 30.07.2001 stated that there was no blood on one shirt, one pant, or on the button-actuated knife. It further stated that blood was detected on the other shirt, however, the report was inconclusive as to even what blood group the blood belonged to. There was also no evidence if the shirt even

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belonged to the appellant Surender. He submits that the police even failed to conduct a DNA test on the said recovered items. He submits that it could not be presumed that the blood belonged to the accused persons. In any case, this recovery was not at the behest of the appellant-Surender and therefore, cannot be used in evidence against him.

21. The learned counsel submits that PW-1/Smt. Santosh Devi stated that certain ornaments along with cash amounting to Rs. 17,000/- were missing from her house, yet no such ornaments or cash were ever recovered from the appellants or from anywhere till date.

22. He submits that PW-4/Sunder Bhan, the uncle of PW-9/Pxx, stated in his testimony that he saw the appellants on the 5th day of some month that year and that the appellants were arrested about two months after he had seen them. He submits that even if the timeline of this witness is to be believed, then the witness had seen the appellants presumably in the month of February and, therefore, it cannot be said that he had seen the appellants positively on the date of the incident, that is, 05.03.2001.

23. The learned counsel submits that there is no evidence on record against the appellants of their having committed the alleged offence and therefore, the appellants should be acquitted by this Court.

SUBMISSIONS OF THE LEARNED APP FOR THE STATE

24. On the other hand, Mr. Aman Usman, the learned APP, submits that the present case is based on a cogent and complete chain of circumstantial evidence, which has been duly appreciated by the

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learned Trial Court, leading to the conviction of the appellants. The testimony of PW-9/Pxx is reliable to the extent that she was told by appellant Heera Lal regarding the commission of murder of the deceased, in the form of an extra-judicial confession, which proves the case of the prosecution. He further submits that it stands clearly established on record that PW-9/Pxx was residing with appellants in their village after her marriage was performed with Surender, which fact is corroborated by documentary evidence, namely, Ex. PW-9/DX bearing the thumb impression of accused Surender. He contends that the testimony of PW-9/Pxx establishes that during her stay with the accused persons, she was specifically asked about who the richest employer was under whom she was working. It had further been proved that both accused persons came to Delhi approximately fifteen days prior to Holi and remained there for a period of time before returning to their village, which establishes their presence in Delhi around the time of the incident.

25. Learned APP submits that PW-4/Sunder Bhan had categorically deposed that on 05.03.2001 at about 9:00 A.M., both the appellants were seen near the place of occurrence, thereby placing them in the immediate vicinity of the crime scene on the date of the incident.

26. He submits that the recovery of incriminating articles, including a blood-stained shirt and a knife at the instance of the appellant Heera Lal, further strengthens the prosecution's case. He submits that the cumulative effect of the aforesaid circumstances forms a complete and unbroken chain pointing exclusively towards the guilt of the appellants.

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27. He further submits that the prosecution had successfully established the motive behind the crime, which was to commit robbery, as is also evident from the testimony of PW-1/Smt. Santosh Devi, who deposed that cash amounting to Rs. 17,000/- along with certain articles were found missing from the house of the deceased.

28. Learned APP submits that PW-5/Dr. L.K. Baruah had deposed that the injuries inflicted on the deceased were caused by the weapon of offence, that is, the button-actuated knife which was recovered at the instance of the appellant Heera Lal.

29. Learned APP concludes by submitting that in view of the aforesaid, the prosecution has proved its case beyond reasonable doubt, and the conviction of the accused persons is liable to be upheld.

ANALYSIS & FINDINGS

30. We have considered the submissions made by the learned counsels for the parties.

31. From the above narration of facts, it would be evident that the case of the prosecution is primarily based on the evidence of PW-9/Pxx and on the alleged extra-judicial confession made by the appellant Heera Lal to her. It is then based on the alleged disclosure and the recoveries of clothes and one button-actuated knife made at the behest of the appellant Heera Lal. The evidence is sought to be corroborated by the statements of PW-4/Sunder Bhan, the uncle of Ms. Pxx, and the CFSL report.

32. First, we shall examine the alleged extra-judicial confession made by the accused Heera Lal to PW-9/Pxx. The learned Trial Court

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has relied upon her testimony by observing that there is no reason for the wife to depose against her husband. However, what the learned Trial Court failed to appreciate was that Ms. Pxx had, in fact, complained of her forceful abduction and rape, for which not only were the accused arrested on 27.03.2001, but we are informed that they had later been convicted in the said case. The learned Trial Court, insofar as it accepts part of the statement of PW-9/ Pxx, being the wife of the appellant Surender, therefore, cannot be accepted.

33. That apart, it is in the testimony of PW-9/Pxx that she had been forced to get married with Surender. While she was staying with Surender in the village, the appellants inquired from her regarding the persons and the flats where her mother used to work and who would be the richest among them. She claims that she named the deceased as the richest person. She further states that 15 days prior to the Holi festival, which fell on 09.03.2001, the appellants came to Delhi by saying that they were going there for some work. She states that after 8–9 days of Holi, they came back to the village, and she was then taken by them to Delhi. For 3–4 days, she remained in village Palam, whereafter she was taken to Anand Vihar. She states that on '*5th day of the month*', one day both the accused locked her inside the room and left the house at 6/7 AM and returned home at 10/11 PM. They both then washed their clothes at which she got suspicious as she used to wash their clothes daily. She states that in the morning she went to the bathroom and then found bloodstains there. She inquired from the appellants, and they threatened her to keep mum. They then again shifted to their village.

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34. The above version of sequence of events narrated by PW-9/Pxx does not match at all with the case of the prosecution, except to the limited extent that on 09.03.2001, the appellants would be in Delhi. By this narration, the murder would have taken place after Holi, which fell on 09.03.2001, whereas the deceased had been killed on 05.03.2001, that is, before Holi. The learned Trial Court, while on one hand accepted the version of PW-9 that an extra-judicial confession was made to her by appellant Heera Lal, being the wife of Surender, his brother, however, on this material contradiction, observed that this version of hers does not seem to be reliable. We have already quoted hereinabove the relevant finding of the learned Trial Court on this aspect. Once the witness is not found to be reliable on material parts and is, in fact, found to be exaggerating or telling falsehood, relying upon other part of the testimony of such witness without corroboration should not normally be accepted and doing so casts a grave doubt on the case of the prosecution.

35. Coming back to the alleged extra-judicial confession made by the appellant Heera Lal to PW-9, PW-9 states that when they returned to the village along with her, she heard the appellants telling their mother that she should not be allowed to go outside the house, as they had committed some '*kand in Delhi*.' She states that she asked the appellant Heera Lal regarding what the '*kand*' was, and the appellant Heera Lal told her that they had murdered Lal Singh, husband of Santosh Aunty.

36. Recently, the Supreme Court in ***Chandrabhan Sudam Sanap*** (supra), observed that an extra-judicial confession, by its very nature,

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has been held to be a weak piece of evidence. Normally, it is given to persons who enjoy the confidence and trust of the accused. The Supreme Court had placed reliance on an earlier judgment in ***Nikhil Chandra Mondal v. State of West Bengal***, (2023) 6 SCC 605, wherein it had been held as under:-

> *"16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence.*
>
> *17. Reliance in this respect could be placed on the judgment of this Court in Sahadevan v. State of T.N. This Court, in the said case, after referring to various earlier judgments on the point, observed thus:*
>
> *'16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:*
>
> *(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.*

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

(iii) It should inspire confidence.

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

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

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

37. In ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh*** (2023) 16 SCC 510, the Supreme Court, while considering the law in relation to the extra-judicial confession, has again held as under:-

*"**85.** Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before Magistrate or court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164CrPC or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise : (i) were they made voluntarily? And (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the court to have been caused by*

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any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Evidence Act.

86. *The law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some*

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other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors at the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that its opinion, the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. (See R. v. Warickshall.)

87. *It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So, where the statement is made as a result of the harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe Evidence 9th Edn. p. 284.) A promise is always attached to the confession, alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory*

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situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of inducement, promise, etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused. (See State of Rajasthan v. Raja Ram)

88. *An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he*

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may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

89. *Extra-judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. It is considered to be a weak piece of evidence as it can be easily procured whenever direct evidence is not available. In order to accept extra-judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra-judicial confession is voluntary, it can be acted upon to base the conviction.*

90. *Considering the admissibility and evidentiary value of extra-judicial confession, after referring to various judgments, in Sahadevan v. State of T.N, this Court held as under:*

"15.1. In Balwinder Singh v. State of Punjab , this Court stated the principle that:

'10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.'

***

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in State of

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Rajasthan v. Raja Ram stated the principle that:

'19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.'

The Court further expressed the view that :

'19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, ...'

***

15.6. Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan held that :

'29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma & Thimma Raju v. State of Mysore , Mulk Raj v. State of U.P. , Sivakumar v. State of T.N. :, Shiva Karam Payaswami Tewari v. State of Maharashtra and Mohd. Azad v. State of W.B.]"

(emphasis supplied)

91. *It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused*

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> *need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey & Anr, this Court after referring to Piara Singh & Ors. v. State of Punjab, held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.*
>
> ***92.*** *The sum and substance of the aforesaid is that an extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance like the case in hand. The courts generally look for an independent reliable corroboration before placing any reliance upon an extra-judicial confession."*

38. In the present case, from the testimony of PW-9/Ms. Pxx, it is evident that the appellants did not trust her. In fact, as noted hereinabove, on her complaint they were later arrested and have been convicted of an offence of kidnapping her, forcibly performing her marriage and raping her. They also used to confine her in the house, with one of them standing guard. It is, therefore, not believable that the appellant Heera Lal would confide in her about murdering someone.

39. Furthermore, when the learned Trial Court itself has found PW-9/Pxx not to be reliable on certain aspects, in our view, it erred in placing complete reliance on the alleged extra-judicial confession made by the appellant Heera Lal to her.

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40. The extra-judicial confession is then sought to be corroborated by the testimony of PW-4/Sunder Bhan, uncle of the appellants. In his statement, he states that on the '*5th of the month I do not remember, of 2001*,' he had seen the appellants coming out of the DDA park. He, therefore, does not even remember the month, but only the date when he allegedly saw the appellants. In fact, in his cross-examination, he further states that in the case regarding Pxx, the appellants had been arrested after about two months from the date when he saw them coming out of the DDA park. The appellants were admittedly arrested on 27.03.2001. This would mean that Shri Sunder Bhan had seen the appellants coming out of the DDA park sometime in January 2001. The same is completely in contradiction to the case of the prosecution and cannot, therefore, corroborate the alleged extra-judicial confession made by the appellants to PW-9/Pxx or the case of the prosecution. The learned Trial Court, however, erred in observing that it was on 05.03.2001 that PW-4/Sunder Bhan had seen the appellants coming out of the DDA park in Mangla Puri. This was not the statement of PW-4 in Court and, therefore, the very basis of placing reliance on this statement to hold the appellants guilty of the offence, cannot be sustained.

41. The other piece of alleged corroborative evidence relied upon by the prosecution is the alleged disclosure of the appellants and, thereafter, the recoveries made at the instance of the appellant Heera Lal. At the very outset, we would note that this is the admitted case of the prosecution that no recovery was made at the instance of the appellant Surender. The alleged disclosure made by him is, therefore,

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inadmissible in nature.

42. Coming to the alleged disclosure and the recovery made at the instance of the appellant Heera Lal, PW-18/Inspector Lakhindar Singh states that the appellant Heera Lal had taken them to a house under construction at Vaishali, Ghaziabad, from where he got recovered a rexine bag in a torn condition. The same contained two shirts and one pant, and he stated that one pair of pants and a shirt belonged to him, while the other shirt belonged to the appellant Surender. From the pant, one button-actuated knife was recovered. What is important here is that the owner of the house was not examined, nor was any independent witness, including labourer working there as the house was under construction, made a part to the alleged recovery. We quote from the statement of PW-18/Inspector Lakhindar Singh as under:-

> *".....I also recorded the disclosure statement of Heera Lal and Surender Ex. PW 18/C and 18/D respectively. Both the accused persons pointed out the place of occurrence vide pointing out memo Ex. PW18/E. Both the accused persons were produced before the court and were taken on five days police custody remand.*
>
> *On 30.3.01 Heera Lal accused took be to house No.KA-64 Vaishali Ghaziabad where they used to work as labourers. Accused Heera Lal got recovered a bag of rexine and in torn condition. Accused Heera Lal took out two shirts and one pant from that bag. Out of one pant and shirt belonging to Heera Lal and second was told by him belonging to his brother. On checking pant of Heera Lal which was of black colour, one button actuated knife was recovered from it. I prepared the sketch of the knife Ex. PW-18/F and same was seized vide memo Ex. PW-18/G after sealing with the seal of AS. He also disclosed in his disclosure*

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stat. that the said knife was used by him in the commission of crime.....Accused Heera Lal also made second disclosure stat in his village regarding the knife which was used in the commission of the crime and same is Ex.PW18/M.....Nothing was recovered at the instance of accd. Surender in consequence of his alleged disclosure stt. Ex.PW18/D. A knife was recovered at the pointing out of accd. Heera Lal in consequence of disclosure stt. Ex.PW18/C from Vaishali. This knife was sent to CFSL. First of all accd. Surender made disclosure stt. And thereafter accd. Heera Lal. Both were interrogated in separate room. The place of recovery at the instance of Heera Lal the house under construction. There was no labourers present at that time. It was at 2.30 PM when recovery was affected. It is correct that I prepared a consolidated memo of knife as well as pant and shirt. Two constable were present with me at the time of recovery. No public persons were available near the place of recovery. I had interrogated accd. and he had disclosed that he had been working there at the place of recovery. I did not collect evidence to the effect that accd. Heera Lal has been working at the place of recovery. It is wrong to suggest that accd. did not led the police party to the place of alleged recovery. It is wrong to suggest that accd. did not made any disclosure stt. It is wrong to suggest that accd. has nothing to do with H.No. KA-64 Vaishali, Ghaziabad..... I did not collect any evidence nor recorded stt. of any person that accd. was in possession of H.No. KA-64 Vaishali. This house was being constructed on a plot of 200 sq. yds. It is correct that other labourers had also been employed by the owner for the purpose of construction. I did not record the stt. of owner of the house who had employed accd. Heera Lal for the purpose of construction work.....No public person was joined by me from the PS to the place of recovery at the instance of accd. Heera Lal though on the way people were available.'

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43. In Ex. PW-18/C, which is the alleged disclosure statement made by the appellant Heera Lal, he had stated that bloodstained clothes, which had been washed by him, has been kept in his house and even the knife, after washing, has been hidden there. He also stated that he can get jewellery, pouch (purse), clothes, and the knife recovered. Curiously, he is alleged to have made another disclosure statement, which is Ex.PW-18/N, wherein he stated that his earlier disclosure statement regarding the knife and the jewellery was false, and that the knife which he got recovered earlier was the one used by Surender. As far as the knife used by him is concerned, he stated that he had thrown it on the way from Delhi to Ghaziabad, and that the jewellery had been stolen from him while he was going from Ghaziabad to Etah by bus. The above disclosure statements are clearly doubtful and cannot be relied upon. This itself casts a doubt on the veracity of the alleged recoveries.

44. As far as the discovery of the alleged recoveries is concerned, it was the case of the prosecution that the appellants had also stolen some cash and jewellery from the deceased. However, there is no recovery of these items.

45. It is pertinent to refer to Section 27 of the Indian Evidence Act, 1872, which reads as under:-

> *"27.* ***How much of information received from accused may be proved.****—Provided that, when any fact is deposed to as discovered inconsequence 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*

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confession or not, as relates distinctly to the fact thereby discovered, may be proved."

46. In ***Ramanand @ Nandlal Bharti*** (supra), the Supreme Court, while analysing the requirement of Section 27, held the pre-requisites to be satisfied for admitting in evidence of an alleged disclosure made by the accused, as under:-

> ***"56.*** *If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his bloodstained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent*

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witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

57. *The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW 2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the bloodstained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the bloodstained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or*

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if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

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59. *The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW 7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh. 5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to*

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safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

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73. *Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama (Exh. 5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon."*

47. Recently, in ***Anand Jakkappa Pujari @ Gaddadar v. The State of Karnataka***, 2026 SCC OnLine SC 716, the Supreme Court has held that Section 27 of the Indian Evidence Act is in the nature of an exception to the general rule on non-admissibility of confessions made by the accused, and it, therefore, has to be strictly construed. The Court held as under:–

*"**52**. The conditions necessary for the applicability of Section 27 of the Evidence Act are broadly as under:-*

1. *Discovery of fact in consequence of an information received from accused;*
2. *Discovery of such fact to be deposed to;*
3. *The accused must be in police custody when he gave information; and*
4. *So much of information as relates distinctly to the fact thereby discovered is admissible — Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC*

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62. *Section 27 of the Evidence Act is in the nature of an exception to the general rules contained in the two preceding Sections 25 and 26, respectively. Section 25 makes inadmissible any confession by an accused person to a police officer. Under Section 26, no confession by any person while he is in the custody of a police officer shall be proved against such person unless it be made in the presence of a Magistrate. Section 27 says that such part of the information given by an accused person while in the custody of a police officer may be proved against him as distinctly relates to the fact which is thereby discovered. It therefore makes admissible a confession made while in police custody if the other conditions laid in it are fulfilled. Being an exception to the general rule it has to be strictly construed. Section 27 of the Evidence Act does not permit the admission in evidence of the whole of the confession, but of such portion only of it as can be said to relate distinctly to the fact discovered.*

63. *We are of the view that the courts below committed an error in placing implicit reliance on the discovery part. As explained earlier, the discovery panchanama was not drawn in accordance with law. The panch witness i.e., the PW-4 has not said a word as regards the exact statement made by the appellants in his presence. The discovery of fact relevant under Section 27 of the Evidence Act in the form of various objects, place of occurrence etc., was at the instance of the accused no. 1, namely, Kalappa. Kalappa is not before us. We are informed that Kalappa has not preferred any appeal before this Court.*

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> *There is nothing to even remotely indicate that there was discovery of any fact at the instance of the appellants admissible under Section 27 of the Evidence Act.*
>
> *64. The information should directly and distinctly relate to the facts discovered. Where, therefore, a fact has already been discovered any information given in that behalf afterwards cannot be said to lead to the discovery of the fact. There cannot be a rediscovery. Where the information as to the fact said to have been discovered is already in the possession of the police, the information given over again does not actually lead to any discovery so that its discovery over again in consequence of the information given by the accused is rightly inadmissible under Section 27 of the Evidence Act."*

48. The alleged recoveries, even otherwise, do not take the case of the prosecution any further. As far as the shirt and pants stated to be of the appellant Heera Lal are concerned, no blood could be detected on them. As far as the shirt alleged to be belonging to the appellant Surender is concerned, though blood was detected on it and was stated to be of human origin, the blood group could not be conclusively stated. Even otherwise, whether the shirt at all belonged to appellant Surender has not been proved by the prosecution, except only through the statement of appellant Heera Lal, which would be inadmissible as against appellant Surender. As far as the knife is concerned, again, no blood was detected on it.

49. The prosecution has also placed reliance on the statement of PW-5/Dr. L.K. Baruah, who had conducted the post-mortem of the deceased. He found that the deceased had suffered seven injuries, and

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in his statement, he states that injury nos. 1 and 2 were sufficient to cause death in the ordinary course of nature, individually and collectively. For injury nos. 3, 4, 5, 6, and 7, he opined that these '*could possibly be caused by this knife, however, injury Nos. 1 and 2 are not likely to be caused by this knife.*'. Apart from the fact that such medical opinion by itself is not sufficient to convict the appellants, the statement of PW-5/Dr. Baruah, in fact, suggests that the injuries which were fatal to the deceased were not caused by the knife which was allegedly recovered.

50. In the present case, there is no direct evidence against the appellants. The case of the prosecution was based on circumstantial evidence. It is settled law that where a conviction is based on circumstantial evidence, each link of the evidence must lead only to the culpability of the accused. In ***Sharad Birdhichand Sarda v. State of Maharashtra***, (1984) 4 SCC 116, the Supreme Court held that the circumstances from which the conclusion of guilt is to be drawn should be fully established and should be consistent only with the hypothesis of the guilt of the accused; they should exclude every possible hypothesis except the one to be proved and should not leave any reasonable ground for the conclusion consistent with the innocence of the accused. We quote from the judgment as under:-

> ***"153.*** *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*

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It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made:

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

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

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

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

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

51. In our opinion, the prosecution has not met the above standard.

52. In view of the above, the appeals are allowed and the impugned order dated 14.11.2002 convicting the appellants, is hereby set aside. The order on sentence dated 15.11.2002, sentencing them, is also set aside. The appellants are acquitted of the charges against them.

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53. The personal bonds of the appellants and the sureties are also discharged.

54. We make it clear that the findings recorded in the present judgment are confined to the issues arising herein and shall not influence the adjudication of any other proceedings pending against the appellants, especially the conviction of appellant Surender in the other case relating to Ms.Pxx.

55. A copy of this judgment be communicated to the learned Trial Court and the concerned Jail Superintendent, for necessary information and compliance.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

MAY 13, 2026/*rv/as*

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