

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 402 of 2019

With

CRAN 2 of 2020

CRAN 3 of 2020

Md. Mujahid Khan

Vs.

The State of West Bengal

With

CRA 659 of 2019

Md. Chand @ Sahabaj Akhtar @ Shahbaz Akram & Anr.

Vs.

State of West Bengal

With

CRA 85 of 2021

Md. Samim

Vs.

The State of West Bengal

For the appellant in : Mr. Milon Mukherjee, Ld. Sr. Adv.
CRA 402 of 2019 Mr. Biswajit Manna, Adv.

For the appellants in : Mr. Saryati Datta, Adv.
CRA 659 of 2019
 and *CRA 85 of 2021*

For the State : Mr. Krishnendu Bhattacharjee, Ld. A.P.P.
 Ms. Tanushree Kar, Adv.

Hearing concluded on : 13.07.2026

Judgment on : 21.08.2026

Md. Shabbar Rashidi, J.:-

1. These three appeals are taken up together as they emanate out of the same judgment and order.

2. The appeals arise out of judgment of conviction dated June 27, 2019 and order of sentence dated June 28, 2019 passed in Sessions Trial No. 10 of 2012 corresponding to Sessions Case No. 187 of 2011. By the impugned judgment, the appellants were convicted under Sections 302/201/34 of the Indian Penal Code, 1860 (for short, the 'I.P.C.').

3. By the impugned order of sentence, the convicts were sentenced to suffer rigorous imprisonment for life with a fine of Rs. 20,000/- each for the offence punishable under Sections 302/34 of the I.P.C. In default of payment of fine, the convicts were directed to undergo further rigorous imprisonment for two years. They were further sentenced to suffer rigorous imprisonment for three years each with a fine of Rs. 5,000/- each for the offence punishable under Sections 201/34 of the I.P.C. In

default of payment of fine, they were directed to undergo rigorous imprisonment for a further period of one year each. All the sentences were directed to run concurrently.

4. It was submitted by learned Senior Advocate for the appellant that the evidence on record did not justify the conviction of the appellants and for such reason, the impugned judgment and order is liable to be set aside. It was also submitted that the impugned judgment and order was passed on the basis of conjectures and surmises. The charges labelled against the accused persons were not established at the trial.

5. Learned Senior Advocate for the appellant further submitted that prior to lodging of the First Information Report, a GDE was lodged with the police. However, such GDE did not disclose the facts that were proved at the trial. In the GDE, there was no allegation to the effect that the victim was called upon by some person, rather it was stated that the victim left his house. The chain of circumstances was not proved at the trial sufficient enough to point to the guilt of the appellant to the exclusion of all others. The case being based on circumstantial evidence and as the chain of circumstances has not been proved pointing to the theory of guilt of the appellants exclusively, the conviction of the appellants cannot be sustained.

6. Learned Senior Advocate for the appellant also submitted that as per the case of the prosecution, the victim was seen in the company of the appellants on January 27, 2011 whereas his dead body was recovered on January 30, 2011. According to the evidence of the autopsy surgeon, victim died 24 to 36 hours prior to the post mortem. The prosecution has not been able to explain the time gap between the victim 'last seen in the company of the appellants' and 'recovery of his dead body'. It was submitted that learned Trial Judge did not consider such facts and passed the impugned judgment and order.

7. Learned Senior Advocate for the appellant further submitted that there are material contradictions between the testimonies of the witnesses examined on behalf of the prosecution. It was submitted that as per the evidence, the victim was called upon by the appellant Sk. Samim and both of them entered into Khan Marriage Hall. It was also submitted that there were so many shop rooms around Khan Marriage Hall. However, no evidence was brought on record by the prosecution that the family members of the victim enquired from the said shop owners. The said shop owners have not been examined on behalf of the prosecution as witnesses. Learned Senior Advocate for the appellants also submitted that as per the evidence, victim was called upon from his

house while he was taking lunch, however, autopsy surgeon did not find any food particles from the body of the victim.

8. Learned Senior Advocate for the appellant also submitted that the place of occurrence has not been established by the evidence on behalf of the prosecution. According to the case of the prosecution, the victim was called upon by one of the appellants and they went into Khan Marriage Hall whereas PW 11 had stated that the deceased and appellant, Sk. Samim were talking about going to Janazah Hall.

9. Learned Senior Advocate for the appellant also submitted that a blood stained lungi said to be belonging to the victim was recovered at the instance of the appellant, however, serological examination failed to determine the blood group of the blood stained lungi. Moreover, the investigating agency seized a blood stained lungi as well as a blood stained full pant both said to be belonging to the victim. It was contended on behalf of the appellants that the learned Trial Court did not appreciate that both lungi and full pant cannot be worn by the victim at the same time.

10. Besides that, learned Senior Advocate for the Appellant also submitted that the evidence is solely based on circumstantial evidence and the prosecution has failed to explain the missing links in the chain of circumstances which vitiate the prosecution case. Motive of the crime

has also not been proved at the trial which is necessary in a case based on circumstantial evidence. Learned Senior Advocate submitted that the prosecution has not been able to bring home the charges labelled against the appellants and, as such, prayed for setting aside the impugned judgment and order.

11. On the other hand, learned Advocate appearing for the State submitted that the prosecution has proved the charges labelled against the appellants with the help of convincing evidence led at the trial. It was further submitted that the prosecution has proved each and every link in the circumstances which point to the guilt of the appellants. Learned Advocate for the State submitted that the learned Trial Judge was quite justified in passing the impugned judgment dated June 27, 2019 and order of sentence dated June 28, 2019.

12. Learned advocate for the State further submitted that since, the victim was last seen alive in the company of appellants, the appellant owed responsibility to explain the circumstances as to when he parted with such company in terms of the provisions of Section 106 of the Indian Evidence Act, 1872. In support of such contention, learned advocate for the State relied upon **2024 SCC OnLine SC 12 (Perumal Raja alias Perumal vs. State Rep. by Inspector of Police), (2018) 6 Supreme Court Cases 610 (Satpal vs. State of Haryana), (2023) 5**

Supreme Court Cases 534 (Ram Gopal vs. State of Madhya Pradesh)
and ***2015 SCC OnLine Cal 1057 (State of West Bengal vs. Laxmi Kanta Karmakar)***.

13. Learned advocate for the State further submitted that the medical evidence can be considered in aid of material evidence to prove a case. Such evidence cannot be taken to disprove the case of the prosecution. In support of such contention, learned advocated for the State placed reliance upon ***(1992) 3 Supreme Court Cases 204 (Madan Gopal Kakkad vs. Naval Dubey and Another)***.

14. Relying upon ***(1985) 4 Supreme Court Cases 80 (Pattipati Venkaiah vs. State of Andhra Pradesh)***, learned advocate for the State further submitted that delay in lodging the FIR was properly explained in the written complaint. There was no inordinate delay to doubt the veracity of the prosecution case.

15. Learned advocate for the State also submitted that relative witnesses examined in the case are reliable and conviction based on such evidence cannot be doubted. In support of his contention, learned advocate for the State cited ***(2012) 4 Supreme Court Cases 79 (Mano Dutt and Another vs. State of Uttar Pradesh)***.

16. The brother of the victim lodged a written complaint with Bhadreswar Police Station on January 30, 2011 on 3:45 hours. It was

stated in the written complaint that the brother of the de-facto complainant, namely, Javed Ali @ Jahid went missing at about 1:00 p.m. on January 27, 2011. He did not return to his house. On January 29, 2011, father of the de-facto complainant lodged a missing diary in this regard. Later on, the de-facto complainant came to know from one Md. Samim that he had taken his brother Javed Ali to play Carrom inside Khan Marriage Hall. The written complaint also stated that he came to know further that, at that time, Md. Chand, Md. Iktear @ Sagar, Md. Mujahid Khan and Md. Gazi Khan were also present with the brother of the de-facto complainant. The de-facto complainant also disclosed that many more persons were involved. He later came to know that Javed Ali was killed and his dead body was concealed somewhere.

17. On the basis of such written complaint, Bhadraswer Police Station Case No. 12 of 2011 dated January 30, 2011 under Sections 302/201/34 of the I.P.C. was started against five F.I.R. named accused persons. Police took up investigation of the case and on completion of such investigation submitted charge-sheet against four accused persons. The offence being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions for trial. Accordingly, on the basis of materials in the case diary, charges under Sections 302/201/34 of the I.P.C. were framed against the four accused persons. Charges were

duly read over and explained to the accused persons to which, they pleaded not guilty and claimed to be tired.

18. In order to prove the charges, prosecution examined as many as 18 ocular witnesses. Besides that, prosecution also relied upon certain documentary as well as material evidence which were admitted in evidence at the trial.

19. The de-facto complainant himself deposed as PW 1. He stated that he was a resident of Telinipara. The victim was his third brother who was murdered. He further stated that at the time of the incident, all his four brothers including the victim and his father used to reside in a common house. His victim brother Javed Ali used to work in Shyamnagar Jute Mill. There was a Khan Marriage Hall situated at Akbari Road in front of his house. PW 1 further stated that on January 27, 2011 at about 12:45/1:00 p.m., while PW 1 and other family members were taking mill, appellant Samim came and called the victim to Khan Marriage Hall for playing Carrom. At that time, all his four brothers and father were present in the house. He also stated that when Samim took his brother from his house, Sagar and Chand were standing on the road in front of the door of his house whereas Mujahid and Gazi were standing at the door of the office of Khan Marriage Hall. The aforesaid persons took the victim brother of PW 1 inside Khan Marriage

Hall and went upstairs. When the victim was going with the accused persons, PW 1 was also going outside the door of his house for his duty at Bhadreswar Mill. PW 1 further stated that Khan Marriage Hall was a two-storied building. On the first floor, there was a reception hall whereas on the ground floor, there was about 10/11 shops alongwith the office of Khan Marriage Hall. The cooking place and septic tank were also situated on the ground floor. Appellant Mujahid Khan was in-charge of Khan Marriage Hall dealing with the bookings etc. of such hall.

20. PW 1 further stated that on his return from duty at 5:00 p.m., PW 1 found that his brother had not returned. The victim used to do overtime duty often and PW 1 was informed that he went for overtime but the victim did not return even in the night and on the following morning. PW 1 and others tried to trace the victim at several places. Father of PW 1 lodged a missing diary on January 29, 2011. Later on, PW 1 asked the appellant Samim about the whereabouts of the victim but he did not respond properly. Thereafter, PW 1 went to Bhadreswar Police Station and lodged a written complaint on January 30, 2011 scribed by one Md. Rejaullah. Such written complaint was read over to him and, thereafter, he signed on it. He proved his signature on the written complaint (Exhibit-1)

21. PW 1 further stated that police visited Khan Marriage Hall after lodging of the written complaint. PW 1 along with Daud, Fakru, Julfikar Ali Bhutto accompanied the police to Khan Marriage Hall. Police recovered the beheaded dead body of the brother of PW 1 from inside the septic tank. There was a cut injury on the left side of the jaw and the head was severed from the body. Police conducted inquest over the dead body in his presence.

22. PW 1 also proved his signature in the inquest report (Exhibit-2). Subsequently, the dead body was sent for post mortem examination. PW 1 further stated that he along with others accompanied the police to the first floor of Khan Marriage Hall when the appellant Samim took out a dragger (*bhojali*) from a room in the western side of Khan Marriage Hall and handed over the same to the police in presence of PW 1. Police seized the *bhojali* under a seizure list. PW 1 as well as 3 and 4 others signed on such seizure list. He proved his signature on the seizure list (Exhibit-3). PW 1 also identified the *bhojali* in Court (Mat Exhibit-I).

23. PW 1 further stated that the appellant Chand also took out a *hansua* from the ground floor of hall which was seized by police in presence of PW 1 and others. PW 1 proved his signature on such seizure list (Exhibit-4) as well as *hansua* (Mat Exhibit-II). Appellant Mujahid took out a blood stained lungi under a water tank on the first floor of Khan

Marriage Hall in presence of PW 1 which was seized by police under a seizure list. PW 1 proved his signature on such seizure list (Exhibit-5). PW 1 also identified the seized blood stained lungi and Carrom board (Mat Exhibits-III and IV).

24. PW 1 also stated that after two days, he along with Reajuddin, Julfikar and Sagar accompanied the police to the house of Sagar. Sagar took out a *nepala* from under his bed in his house which was seized by police under a seizure list. PW 1 proved his signature on such seizure list dated February 4, 2011 (Exhibit-6). The seized *nepala* was also identified by him as Mat Exhibit-V. PW 1 identified the appellants in Court. In his cross-examination, PW 1 admitted that the appellants had cordial relations with his brother. PW 1 also stated in his cross-examination that he along with others went to the police station on January 29, 2011 and stated before police that his brother was called upon by Samim and his brother went with Samim, Sagar and Chand to Khan Marriage Hall. Thereafter, he again went to Bhadreswar Police Station on January 30, 2011 and lodged the written complaint. In his cross-examination, PW 1 also stated that police visited his house at 11:00 p.m. in the night on January 30, 2011 and got the lock of Khan Marriage Hall opened. PW 1 also accompanied the police. He further stated that at that time police did not make search thoroughly but with a torch light and at that time

the seized articles could not be recovered. The police opened the lid of the septic tank with the help of dom at 12 in the midnight. He has also stated that police visited at 11/11:30 in the night either on January 31, 2011 or February 1, 2011. Seizures of the articles were made at 1/1:30 am.

25. Mother of the victim deposed as PW 2. She stated that on the 27th day at 1:00 p.m. the victim returned from Bhadreswar Mill. She served meal to her husband and four sons. While they were taking meal, appellant Samim came there and called upon the victim to Khan Marriage Hall where Mujahid was waiting for him to play Carrom. PW 2 also stated that when the victim left with Samim, she saw Sagar and Chand were standing outside the door and Mujahid and Gazi were standing in front of the gate of Khan Marriage Hall. Mujahid was the caretaker of Khan Marriage Hall and Gazi was his brother. PW 2 also saw Sagar, Chand, Samim, Mujahid and Gazi taking her victim son to the first floor of Khan Marriage Hall. She waited for the victim till the evening. Thereafter, a search was conducted throughout the locality. PW 2 further stated that on 29th day, she asked Samim and Mujahid about the whereabouts of her son Javed to which they replied that they had no knowledge. On that day, she along with others went to Bhadreswar Police Station and lodged the First Information Report (F.I.R.). She further

stated that on 30th day at about 11:30/12:00 at night, police came to Khan Marriage Hall. PW 1 accompanied the police with other people from the locality. In the Khan Marriage Hall, the dead body of her son Javed was recovered from the septic tank in a beheaded condition. Police arrested Mujahid, Chand, Sagar and Samim. She further stated that she was interrogated by police in connection with the case. She also recorded statement under Section 164 of the Code of Criminal Procedure, 1973 (for short, the 'Cr.P.C.'). In her cross-examination, PW 2 stated that she did not accompany PW 1 on 30th day to the police station. In her cross-examination, PW 2 also stated that 1/1.5 year prior to the incident, her house was being renovated and at that time her family members resided in Khan Marriage Hall for about a month. She admitted that Mujahid did not take any rent for such stay.

26. The other brother of the victim was deposed as PW 3. He stated that on January 27, 2011 at about 1:00 p.m., he was standing in front of Khan Marriage Hall. Appellants Mujahid and Gazi were standing at the gate of Khan Marriage Hall which was situated opposite to his house. At that time, appellant Samim called his brother from his house. Incidentally thereafter, PW 3 corrected his statement that his brother was called by Chand and Sagar also for playing Carrom board in the Khan Marriage Hall. Thereafter, Samim, Chand, Sagar, Mujahid and Gazi

along with his victim brother Javed went inside Khan Marriage Hall. The victim thereafter returned from Khan Marriage Hall. He could not be found anywhere. PW 3 also stated that a missing diary was lodged in this regard with Bhadreswar Police Station by his parents but his brother could not be found. In the night of January 30, 2011 police came and after opening the gate of Khan Marriage Hall, the dead body of the victim was recovered from a septic tank on the ground floor of Khan Marriage Hall. The dead body was beheaded. PW 3 also found cut injury on the left side of the face of the severed head. PW 3 also signed on the inquest report (Exhibit-2/1). PW 3 along with his family members identified the dead body and, thereafter, it was sent for post mortem examination. He also identified the appellants in Court. In his cross-examination, PW 3 stated that search for his brother was started from the evening of January 27, 2011.

27. A neighbour of the victim was examined as PW 4. He stated that the victim Javed was murdered in Khan Marriage Hall and his dead body was recovered from the septic tank in the marriage hall in a beheaded condition. A severed head was also recovered. PW 4 further stated that on February 1, 2011 police from Bhadreswar Police Station came to him at about 8/9 at night accompanied by the appellants. They were taken to Khan Marriage Hall. PW 4 along with Fakruddin, Mainuddin and about

10-12 persons of the locality also entered into Khan Marriage Hall. From the western room of Khan Marriage Hall Samim brought out a *bhojali* which PW 4 identified in Court. The said *bhojali* was seized by police under a seizure list. PW 4 proved his signature on such seizure list. The appellant Chand also brought out a *hansua* from the middle room of Khan Marriage Hall which was also seized. PW 4 proved his signature thereon. A blood stained lungi from near the water tank on the first floor of Khan Marriage Hall was recovered as shown by appellant Mujahid which was also seized by police under a seizure list in presence of PW 4. He signed on such seizure list. PW 4 identified the seized articles in Court. He identified the appellants in Court.

28. The autopsy surgeon was examined as PW 5. He stated that on January 31, 2011 he conducted post mortem examination over the dead body of the victim. He found the dead body in beheaded condition with decomposition and appeared marbling. The dead body was stained by blood, mud and sand particles and foul smelling. The body was wearing green-white half shirt with full jeans pant mixed with mud, blood and sand. PW 5 also stated that on examination of the dead body, he found the following injuries:-

“1) Head was separated from remaining part of the body at the level anteriorly joined above the hyoid bone and below of 1st cervical vertebra posterior with evidence of multiple chop wound

with verifying length and depth transecting all the structures of neck at that mentioned level;

2) One in sized would measuring 3" x 0.5" up to muscle depth over the jaw placed with tailing medially;

3) One in sized would measuring 1" x 1/2" up to muscle depth over right angle of mandible;

4) One in sized would measuring 1" x 1/2" up to muscle depth over front of left mastoid placed vertically;

5) In sized would measuring 3" x 1/2" up to muscle depth transversely supra sternal notch;

6) One in sized would measuring 3" x 1/2" up to muscle depth transversely over anterior neck 1/2" below previous one;

7) One defence cut over left plum between thumb and middle finger from obliquely measuring 3" x 1/2" up to muscle depth;

8) Cut fracture of cervical second vertebra on body anteriorly of full diameters. All injuries show evidence of ante mortem in nature. W/a, hair, nails and lever viscera are preserved, labelled and handed over to police for examination of FSL."

29. Upon examination, PW 5 opined that death was caused due to the effects of aforementioned injuries which were ante mortem and homicidal in nature which could be caused by sharp cutting weapons like *bhojali*, *hansua* and *nepala*. In his cross-examination, PW 5 stated that he conducted the post mortem examination at 2:20 p.m. on January 31, 2011 and he found evidence of early decomposition in the whole body which indicated that the death was caused about 24/36 hours prior to

the post mortem examination. He also found vital reaction in respect of injury No. 7 which suggested that the victim tried to resist.

30. Another neighbour of the victim deposed as PW 6. He stated that house of the victim was situated just opposite to Khan Marriage Hall. On January 27, 2011 in the evening, the parents of the victim came to him and told her son Jahid was missing since noon. They requested PW 6 to search for their son. PW 6 also stated that the mother of the victim told him that while Jahid was taking meal, Chand, Samim and Sagar came to her house and called the victim to play Carrom at Khan Marriage Hall. PW 6 advised them to lodge a missing diary to the police station. He also searched for the victim at various places.

31. PW 6 also stated that on January 30, 2011 at about 12 am in the midnight, he heard hue and crying in front of Khan Marriage Hall and went there. He saw police personnel had entered in Khan Marriage Hall. He accompanied the police into the Khan Marriage Hall. One Mujahid was the caretaker of the said marriage hall. Police at first went on the first floor of the hall but victim was not found there. Thereafter, they came down to the ground floor. There was a septic tank near the kitchen from where the dead body of the victim was recovered. The dead body was found in a beheaded condition. The severed head was also taken out from the septic tank. PW 6 signed on the inquest report

conducted over the dead body. PW 6 also stated that on February 4, 2011 police again came to Khan Marriage Hall with accused Sagar. Thereafter, he accompanied police to the house of Sagar where Sagar brought a *nepala* from under his bed which was seized by police under a seizure list. PW 6 signed on such seizure list. He proved his signature under seizure list and identified the recovered *nepala*. PW 6 identified accused Sagar in Court. In his cross-examination, PW 6 stated that when the dead body was taken out from the septic tank, there were wearing apparels on the body and the severed head had a cut mark on one side of the head. The beheaded head was under a bag.

32. A shop owner in front of Khan Marriage Hall and cousin brother of the victim was examined as PW 7. He stated that he had a betel shop just in front of the Marriage hall. The house of victim Javed was situated opposite the Khan Marriage hall. He further stated that on January 27, 2011 at about 1:30 p.m., he saw Chand, Samin and Sagar taking along the victim Javed towards Khan Marriage hall from his house. He also saw Mujahid Khan and Gazi Khan on the gate of marriage hall. They took Javed to the first floor. At about 10/11 hours in the night, mother of Javed came to PW 7 and told that Javed was taken by Chand, Samin and Sagar to marriage hall for playing carom but he did not return. Hearing

this, PW 7 started searching for Javed in the night as well as in the following morning.

33. PW 7 also stated that brother of Javed lodged a missing diary with Bhadreswar P.S. on January 30, 2011. Thereafter, the family members of the de facto PW 1 were interrogated. On the basis of statement of PW 1, police conducted search and recovered beheaded dead body of the victim from the septic tank on the ground floor of the marriage hall. The severed head had a cut injury on its left side. Inquest was conducted over the dead body. PW 7 proved his signature on the inquest report. He further stated that on February 1, 2011, at about 1:30/2:00 p.m. police came to Khan Marriage Hall accompanied by the appellants Mujahid Khan, Chand and Samim and 10/12 persons including the PW1 and PW 7. Appellant Samim took out a *bhojali* from western room which was seized. He proved his signature on the seizure list and identified the recovered *bhojali*. Appellant Chand also took out a *hansua* from the adjoining room. A blood stained lungi was also recovered from under the water tank on the roof of marriage hall, as shown by the appellants. The aforesaid articles along with carom board etc. were seized by police. PW7 was interrogated by police and he also recorded his statement under Section 164 of the Cr.P.C.

34. A professional photographer deposed as PW 8. He took some photographs of the dead body of the victim at 3:30/4:00 a.m. on January 30, 2011, as per the instructions of police. He proved the photographs and his signature on the seizure list through which, the photographs were seized. Defense declined to cross-examine PW 8.

35. A local resident deposed as PW 9. He stated that Javed Ali @ Jahid was murdered on January 26, 2011. He further stated that in the night of January 30, 2011 after about 1:00 a.m. police came and entered the marriage hall. PW 9 also stated that he heard in the locality that there was a murder in the marriage hall. From the septic tank of the marriage hall, one beheaded dead body and severed head of Javed were recovered. He further stated that on February 4, 2011 police again visited the place. He heard that Sagar took out a blood stained *nepala* from his house from under his beddings. It was seized by police under a seizure list. PW 9 signed on the seizure list. He proved his signature and identified the recovered *nepala*. He identified the appellant Sagar in Court.

36. The Judicial Magistrate examined as PW 10. He recorded the statement of witness Sahidan Bibi (PW 2) on February 7, 2011 and on February 9, 2011 he recorded the statement of witnesses Fakruddin,

Nazila Khatun and Daud Hussain under Section 164 of the Cr.P.C. He proved such statements (Exhibits-7/3, 9/4, 11 and 12).

37. A local resident who recorded statement under Section 164 of the Cr.P.C. was examined as PW 11. She stated that her house was situated intervened by one house from Khan Marriage Hall. Mujahid Khan was the caretaker of such marriage hall. She further stated that she knew Javed Ali who was murdered. She saw Javed last on January 17, 2011 at about 1/1:15 p.m. At that time, she was standing near her door. Mujahid, Gazi, Chand, Sagar and Samim were standing near the door of the staircase of the marriage hall. Javed was called by Samim and, thereafter, all the aforesaid persons went into the marriage hall. Since then, PW 11 did not see Javed. PW 11 also stated that in the said night, PW 2 came to her house and wanted to know about Javed to which PW 11 replied that Javed was with the appellants and will return back. On the following morning, PW 2 again came to PW 11 asking for Javed whereupon PW 2 asked Mujahid who was sitting near the marriage hall. On such query, Mujahid became frightened. Thereafter, PWs 2, 11 and other people of the locality went to the house of Samim in search of Javed. The mother of Samim told that Samim had gone to work. On January 29, 2011 a missing diary was lodged. PW 11 further stated that on January 30, 2011 police came and entered into Khan Marriage Hall

with para people and PW 1. The dead body of Javed was recovered from the septic tank of Khan Marriage Hall in a beheaded condition. On February 1, 2011 police again came to Khan Marriage Hall along with Samim and others. She also stated that she recorded statement before learned Magistrate. She identified the appellants in Court. In her cross-examination, PW 11 stated that although her house and Khan Marriage Hall were situated in the same row, but it was visible from her house. She further stated that Mujahid and her family members belonged to a political party and they had campaigned against her husband.

38. The recording officer was examined as PW 12. He stated that on January 30, 2011 he was posted at Bhadreswar Police Station as Officer-in-Charge. On such day, he received a written complaint from PW 1 and registered the specific case. The written complaint was forwarded by S.I. Madhumangal Das posted at Telinipara T.O.P. He knew his handwriting. PW 12 proved the endorsement made by S.I. Madhumangal Das and himself on the written complaint. PW 12 also proved the formal F.I.R. In his cross-examination, PW 12 could not say if any missing diary was lodged relating to the instant case. He further stated that before receiving the written complaint, he had information that there was a trouble in the area.

39. The scribe of the written complaint deposed as PW 13. He stated that he wrote the written complain as per dictation of Md. Mainuddin (PW 1). After writing, he read over the same to PW 1 and, thereafter, PW 1 signed on it in his presence. He proved the written complaint (Exhibit-1/3).

40. An Assistant Sub-Inspector of Police was examined as PW 14. He stated that on January 29, 2011 he was posted at Bhadreswar Police Station and on the said day, he had written G.D. Entry No. 1577 dated January 29, 2011. He proved the true copy of said G.D.E. (Exhibit-14).

41. An officer from Biology Division of Forensic Science Laboratory, Kolkata deposed as PW 15. He stated that on August 25, 2011, he was posted as Assistant Director of Biology Division, FSL, Government of West Bengal, Kolkata. He proved FSL report dated August 25, 2011 in connection with Bhadreswar Police Station Case No. 12 of 2011 dated January 30, 2011 under Sections 302/201/34 of the I.P.C. He further stated that his office received nine seal packed parcels forwarded by learned Additional Chief Judicial Magistrate, Chandernagore, Hooghly. Upon examination, he found that,

“Blood, insufficient for Serological tests was detected in the scabbard contained, in the item marked G and on the handle of the ‘Bhojali’ contained in the item marked H. Blood was detected on the contents of the items marked A (brown stains of the

blotting paper). B (brown stains of the blotting paper), C (scalp hair), D (nail out things), F (wearing apparels), G ('nepala' blade). H (bhojali-blade) and J (lungi). Regarding the origin and group of blood on each of those items. The report of the Serologist, Govt. of India, 3 Kyd Street, Kolkata-16, bearing No. 251 MLR dt. 28.07.11 is enclosed."

He proved his report (Exhibit-15). In his cross-examination, PW 15 stated that blood insufficient for Serological test was detected in the scribe report contained in item No. G and on the handle of the *Bhojali* contained in the item marked H. He further stated that he did not conduct any Serological tests and, as such, he was not in a position to prove whether the blood was of human, bird or any kind of animal. He referred the received item to the Serologist, Government of India.

42. Another officer from FSL was examined as PW 16. He stated that on June 24, 2011 he was posted as Senior Scientific Officer (Toxicology), FSL, Kolkata. On the said date, he prepared a report after examination of one glass jar and found that no poison could be detected in the viscera said to be of Javed Ali @ Jahid. He proved his report (Exhibit-15/1).

43. The Serologist was examined as PW 17. He stated that on July 28, 2011 he was posted at Institute of Serology, Government of India. On the said day, the Director of FSL, Government of West Bengal forwarded ten numbers of exhibits in connection with Bhadreswar Police Station

Case No. 12 of 2011 which were re-numbered as Serial Nos. 1 to 10 in his office which are as follows:-

*“Serial No. 1 was Blood soak blotting paper marked as Ext.A;
 Serial No. 2. Blood soak blotting paper marked as Ext.B;
 Serial No. 3. Hair marked as Ext.C;
 Serial No. 4. Nail cuttings marked as Ext.D;
 Serial No. 5. Full pant cuttings marked as Ext.F;
 Serial No. 6. Jangia cutting marked as Ext.F;
 Serial No. 7. Half sleeve shirt cutting marked as Ext.F;
 Serial No. 8. Nepala blade swab in cotton wool marked as Ext.G;
 Serial No. 9. Vojali blade swab in cotton wool marked as Ext.H;
 Serial No. 10. Lungi cuttings marked as Ext.J.”*

44. After examination, he found item Nos. 2 to 4 stand with human blood. Item Nos. 1, 3, 5, 6, 7, 8, 9 and 10 were disintegrated and that is why the origin could not be detected. He further stated that the blood group of the stains on item Nos. 2 to 4 could not be determined because the exhibits were not sufficient for test. Rest of the items could not be determined because blood stains were disintegrated. PW 17 proved the report prepared in his pen and signature (Exhibit-15/2).

45. The investigating officer of the case was examined as PW 18. He stated that on January 30, 2011 he received a written complaint from PW 1 and forwarded the same to Officer-in-Charge, Bhadreswar Police Station. Later on, he was endorsed with the investigation of the case. He

further stated that on January 27, 2011 at about 13.00 hours, one Nejamuddin lodged a GDE informing that his son Md. Javed Ali @ Jahid was missing from his house. The GDE was registered as No. 1577 dated January 29, 2011. Following such GDE, PW 18 accompanied by police force, tried to search out the missing person but could not find him. He further stated that on January 30, 2011 at 3:00 a.m., PW 1 informed him on January 27, 2011 at 13:00 hours, Md. Samim, Chand and Sagar called his brother at Khan Marriage Hall for playing carom. Mujahid Khan and Md. Gazi Khan were also present there. PW1 also informed PW 18 that he suspected that the aforesaid persons murdered Javed. On the basis of such written complaint, search for the missing person was conducted and, ultimately, dead body was found at 3:15 hours from inside the septic tank of Khan Marriage Hall. The beheaded dead body was identified by PW 1 and other local people as that of Javed Ali. PW 18 conducted inquest over the dead body and prepared report which he proved. Thereafter, the dead body was sent for post mortem examination under a dead body challan (Exhibit-16).

46. In his deposition, PW 18 described the various steps taken by him during investigation. He visited the place of occurrence and prepared rough sketch map with index thereof. He also examined available witnesses and recorded their statement. He also forwarded the accused

persons to Court and obtained their police custody. On January 31, 2011, PW 18 also collected the wearing apparels of the victim after post mortem examination. He also examined the accused persons on February 1, 2011 and went to Khan Marriage Hall with the accused persons. Accused Md. Samim made a statement in presence of local people that on January 27, 2011 at about 1:00 hours they murdered Javed Ali @ Jahid. As per the statement of Md. Samim, a *bhojali* was recovered from western room on the first floor of Khan Marriage Hall. He proved the seizure list and identified the recovered *bhojali*. PW 18 further stated that as per leading statement of accused Shahbaz Akram @ Md. Chand, a sharp cutting *hansua* was recovered from the middle room on the first floor of Khan Marriage Hall which was also seized. Similarly, on the leading statement of Mujahid Khan, Md. Chand and Md. Samim a blood stained lungi was recovered. A Carrom board was also seized from the place of occurrence. He also seized five copies of photographs from the photographer under a seizure list (Exhibit-10). A *nepala* was recovered on the leading statement of appellant Sagar. He also arranged for recording of statement of witnesses under Section 164 of the Cr.P.C. and collected copies thereof. He also collected post mortem report and the viscera and other articles for chemical examination and collected reports thereof. Upon conclusion of investigation, PW 18 submitted

charge-sheet under Sections 302/201/34 of the I.P.C. against five accused persons.

47. Upon conclusion of the evidence on behalf of prosecution, the appellants were examined under Section 313 of the Cr.P.C. Such examination of the appellants as well as the trend of cross examination of prosecution witnesses goes to show that the appellants claimed innocence. According to the defense case, the appellants were in no way connected with the incident. They were falsely implicated in the case.

48. So far as the case of prosecution is concerned, the appellants were charged and tried for committing murder of victim Md. Javed @ Jahid. According the case of the prosecution, the dead body of the victim was recovered from the septic tank of Khan Marriage Hall. Police recovered the dead body and conducted inquest in presence of witnesses. Thereafter, the dead body was sent for post mortem examination. Autopsy was conducted by PW 5 and on examination of the dead body, PW 5 found as many as eight injuries on the body of the victim. Upon such examination, PW 5 opined that death was caused due to the effects of the injuries noted in the post mortem examination report, which were ante mortem and homicidal in nature which could be caused by sharp cutting weapons like *bhojali*, *hansua* and *nepala*. He also prepared the post mortem report which he proved as Exhibit-8. Thus, on the basis of

testimony of PW 5 as well as Exhibit-8, it is well established that the victim Md. Javed @ Jahid was murdered.

49. As regards the persons responsible for the murder of victim Md. Javed @ Jahid, it is the case of the prosecution that the appellants called upon the victim from his house while he was taking meal. They took the victim into Khan Marriage Hall for playing Carrom. It has been alleged that since then, the victim went missing and was never found until his dead body was recovered. As per the case of the prosecution, since the victim was last seen together with the appellants, they were responsible for this murder.

50. According to the case set out in the written complaint lodged by PW 1, his brother Javed went missing at about 1:00 p.m. on January 27, 2011 and, thereafter, he did not return. His father lodged a GDE on January 29, 2011 reporting that his son was missing. The written complaint also stated that PW 1 came to know from appellant Md. Samim that he took the brother of PW 1 to play Carrom inside Khan Marriage Hall and, at that time, Md. Chand, Md. Sagar, Md. Mujahid, Md. Gazi were also present with them.

51. The father of the victim lodged a GDE on January 29, 2011. The copy of said GDE has been proved as Exhibit-A. The reading of Exhibit-A goes to show that father of the victim stated in the GDE that his son

Javed aged about 17 years was missing since January 27, 2011. It also stated that the informant continued to search for the missing son until 28th January, 2011 at the house of relatives and other places but he could not found.

52. A perusal of Exhibit-A goes to show that although the father of the victim lodged a missing GDE with the police on January 29, 2011 but such missing diary does not contain any information to the effect that he was called upon by appellant Md. Samim from his house while he was taking meal, there is also no averment that while the victim was called by appellant Md. Samim, other appellants were also present there. It is categorically stated by PW 1 as well as PW 2 i.e. mother of the victim that the victim was called by appellant Md. Samim while he was taking meal at his house at about 1:00 p.m. Both the aforesaid witnesses have stated in their depositions that when the victim was called upon and taken alone by appellant Md. Samim, other appellants, namely, Sagar and Chand were standing on the road and Mujahid and Gazi were standing on the door of the office of Khan Marriage Hall. PW 3, another brother of the victim was also present when the victim was called. In his deposition, PW 3 also stated that the victim was called by Md. Samim as well as Chand and Sagar also. Such statement of PW 3 is contradictory to the statements of PWs 1 and 2. Moreover, the case of calling upon the

victim and taking along him has not been disclosed in Exhibit-A which was lodged after two days when the victim went missing. Such case was first made out in the written complaint lodged by PW 1 on January 30, 2011. There appears no explanation in the case of the prosecution as to why the written complaint was lodged after three days of the incident. On January 29th, 2011, father of the victim lodged a missing diary, not naming any suspect and even not narrating the incident which was incorporated in the written complaint lodged one day thereafter.

53. The case of the prosecution also does not offer any explanation as to why the missing diary was not lodged by the father of the victim when he lodged a missing diary only one day prior. The written complaint was lodged by PW 1 on January 30, 2011 at 3:45 hours. Thereafter, the dead body was recovered from a septic tank of Khan Marriage Hall in the morning hours of January 30, 2011. An inquest was conducted on the dead body and, thereafter, the dead body was sent for post mortem examination. Such post mortem examination was conducted at 2:20 p.m. at January 31, 2011. The post mortem report as well as testimony of the autopsy surgeon, PW5, shows that death of the victim occurred within 24 to 36 hours prior to the post mortem examination.

54. If that be so, the death of victim must have occurred within 3-4 hours prior to the recovery of dead body in the wee hours of January 30,

2011. Incidentally, according to the testimony of PW12, the police officer posted at Telinipara T.O.P, he had information of some disturbance in the locality, though; details of such disturbance were not brought on record by the prosecution.

55. The circumstances that the prosecution has tried to prove against the present appellants are that some of the appellants called the victim from his house at 13.00 hours on January 27, 2011. The other appellants were present there and accompanied the victim into the Khan Marriage Hall for playing carom. In such way, prosecution has tried to make out a case that the victim was last seen together alive with the appellants. However, such circumstances do not appear to be of any significance for the prosecution. Firstly, the time gap between the last seen and the recovery of the dead body does not permit to draw an inference of hypothesis of exclusive guilt of the appellants in the murder of the victim. Secondly, the victim went missing from the afternoon of January 27, 2011. He was then allegedly called by one of the appellants Md. Samim. The victim accompanied the said Md. Samim as well as other appellants into Khan Marriage Hall. There is no evidence that the victim and the appellants were seen together after such point of time. Search at different places were conducted to trace the victim for two days. Ultimately, finding no trace of the victim, a missing diary was

lodged with the police on January 29, 2011. Astonishingly, such missing diary did not find mention of the case that the victim, before he went missing, was called by the appellant(s). No suspicion as against the appellants was disclosed in such missing diary. Such an omission leaves the case of prosecution highly doubtful.

56. In ***Perumal Raja*** (supra), the Hon'ble Supreme Court, taking note of an earlier decision, observed that,

“40. This Court in Deonandan Mishra v. State of Bihar³¹ has laid down the following principle regarding circumstantial evidence and the failure of accused to adduce any explanation:

“It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are,

therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.”

41. The appellant - Perumal Raja @ Perumal in his statement under Section 313 of the Criminal Procedure Code, 1973 plainly denied all accusations without furnishing any explanation regarding his knowledge of the places from which the dead body was recovered. In this circumstance, the failure of the appellant - Perumal Raja @ Perumal to present evidence on his behalf or to offer any cogent explanation regarding the recovery of the dead body by virtue of his special knowledge must lead to a reasonable adverse inference, by application of the principle under Section 106 of the Evidence Act, thus forming an additional link in the chain of circumstances. The additional link further affirms the conclusion of guilt as indicated by the prosecution evidence.”

57. Similarly, in the case of **Satpal** (supra), the Hon’ble Supreme Court noted that,

“6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time

*when the deceased was last seen with the accused, **and the recovery of the corpse being in very close proximity of time**, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine.”*

[Emphasis supplied]

58. In **Ram Gopal** (supra) also it was held by the Hon’ble Supreme Court that,

“6. It may be noted that once the theory of “last seen together” was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the

accused, nonetheless it is also equally settled legal position that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by the prosecution was proved against him."

59. In ***Laxmi Kanta Karmakar*** (supra), a Coordinate Bench of this Court laid down similar views to the following terms, that's to say: -

"18. On the findings as above, all the incriminating circumstances relied upon by the prosecution against the appellant/convict, undoubtedly stands established. The chain is complete and taking into consideration all the proved facts collectively, the same leads to irresistible and inevitable conclusion that it is none else but the petitioner is the author of the crime and he concealed the beheaded dead body of the baby to conceal the disappearance the offence of murder.

19. After the most incriminating circumstance against the appellant that a truncated head of a new born baby was found inside his temple and when he was alone there being proved beyond all reasonable doubt, the provisions of section 106 of the Evidence Act comes into play and the burden shift on him to explain how that severed head came there, as the same was within his special knowledge. However, the appellant/convict having failed to offer any explanation as

regards to the same and only claimed his innocence, such failure can very well be considered as an additional link in the chain of circumstance pointing his guilt. We are therefore of the opinion, the conviction of the appellant for the offences punishable under section 302/201 of the Penal Code, 1860 is completely justified and same deserves no interference. The order of conviction and sentence passed against the appellant/convict by the trial court stands upheld.”

60. However, in the case at hand, the victim was last seen in the company to the appellants in the afternoon of January 27, 2011 whereas, the dead body was recovered on January 30, 2011. Coupled with that, a missing diary was lodged by the father of the victim on January 29, 2011 and such diary does not mention any of the appellant to be suspected in the incident of victim going missing. Moreover, the medical evidence showed the death to have occurred within 24 to 36 hours prior to post mortem examination which was conducted on January 31, 2011. In any case, the time gap between the victim going missing and recovery of dead body cannot be termed as proximate to oblige the appellants with an explanation under the provisions of Section 106 of the Indian Evidence Act, 1872.

61. Besides that, PW 11 stated in her deposition that although her house and Khan Marriage Hall were situated in the same row, but it was visible from her house. She further stated that Mujahid and her family

members belonged to a political party and they had campaigned against her husband. PW 11 narrated her endeavors in search of the victim with great details. She stated that when she enquired about the victim from appellant Mujahid, he became frightened. She did not state such fact in her statement under Section 164 of the Cr.P.C. Taking into account such statement of PW 11, coupled with the statement of PW 12 that there was information of turmoil in the locality, possibility of framing the appellants for political rivalry cannot be ruled out.

62. In ***Madan Gopal Kakkad*** (supra), the Hon'ble Supreme Court observed to the following,

“34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court.”

63. In the case of ***Pattipati Venkaiah*** (supra), in the facts of said case had found that the delay in lodging the First Information Report was

properly explained and the argument that there, was considerable delay in taking the victim to the hospital could not possibly survive. In the case at hand however, there appears no explanation on the part of the prosecution as why the first information report was lodged after a delay of 3 days when the victim went missing. In addition, there is another circumstance staring at the face of the prosecution case and that is, a missing diary was lodged by the father of appellant on January 29, 2011. In such diary, it was never mentioned that the victim was last seen in the company of the appellants.

64. In ***Mano Dutt*** (supra), the Hon'ble Supreme Court laid down that,

“33. The court can convict an accused on the statement of a sole witness, even if he was a relative of the deceased and thus, an interested party. The condition precedent to such an order is that the statement of such witness should satisfy the legal parameters stated by this Court in a catena of judgments. Once those parameters are satisfied and the statement of the witness is trustworthy, cogent and corroborated by other evidence produced by the prosecution, oral or documentary, then the court would not fall in error of law in relying upon the statement of such witness. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure its defect. Reference in this regard can be made to the judgment of this Court, in Anil

Phukan v. State of Assam [(1993) 3 SCC 282: 1993 SCC (Cri) 810].”

65. In the present case, no argument has been advanced on behalf of the appellants to the effect that their conviction was bad for being based on the testimony of interested witnesses. All that such witnesses have testified is that the victim was last seen in the company of the appellants 3 days prior to his death i.e. on January 27, 2011. Such witnesses testified that the dead body was discovered on January 30, 2011, post mortem was conducted at 2.:20 p.m. on January 31, 2011 and the autopsy surgeon opined that death of the victim might have occurred within 24 to 36 hours prior to the date and time of autopsy. Such evidence led at the trial does not inspire confidence in attracting the theory of last seen together. The time gap of over 72 hours between the time when the victim was last seen in the company of the appellants and the recovery of the dead body can, at no stretch of imagination, be termed as ‘proximate’ to apply the theory of last seen together.

66. Relying upon the principles laid down in ***Perumal Raja*** (supra), a case was made out that since the alleged offending weapons were recovered on the basis of statement of the appellants, such recovery should be taken to be one under the provisions of Section 27 of Indian

Evidence Act, 1872, the appellants have been rightly convicted by the learned trial court.

67. The Hon'ble Supreme Court, in **Perumal Raja** (supra), observed in relation to Section 27 of the Indian Evidence Act, 1872, to the following:

“22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In Mohmed Inayatullah v. State of Maharashtra, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby

discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible."

68. In the case at hand, PW 18, the investigating officer, stated in his deposition that he arrested the appellants, recorded their statements under Section 161 of the Cr.P.C. However, the recovery of alleged offending weapons, were made on the basis of statement made by the appellants in presence of the local people, when the appellants were brought by police to the Khan Marriage Hall. In any case, the relevant portions of the statement made by the appellants leading to recovery, which were recorded by PW 18 under Section 161 of the Cr.P.C., were not proved at the trial. Besides that, the autopsy surgeon was not confronted with the alleged offending weapons so recovered. PW 5, in his deposition had opined that the injuries found on the person of the victim could be caused by sharp cutting weapon like *bhojali*, *hansua* and *nepala*. The prosecution also failed to establish at the trial, that the alleged offending weapons, said to be recovered on the basis of statement of appellants were actually used in committing murder of the victim. The

serological expert witnesses failed to find the origin of blood found on such weapon.

69. Therefore, on the basis of discussions hereinbefore, we are not in a position to hold that the prosecution has been able to substantiate the charges leveled against the appellants with the help of convincing evidence. In such circumstances, we cannot sustain the conviction and sentence of the appellants as imposed by the learned Trial Court.

70. The impugned judgment of conviction and order of sentence are hereby set aside. The appellants are hereby acquitted from all the charges levelled against them.

71. Consequently, all the appeals being **CRA 402 of 2019, CRA 659 of 2019** and **CRA 85 of 2021** stand allowed. Connected applications, if any shall also stand disposed of accordingly.

72. The appellants be set at liberty forthwith, if not wanted in connection with any other case, subject to bail bond to be executed by the appellants under Section 437A of the Cr.P.C. corresponding to Section 481 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 which shall remain valid for a period of six months.

73. Copy of the judgment and order along with the Trial Court Records be transmitted to the learned Trial Court forthwith.

74. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

75. I agree.

[DEBANGSU BASAK, J.]