IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2731 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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MAHESH PARBATBHAI SURELA KOLI
Versus
STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MR PRATIK B BAROT(3711) for the Appellant(s) No. 1
MR LB DABHI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 30/07/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This criminal appeal preferred by the appellant original accused no.7-Mahesh Prabhatbhai Surela Koli, under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against the judgment of conviction and order of sentence dated 07.07.2008 passed by the learned Additional Sessions Judge (FTC), Jamnagar in Sessions Case No.89 of 2006 by which the appellant and co-accused Alpesh Rathod (Accused No. 6) have been convicted under Sections 302, 201 read with Section 34 of the Indian Penal Code and sentenced as

tabulated hereinunder:

Conviction	Sentence	Fine	In default of fine
Section 302 of IPC	RI for Life	Rs.1,000/-	RI for 3 months
Section 201 of IPC	RI for 7 years	Rs.1000/-	RI for 1 year

2. The case of the prosecution leading to conviction of the appellant accused is as follows:

2.1 On 25.04.2006, an offence of robbery with murder came to be registered (C.R.No. 94 of 2006) with City "A" Division Police Station, Jamnagar for the offence punishable under Sections 302, 457 and 460 of the Indian Penal Code.

2.2 The incident took place in the brass casting factory running in the name of 'Yogi Cast', owned by PW-17-Ramesh Gandubhai Bhanderi. The working hours of the factory were 7-00 a.m. to 5-00 p.m. There was a security personnel for round the clock employed by the complainant namely, Ramesh Bahadursinh Gorkha and he was living in the first floor of the factory.

2.3 The appellant Mahesh Koli A7 and Mahesh Barot A1 were working as a labourer with the factory. They were aware about the stock of brass scrap maintained for running of the factory and on the day of incident, there was huge stock of scrap lying in the factory. In this backdrop, the A1 and A7 along with A2 to A6 formed an unlawful

assembly with an object to commit an offence of robbery. In order to execute the operation, the accused arranged the matador for transportation and on 24/25.04.2006 in wee hours, they entered into factory for the purpose of robbery. The security personnel Ramesh Gorkha, after seeing the accused, had resisted and confronted the accused. In order to overcome the resistance, the appellant accused A7 and A6 Alpesh Rathod, inflicted multiple blows on the deceased watch-man by weapon Gupti, as a result, the deceased died on the spot. Thereafter, the accused looted the 600 kgs of brass scrap and other material from the factory and loaded in the matador and straightway went to village Jetpur, Dist.: Rajkot, where they sold the looted brass scraps to A5 Asif Sumra.

2.4 After the incident, i.e. on next day on 25.04.2006, when the complainant PW-17 came to his factory, he could not find the presence of the watchman at the ground floor and shutter of the factory was open. The PW-17 went to the upper floor, and saw the dead body of the watch-man lying in the pool of blood. He informed the police. On arrival of the police, and upon inquiry, it revealed that, unidentified persons looted the brass scraps, and killed the watch-man.

The offence in para-2.1 came to be registered with City “A” Police Station, Jamnagar. The inquest was prepared and dead body of the deceased sent for autopsy. The police drew the panchnama of scene of occurrence and collected the necessary samples for FSL.

The IO PW-38, Mr. V. D. Gohel, during the course of investigation, came to know that appellant A7 being a worker of

the factory, remained absent after the incident and upon further investigation, it revealed that, A7 in connivance with A1 Mahesh Barot made a plan for robbery and in order to execute the plan, the co-accused A2, A3, A4 and A6 also joined and participated in the offence. It was further revealed by the IO that, the looted brass scraps transported in the matador and sold to A5 at Jetpur City. The I.O. in view of the involvement of the accused, arrested A1 to A6 and seized the sold brass scraps from A5 and at the disclosure statement of A6 Alpesh Rathod, discovered and recovered the weapon gupti and its cover from the river of the city.

2.5 The appellant A7 came to know that, the police is looking on him, and therefore, he left his home and went to Village Bhanvad where he could not get any shelter from anyone. On 01.05.2006, the accused appellant purchased the poison for committing the suicide and when he landed in Jamnagar, he consumed poison near brook-bond company and his condition came to be deteriorated and after reaching the home, he told the family members about the reasons for consuming poison and was immediately admitted in the government hospital at Jamnagar. On 03.05.2006, the medical officer had informed the duty constable PW:40 Mr.A.K. Mehta and the statement of the accused was recorded by PW:40 wherein he has stated inter alia that his name was surface in the offence of robbery and murder and was scared by the police and under the apprehension, he went to Village Bhanvad and while returning back to Jamnagar, he thought to end his life by consuming poison, as a result, he purchased the poison and when he came to Jamnagar, he consumed it. The offence of attempt to suicide under

Section 309 came to be registered with City-B Police Station. The I.O. of the case came to know about the admission of the accused in the hospital and after his discharge on 09.05.2006, the accused came to be arrested in the case of robbery and murder.

During the interrogation, and while he was in the custody, he made a confessional statement and on his voluntary statement, the weapon gupti and burnt clothes discovered and recovered at the behest of the accused. The I.O. at the behest of the accused, discovered and recovered the slippers which the accused had worn at the time of commission of the offence.

In such circumstances, PW:38, Mr.V.D. Gohil, Police Inspector found sufficient material against 7 accused for the charge of dacoity with murder and causing disappearance of evidence and accordingly, filed the chargesheet before the jurisdictional Magistrate Court at Jamnagar. The case was culminated into Sessions Case No.89 of 2006 and was tried by the Court of Additional Sessions Judge (FTC), Jamnagar.

3. After due framing of charge and upon accused not pleaded guilty, the trial commenced before the Sessions Court. In order to prove the charge, the prosecution examined as many as 40 witnesses and exhibited following documents:

Oral evidence

PW 1 – Exh.24	Arvindbhai Jadavjibhai, panch witness
PW 2 – Exh.25	Madhavjibhai Popatbhai Patoliya, panch witness
PW 3 – Exh.26	Prafulbhai Harilal Kankhra, panch witness

PW 4 – Exh.27	Sanjay Mansukhbhai Kankhra, panch witness
PW 5 – Exh.28	Harilal Bavabhai Ramani, panch witness
PW 6 – Exh.29	Rameshbhai Raghavbhai Makwana, panch witness
PW 7 – Exh.30	Jagdish Sinh Udeysinh Jadeja, panch witness
PW 8 – Exh.35	Vijay Meghjibhai Bahnderi, panch witness
PW 9 – Exh.36	Jivanbhai Gandubhai, panch witness
PW 10 – Exh.37	Mahendrabhai Dhirajlal Fuliya, panch witness
PW 11 – Exh.38	Navjibhai Bachubhai, panch witness
PW 12 – Exh.39	Pruthvirajsinh Chandrsinh Vaghela, forensic officer
PW 13 – Exh.42	Ratilal Ramjibhai Rank, panch witness
PW 14 – Exh.43	Jagdishbhai saikanbhai katarmal, panch witness
PW 15 – Exh.44	Prafulbhai Harilal Kankhra, panch witness
PW 16 – Exh.48	Mahesh Bhikhabhai
PW 17 – Exh.60	Rameshbhai Gandubhai Bhanderi, Complainant
PW 18 – Exh.72	Jentilal Ragunath Popat, Medical Officer
PW 19 – Exh.74	Prabhaben Nanjibhai
PW 20 – Exh.75	Bipinbhai Bhikubhai
PW 21 – Exh.78	Ashishbhai Premnarayan Kher
PW 22 – Exh.84	Abhinav Mrudalbhai Kulsresth
PW 23 – Exh.89	Kanchanben Bavkubhai
PW 24 – Exh.90	Mayursinh Juvansinh
PW 25 – Exh.92	Kaushikbhai Bensing Makwana, Scientific officer
PW 26 – Exh.94	Kanjibhai Virjibhai Makwana, PSI
PW 27 – Exh.99	Yunusbhai Hasanbhai Makwana
PW 28 – Exh.100	Kamleshbhai Jamanbhai Amipara
PW 29 – Exh.102	Savitaben Parbatbhai Surela

PW 30 – Exh.103	Sarpbhadur Paherbhadur
PW 31 – Exh.108	Pritiben Premchandbhai Vora, medical Officer
PW 32 – Exh.115	Bhudharbhai Thobhanbhai Savsani, Circle Officer
PW 33 – Exh.119	Lakhmanbhai Kanabhai
PW 34 – Exh.120	Aminbhai Abdul Raheman, PSI
PW 35 – Exh.147	Mahavirsinh Navalsinh Sarvaiya, PI
PW 36 – Exh.151	Bhupatbhai Govindbhai Chavda, PI
PW 37 – Exh.156	Pritiben Premchandbhai Vora, Medical officer
PW 38 – Exh.164	Vikramsinh Dasrathsinh Gohel, PI
PW 39 – Exh.222	Devsibhai Amarshibhai Vaghela, PSO
PW 40 – Exh.230	Kishorbhai Kantibhai Mehta, ASI

Documentary evidence

Exh.34	Panchnama of Deceased clothes
Exh.40	PM Report Yadi
Exh.41	PM Report
Exh.68	Disha Impesh Bass Scrap Bill
Exh.73	Certificate of Treatment of Alpesh from Dr. J.R. Popat
Exh.85	Letter from Hutch Cellular Company regarding ownership of Mobile no. 9825918718 and 9825721095
Exh. 86&87	Letter from Hutch Cellular Company regarding call activity from Mobile no. 9825918718 and 9825721095
Exh.88	Certificate from Hutch Cellular Company regarding providing of information for Mobile no. 9825918718 and 9825721095
Exh.93	Preliminary Report from FSL, Mobile Unit
Exh.95	List of Commission of Crime

Exh.96	Copy of Station Diary
Exh.97	Special Report for Major Crimes
Exh.98	Crime Report E-Form
Exh.101	Diesel bill dated 23.04.06 from Reliance Petrol Pump
Exh.113	Collection of Accused Blood Sample Form
Exh.114	Certificate of Injury of Alpesh Karsanbhai
Exh.116	List of mapping of space to be created
Exh.117	Map of Construction Site
Exh.118	Letter Regarding construction site sent
Exh.121	Panchnama of Seizure of scrap Brass and Zinc material
Exh.157&158	List for taking blood samples
Exh.159	Mahesh Parbat Blood sample collection form
Exh.165	Complaint
Exh.166	Panchnama of Place of Offence
Exh.167	Inquest Panchnama
Exh.168	Panchnama of vehicle used in offence
Exh.169	Accused Mehul Nareshbhai arrest panchnama
Exh.170	Discovery Panchnama of weapon
Exh.171	Discovery panchnama of shirt and pant
Exh.172	Accused Mahesh Parbat Surela arrest panchnama
Exh.173	Panchnama of seizure of Burnt clothes
Exh.174	Panchnama of seizure of Slippers
Exh.175	List of Maps
Exh.176	List of Inquest panchnama of deceased
Exh.177,178	List of notes in station diary

&179	
Exh.180	Yadi for treatment of accused Alpesh Karsanbhai
Exh.181-183	Yadi for Collection of blood sample of accused
Exh.184	List of entries
Exh.185-187	Yadi for addition of section 201,395 and 412
Exh.188&189	Yadi for information to Hutch and Airtel cellular company
Exh.190&191	Letter of information regarding mobile of accused Dhoda and Mehul barot
Exh.192	Letter from Airtel regarding mobile of Lakhman Kanabhai
Exh.193	RC Book of Vehicle bearing number GJ03V3773
Exh.194,195	Goods and Carriage permit of Vehicle bearing number GJ03V3773
Exh.196	Police dog call form
Exh.197	Post mortem form
Exh.198-200	FSL Junagadh list of issue, letter of authority and Dispatch note
Exh.201-206	FSL Junagadh Receipt of goods, forwarding letter and analysis report
Exh.207-210	FSL report and Serological report and letter
Exh.223	Discharge of station diary
Exh.224	Copy of Information entry no.179/06
Exh.231	Statement of Accused Mahesh Parbat
Exh.232	Copy of MLC note no. 115/06
Exh.233	Location of FIR

4. After closure of the prosecution evidence, the accused were questioned under Section 313 of the Cr.P.C. to which they stated

their false involvement and claimed innocence.

5. The accused appellant and others have not adduced any evidence in their defence.

6. After appreciation of the evidence and hearing the parties, the learned Sessions Judge came to a conclusion that;

(a) The prosecution miserably proved the charge of unlawful assembly, dacoity with murder against the accused nos.1 to 5 and they have been acquitted of all the charges;

(b) So far as appellant original accused no.7 and accused no.6-Alpesh Rathod are concerned, the learned Trial Court on the basis of evidence of discovery of weapons, and the confessional statement made before the police by the accused no.7 appellant herein, came to a conclusion that the charge of murder has been proved beyond reasonable doubt against the accused nos.6 and 7 and they have been found guilty for the commission of the murder and causing disappearance of the evidence under Sections 302 and 201 of the Indian Penal Code and sentenced them to suffer life imprisonment.

7. This case has long history as after the verdict, the State has challenged the acquittal of the accused nos.1 and 5 by filing acquittal appeal before this Court and simultaneously, the accused nos.6 and 7 had challenged their conviction by preferring conviction appeal (Criminal Appeal Nos.2282, 2731, 2893, and 2894 of 2008). Vide judgment and order dated 21.08.2015, the

Coordinate Bench of this Court while disposing the group of appeals, dismissed the appeals filed by the State and upholding the conviction of accused nos.6 and 7, their appeals also came to be dismissed.

8. The appellant Mahesh Koli – original accused no.7 had challenged the judgment of Coordinate Bench dismissing his conviction appeal, before the Supreme Court (Criminal Appeal No.5466 of 2024, SLP Criminal Appeal No.9920 of 2022). The Supreme Court, vide order dated 19.12.2024, set aside the judgment and order of Coordinate Bench, dated 21.08.2015, remanded the matter for a fresh consideration on its own merits. In Para-9 of the judgment, the Supreme Court has observed thus:

> *"9. The High Court in affirming the conviction and sentence passed by the trial Court has not dealt with any of the submissions advanced by the parties, more particularly, by the counsel for the accused and has even ignored the fact that the entire prosecution was based upon circumstantial evidence. Not a single piece of evidence has been analyzed as if the chain of events stands proved so as to upheld the conviction. Notwithstanding the fact, that the appellate court in affirming the acquittal is not required to re-write the judgment or to give fresh reasoning, nonetheless, in our opinion, reasons for agreeing with the findings recorded by the trial Court must be recorded after briefly analyzing the evidence or agreeing with the analysis made by the trial Court. The manner in which the impugned judgment has been passed which apparently has been written in a casual manner cannot be approved of by this Court."*

9. In the aforesaid circumstances, after the remand, the present appeal

notified for final hearing before this Court.

10. We have heard learned counsel Mr.Pratik Barot and learned Additional Public Prosecutor Mr.L.B. Dabhi, for the respondent – State.

11. Mr.Pratik Barot, learned advocate while assailing the impugned judgment and order of sentence, vehemently contended that;

(a) The entire prosecution case rests on circumstantial evidence and the complete chain of events leading to the involvement of the appellant in the crime in question have not been established by the prosecution;

(b) That the incident took place on 24.04.2006, and thereafter, when the appellant was admitted in the hospital, the hospital police recorded his statement wherein the reference of present case was made by the accused and why the accused had consumed the poison that facts have been disclosed in the police statement. On the basis of the said statement and statement of co-accused on 09.05.2006, the appellant accused was arrested. Thus, the one of the circumstance relied by the prosecution to prove the case against the accused appellant is the confessional statement made before the police. While referring Sections 25 and 26 of the Evidence Act, it was submitted that a confession made by the accused, in his attempt to suicide is not admissible in evidence against him because a confession made before the police official whether in custody or not cannot be proved against the accused, and therefore, the two sections i.e. Sections 25 and 26 of the Evidence Act put a

complete bar in the admissibility of the confessional statement made to a police official. The Trial Court while recording the reasons, mainly relied on the proceedings of suicide case, more particularly, the confessional statement (Exh.231) made before the police constable PW:40 Kishor Mehta. In view of the statutory bar, and settled position of law, it was submitted that the learned Trial Court committed a grave error of law and went wrong while relying on the inadmissible evidence.

(c) That in a case which is based on circumstantial evidence, motive for committing crime on the part of the accused, assumes important. The suggested motive was to loot the brass scraps lying in the factory. In the present case, the Trial Court disbelieved the charge of robbery. In such circumstances, when the motive of crime is not established, and in absence of important link to connect the accused when missing, the accused cannot be convicted.

(d) That the confessional statement of the accused while discovery and recovery of the burnt clothes cannot be read against the evidence as the prosecution failed to prove the contents of discovery panchnama (Exh.173) in terms of Section 27 of the Evidence Act. In this context, it was submitted that the discovery being effected from the open and assessable place and on that count also, the evidence of discovery does not inspire confidence. Reliance has been placed on the judgment of ***Ramanand Vs. State of U.P. (2022 LiveLaw Supreme Court 843).***

12. In the circumstances, referred to above, Mr.Pratik Barot, learned counsel submitted that, the trial court failed to appreciate the evidence in its true prospective and recorded the conviction on the basis of suspicion, conjectures and surmises as there is no evidence to prove the chain of events leading to the guilt of the accused-appellant as each and every circumstances require to be established with certainty that the accused and none else is the perpetrator of the crime alleged. Thus, therefore, he submitted that the court below has committed a serious error while convicting the accused and the judgment of conviction and order of sentence are not sustainable and law and same may be set aside and appellant be acquitted from all charges.

13. On the other hand, Mr. L.B. Dabhi, learned State counsel vehemently opposed the appeal. He submitted that, the court below has not committed any error while holding the accused guilty of offence of murder and causing disappearance of the evidence. The appellant was associated with the cast factory where the murder took place as after the incident, he did not join the factory and absconded for about one month and thereafter, he tried to commit suicide by consuming poison and when he was hospitalized, he disclosed before the PW.40 – Kishor Mehta who was on duty as Constable with Government Hospital. The statement of the accused duly recorded by PW.40 (Exh.231) would show that the guilty mind of the appellant-accused. Thus, the relations of the accused as a labourer with the cast factory is not in dispute and after his arrest, during the course of investigation, he made a confessional statement and on his statement, the discovery of incriminating articles like

weapon and clothes would further prove the involvement of the appellant in the commission of crime. In such circumstances, prosecution has proved beyond reasonable doubt the charges against the appellant and the circumstances as referred above have been proved beyond reasonable doubt and all the circumstances cumulatively as well as individually are sufficient to establish the guilt of the accused and therefore, he prays that, there being no merits in the appeal and the same may be dismissed.

14. Before adverting to the submissions, it is relevant to refer the following admitted facts:

(a) In the present case, there is no dispute about homicidal death of the deceased and therefore, there is no need to refer the testimonies to decide the issue. In our considered opinion, the findings on this aspect recorded by the trial court are based on the evidence on record and we hereby affirm the said findings with respect to the homicidal death of the deceased recorded by the trial court.

(b) In the case on hand, the appellant accused was working as a labourer with the Yogi Cast and the same is not disputed by the appellant. It is also not in dispute that the deceased Ramesh Bahadur (Nepali) was employed as a Security Person by PW.17 and he was living at the first floor of the factory and the ground floor, the production house was established. In view of the admitted facts, it is proved and established that on 24.04.2006, the Security Man Ramesh Bahadur was allegedly murdered by the

sharp edge weapons. There is no eyewitness of the incident and the entire case of the prosecution rests on the circumstantial evidence.

15. The prosecution case being based on circumstantial evidence, it relied on the following circumstances to establish its case against the accused:

(i) the accused and accused no.6 – Alpesh Rathod in furtherance of their common intention, entered into factory and while carrying away the looted brass scrap, they killed security person by causing multiple blows on the body of the deceased with weapon Gupti;

(ii) the appellant after the incident, sold the looted brass scraps to A5 Asif Sumara;

(iii) A6 Alpesh Rathod after the incident went to his village Jetpur and tried to destroy the weapon gupti and clothes, etc. by throwing it into river which later on discovered and recovered at the instance of accused;

(iv) the appellant accused after the incident, had hidden the weapon gupti allegedly used in commission of the offence by him as well as his clothes, keeping on the babul tree near the open plot situated at Gokulnagar, Jamnagar which he had pointed out to the police by his disclosure statement in terms of Section 27 of the Evidence Act;

(v) thereafter, the appellant accused was on run and on 01.05.2006, he went to Village Bhanvad and on 02.05.2006, he

attempted to suicide by consuming poison and he was admitted in the government hospital and during his treatment, the hospital police recorded his statement wherein he made a reference of the offence of robbery and murder and disclosed the reasons for consuming poison;

The learned Trial Court, after appreciation of the evidence, came to a conclusion that the aforesaid circumstances stand proved and the prosecution has proved the complete chain of incriminating circumstances pointing towards the guilt of the accused.

16. Before dealing with the rival submissions of the parties, it would be useful to analysis the evidence of the some of the relevant witnesses:

(i) PW.13 – Ratilal Rank – The witness being a panch witness of discovery of weapon (Exh.173), has stated that, on 10.05.2006, he along with Bharat Ranchhodbhai were called by the City Police Station and appraised that, the accused Mahesh Koli 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 clothes which had worn by him at the time of commission of the offence. The witness had further stated that the police had noted the said facts in the first part of the panchnama and in the Government Jeep, they proceeded to the place where the weapon was hidden by the accused and the said place was shown by the accused-appellant and while reaching at the place, the accused shown the babul tree situated on the open plot in the area of Gokulnagar, Jamnagar and pointed out one plastic bag lying on the tree and thereafter, on

search of the plastic bag, the weapon Gupti with its cover and the burnt clothes were found and same had been seized and recovered by the police. In the cross-examination, the witness has admitted that, the area where the weapon and clothes found, is accessible to all and it is a public area.

(ii) During the investigation, I.O. on the basis of voluntary statement of the accused, discovered and recovered the slippers of the appellant which he worn at the time of commission of the offence. The slipper was found from the house of the appellant. The witnesses of discovery panchnama (Exh.174) declared hostile and they did not support to the case of prosecution. Thus, the deposition of PW.14 – Jagdish Katarmal and PW.15 Praful Kanakhra does not require to refer for the purpose of appreciation of evidence.

(iii) Vikramsinh Dashrathsinh Gohel (PW-38) – The I.O. in his deposition, so far as, arrest and role attributable to the appellant is concerned, it has been stated that after arrest of co-accused, name of the appellant surfaced in the commission of the murder, but he was on run and police were looking on the accused. The IO in his chief examination, stated that on 03.05.2006, the message received from the City "B" Police Station about the admission of the appellant accused in the G.G Hospital, Jamnagar, as in attempt to suicide, he had consumed poison. The accused was discharged on 09.05.2006 and thereafter, he came to be arrested in the present offence of murder. The I.O. has further stated that during the course of investigation, it was revealed that, the accused appellant while in custody, on his own free will, made a statement that he would show

the place where had hidden the weapon gupti and his clothes. Based on this statement made in terms of Section 27, in the presence of two panchas, the facts of disclosure being noted in the first part of the panchnama and thereafter, at the instance of accused, the weapon gupti and clothes have been discovered and recovered. The IO has further stated that, the statement of the accused made during his stay at GG Hospital and other papers kept with the investigation papers and after completion of the investigation, the chargesheet came to be filed against the appellant and others. In the cross-examination, except denial and false implication of the accused, nothing being asked to the IO by the defence side.

(iv) Kishor K. Mehta (PW.40) – Mr. Kishor Mehta being a A.S.I, City "B" Division Police Station, Jamnagar was posted at Hospital Chowky and when he was on duty on 03.05.2006 at about midnight 3:40 a.m., he received a note from the Medical Officer, containing therein that, one Mahesh Koli has consumed poison and he was brought for treatment and presently he has been admitted in the ward. On receiving the said note, the PW:40 contacted the appellant accused and he was conscious statement of mind and after verifying the said facts, the witness proceeded to record the statement of the accused (Exh.233), wherein he has stated inter alia that, *"on 24.04.2006, there was a theft and murder in the factory and his name is surfaced and police is after him and thus, he left the house and went to the Village: Bhanwad where he did not get the shelter, as a result, he purchased a poisonous medicine from the medical store and boarded the train to come to Jamnagar and on arrival at Jamnagar, when he was passing nearby Brookbond Area, he*

consumed poison and in a few minutes, he felt dizziness and started vomiting and after reaching at home, his wife and other family members brought him at G.G. Hospital."

In the cross-examination, nothing brought on record to show that, such kind of statement has not been disclosed by the appellant. The statement was given Exhibit (Exh.231).

17. We have heard at length the learned counsel for the parties. Admittedly, the prosecution case rest on the circumstantial evidence. It is settled position of law that, when the case is based on circumstantial evidence, the prosecution must established the chain of unbroken events, unerringly pointing to the guilt of the accused and none other. The circumstances from which the conclusion of guilt is to be drawn, should in the first instance be fully established and thereafter the circumstances taken cumulatively should formed 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 further show that in all probability the offence must have been committed by the accused. ***(Sharad Birdhi Chand Sarda Vs. State of Maharashtra AIR 1984 SC 1622)***.

18. Now, the question that arises for our consideration is whether the aforesaid circumstances and the chain of events conclusively establish the involvement of the accused in committing the offence of murder?

19. Let us examine the first circumstance of discovery and recovery of weapon and burnt clothes. In the facts of the present case, the incident of murder alleged to have been taken place on 24/25.04.2006. The appellant was arrested on 09.05.2006. The alleged facts of discovery of weapon at the behest of accused being demonstrated on 11.05.2006. The witness of the discovery panchnama (PW.13) has supported the prosecution case, inter alia, stating that the accused made a voluntary statement that, he intends to show the place where he had hidden the weapon Gupti and on his behest, the facts discovered and the weapons and clothes were recovered and seized. It is not in dispute that, the place where the weapon found was an open and accessible place and public access cannot be ruled out. In such circumstances, we have a reasonable doubt in our mind about the plastic bag filled with the weapon Gupti, went unnoticed to the public in general and therefore, the facts of discovery in the form of confessional statement of accused from an open place weakens the prosecution case significantly. We may refer the language of Section 27 which says that, when any fact is deposed to as discovered in consequences of information received from a person accused of any offence, in police custody and if the information relates distinctly to the fact discovered, the said confession may be presumed to be true. Thus, in the facts of present case, the evidence of discovery as relied by the prosecution is not reliable and trust worthy as the alleged weapon is found in an open and accessible place and direct link between the accused statement and his exclusive knowledge of the weapon's concealment is severed. The another infirmities we have found in

the prosecution case on the admissibility of disclosure statement made during the discovery and recovery. The witnesses of discovery panchnama Exh.173 and the I.O. PW:38 failed to prove the contents of the panchnama as mandated by the Supreme Court in the case of ***Ramanand vs. State of U.P. (2022) Livelaw SC 843***. The Supreme Court has emphasized that, the contents of discovery panchnama must be proved by the prosecution before accepting the evidence of discovery and there is an obligation on the part of I.O. to prove the contents of discovery panchnama. In the present case, upon careful examination of the oral as well as documentary evidence, neither the panchas, nor the I.O. have deposed the exact statement and/or words uttered by the accused on the aspect of discovery of facts and recovery of weapon. In view of the settlement position of law and the evidence adduced by the prosecution in the present case, the evidence of discovery in the form of disclosure statement and recovery of weapon at the instance of accused-appellant is not proved and established and the same cannot be read in evidence against the accused.

20. The prosecution mainly relied on the circumstance of statement of the accused-appellant before the Police Constable Mr. Kirit Mehta (Exh.40). We have carefully examined the evidence on this aspect i.e. statement of the accused (Exh.231). It is no doubt true that on 03.05.2006, the accused consumed poison and was admitted in the G.G. Hospital, Jamnagar. Upon reading the entire statement, we do not find any incriminating circumstances suggestive of the admission and/or confession of the accused of the guilt. The accused while narrating the cause for consuming poison, stated

that, the police were looking on him in connection with the theft and murder of security guard in the factory premises and was scared of the things as his name was disclosed as offender in the said incident and that is why he left the house and went to Bhanvad Village where he did not get shelter from anyone and had purchased the poisonous medicine and after arrival at Jamnagar Railway Station, he consumed the medicine near Brookbond Area. In such circumstances, we do not find from the statement of the accused a direct acknowledgment of the guilt or admission of the facts which constitute the offence charged with and therefore, the statement recorded by the police cannot be proved against the accused under Sections 21, 25 and 26 of The Evidence Act. Even otherwise, assuming that there was a confession and/or admission of the guilt of the accused then also a statement made to the police officer in one case is not admissible in evidence, against the accused in another case. Section 25 of the Evidence Act says that a confession made to the police officer is prohibited and cannot be admitted in evidence. Likewise Section 26 provides that no confession made by any person while he is in police custody of a police officer shall be proved against such person unless it is made in the immediate presence of Magistrate. In other words, this two sections put a complete bar in the admissibility of a confessional statement made to the police officer. Thus, in our view, the circumstance of admitting the guilt of the accused by way of confessional statement to the police officer cannot be read in evidence against the accused and therefore, the prosecution on this aspect miserably failed to prove the said circumstance pointing the

guilt of the accused.

21. Based on the analysis of the evidence on record, the circumstances as relied by the prosecution namely evidence of discovery and recovery, acknowledgment of the guilt by the accused appellant before the police officer, are insufficient to link the accused in the commission of the crime and therefore, we are of the considered view that the chain of incriminating circumstances required to bring home the guilt of the accused is not complete in all aspects. It is relevant to note that in a criminal trial irrespective of gravity and nature of charges, the prosecution is under an obligation to prove the guilt of the accused by leading evidence which must be convincing and link the accused with the crime beyond reasonable doubt and the prosecution cannot be relieved by its duty by creating suspicion in the mind of the Court or by proving suspicious circumstances against the accused in the case because suspicion, however, grave cannot take the place of the proof and it is fundamentally maxim of criminal jurisprudence that suspicion and conjectures are no substitute for proof.

22. For the reasons aforementioned, we have no hesitation to hold that the prosecution failed to prove the charges against the accused by acceptable, cogent and reliable evidence. The judgment of conviction and order of sentence passed against the appellant accused is not sustainable in law and accordingly, deserves to be set aside and are hereby set aside.

23. In the result, the appeal stands **allowed**. The judgment of

conviction and order of sentence dated 07.07.2008 passed in Sessions Case No.89 of 2006 is set aside. The appellant accused stands acquitted of all charges. The accused appellant is on bail and no need to surrender again. The bail bond stands cancelled and discharged. Fine amount deposited if any, be refunded to the accused. R & P be sent back to the concerned Trial Court.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

Rakesh

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RAKESH MAHESHKUMAR KOSHTI(HC00950), Principal Pvt. Secretary, at High Court of Gujarat on 30/07/2025 16:38:17